Murray v Four Seasons Hotels Ltd.
2023 NY Slip Op 31687(U)
May 19, 2023
Supreme Court, New York County
Docket Number: Index No. 159050/2019
Judge: Lyle E. Frank
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK, ***Justice*** — **PART** **11M**

INDEX NO. 159050/2019

MOTION DATE 01/06/2022

MOTION SEQ. NO. 002

---X

JACK MURRAY,

Plaintiff,

- v -

FOUR SEASONS HOTELS LIMITED, 30 PARK PLACE HOTEL LLC D/B/A FOUR SEASONS HOTEL NEW YORK DOWNTOWN,

Defendant.

---X

DECISION + ORDER ON MOTION

FOUR SEASONS HOTELS LIMITED

Plaintiff,

-against-

HARVARD PROTECTION SERVICES, LLC

Defendