SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON.LYNN R. KOTLER, J.S.C. PART 8

FELIX MATEO

INDEX NO. 158355/2018

MOT. DATE

- v -

MOT. SEQ. NO. 002

FRANKLIN PLAZA APARTMENT INC.

The following papers were read on this motion to/for sj

Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits ECFS Doc. No(s)._____
Notice of Cross-Motion/Answering Affidavits — Exhibits ECFS Doc. No(s)._____
Replying Affidavits ECFS Doc. No(s)._____

This personal injury action arises from a slip and fall. Defendant Franklin Plaza Apartments Inc. ("Franklin") now moves for summary judgment dismissing plaintiff's complaint. Plaintiff opposes the motion. Issue has been joined and the motion was timely brought after note of issue was filed. Therefore, summary judgment relief is available. For the reasons that follow, the motion is granted.

The relevant facts are as follows. On March 25, 2017, at 1am, plaintiff allegedly slipped and fell on urine in the stairway of the building located at 325 East 106th Street, New York, New York (the "building"). The accident specifically occurred in stairway "B" between the 2nd and 1st floors on the first step from the top of the stairs. At his deposition, plaintiff testified that he was staying with his girlfriend, Leonor Caban, who lived in apartment 2B at the building. On the date of the accident, plaintiff admitted he had consumed a 40-ounce bottle of beer. Shortly before the accident occurred, plaintiff left the apartment to walk his dog and "get more beers." He took stairway "B" to exit the building. Plaintiff testified that the lighting was dim, but he could see the stairs. There was also a handrail, but plaintiff said there was "no reason" why he was not holding it at the time of his accident. Plaintiff did not see what caused him to fall before the accident. After he slipped, plaintiff slid down the stairs and struck the door at the bottom of the staircase. Plaintiff then testified that he saw urine at the bottom of the staircase.

Q. Did you ever see what it was that caused you to slip?

A. Urine, human urine.

Q. Before the accident happened, did you see what caused you to slip?

A. No.

Dated: 10/12/22

HON. LYNN R. KOTLER, J.S.C.

1. Check one: ☒ **CASE DISPOSED** ☐ **NON-FINAL DISPOSITION**

2. Check as appropriate: Motion is ☒ **GRANTED** ☐ **DENIED** ☐ **GRANTED IN PART** ☐ **OTHER**

3. Check if appropriate: ☐ **SETTLE ORDER** ☐ **SUBMIT ORDER** ☐ **DO NOT POST**

☐ **FIDUCIARY APPOINTMENT** ☐ **REFERENCE**

Q. When for the first time did you see this human urine?

A. When I slipped.

Q. Did you see it at the same time you were slipping?

A. No. At the bottom of the staircase.

Q. You saw the urine at the bottom of the staircase?

A. Yeah, when I landed in it.

Q. Did you see any urine on the steps above you?

A. No.

Q. Do you know how long the urine was at the bottom of the staircase?

A. That, I can't tell you. It looked fresh, like somebody just finished pissing, and as I am walking down, That's when it happened.

Q. Would you say it looked brand-new?

A. Like somebody just finished pissing in the staircase.

Q. Looked like it just happened?

A. Not like just happened, but five, ten minutes prior, 15 minutes prior at least.

Q. Did it look like anyone stepped through this urine?

A. No. Not that I know of.

Q. Did you see any footprints on the steps?

A. No.

...

Q. When you were at the bottom of the stairs, did you turn around and look up the stairs?

A. Yes.

Q. Did.you see any urine on the steps?

A. Yeah, all the way up.

Caban also appeared and testified at a deposition about her observations regarding plaintiff after the accident occurred and the accident location. Caban inspected the subject staircase and claimed that she observed "fresh urine" as well as "dry urine" and took photographs of the staircase on the evening of March 25, 2017. Caban further testified that she claimed there was urine in the subject stairwell on an "ongoing" basis in the days prior to the accident and that she complained to the super at the building. According to Caban, the super said "I will take care of it."

Franklin produced three witnesses, two porters and a property manager who was not employed by Franklin until 2019, two years after plaintiff's accident occurred. The porters generally testified about their duties to inspect the staircases twice a day, including weekends. There was also a security com-

pany who conducted its own inspections of the stairways. If a problem was observed, it was the porters' responsibility to address it. The property manager denied that there was an ongoing urination problem at the building. However, one of the porters acknowledged that he encountered urine in the stairwells at the building "[m]aybe once a month" However, the porter did not report or record urine when found and would just clean it up. The porter further acknowledged that he had seen signs placed on the wall of the stairways that said "no urinating in the stairs".

During the course of discovery, Franklin produced a document entitled "Building Porter's Job Description" which enumerates duties assigned to porters, on which the second item listed reads: "Strict attention is to be given to the stairwell daily. Mop urine and clean up debris." Franklin also produced maintenance tickets and a security logbook from March 1, 2017 through May 1, 2017 wherein there are no entries or complaints about urine.

DISCUSSION

On a motion for summary judgment, the proponent bears the initial burden of setting forth evidentiary facts to prove a prima facie case that would entitle it to judgment in its favor, without the need for a trial (CPLR 3212; *Winegrad v. NYU Medical Center*, 64 NY2d 851 [1985]; *Zuckerman v. City of NewYork*, 49 NY2d 557, 562 [1980]). If the proponent fails to make out its prima facie case for summary judgment, however, then its motion must be denied, regardless of the sufficiency of the opposing papers (*Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]; *Ayotte v. Gervasio*, 81 NY2d 1062 [1993]).

Granting a motion for summary judgment is the functional equivalent of a trial, therefore it is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue (*Rotuba Extruders v. Ceppos*, 46 NY2d 223 [1977]). The court's function on these motions is limited to "issue finding," not "issue determination" (*Sillman v. Twentieth Century Fox Film*, 3 NY2d 395 [1957]).

Franklin has established *prima facie* that it discharged its duty as a landowner to maintain the building in a reasonably safe condition through the testimony of its witnesses, including the porters who testified how often and how exactly they maintained the stairway at issue. In turn, plaintiff has failed to raise a triable issue of fact sufficient to defeat the motion. Plaintiff's own testimony was contradictory, in that he first testified that he did not observe any urine on the steps above him and then he said that there was urine on those steps. Nonetheless, plaintiff admitted he didn't see the urine before his accident and further, that he did not know how long the urine was present in the subject staircase sufficient to raise a triable issue of fact as to constructive notice. A building owner is not "required to patrol its staircases 24 hours a day" (*Ellis v. City of New York*, 188 AD3d 594 [1st Dept 2020]). Accordingly, defendant's motion for summary judgment is granted.

Nor has plaintiff established that the urine condition which allegedly caused his accident was a recurrent condition such that Franklin should be held liable for plaintiff's accident. A landowner can be charged with constructive notice of an ongoing and recurring dangerous condition when it has actual notice of same. "A question of fact regarding a recurrent dangerous condition can be established by offering evidence that an ongoing and recurring dangerous condition existed in the area of the accident which was routinely left unaddressed" (*Pagan v. New York City Hous. Auth.*, 172 AD3d 888 [2d Dept 2019] citing *Mauge v. Barrow St. Ale House*, 70 AD3d 1016 [2d Dept 2010]). Other than Caban's self-serving statement that she personally observed and allegedly told the super about urine in the staircase, there is no proof that of a recurrent urine problem in the stairways. Assuming *arguendo* that there was sufficient proof, porters were instructed to clean up urine in the stairways and signs were posted warning against the complained-of condition. Therefore, defendant has shown that it took reasonable steps to address urine in the stairways because it had porters on duty every day of the week who inspected the staircases twice a day and complaints could be made regarding maintenance issues, including urine in the stairways, at any time. No reasonable factfinder could find in favor of plaintiff on this record. Therefore, Franklin's motion must be granted.

CONCLUSION

In accordance herewith, it is hereby:

ORDERED that the motion for summary judgment by defendant Franklin Plaza Apartments Inc. is granted, plaintiff's complaint is dismissed and the Clerk is directed to enter judgment accordingly.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly rejected and this constitutes the decision and order of the court.

Dated: 10/12/22
New York, New York

So Ordered:

Hon. Lynn R. Kotler, J.S.C.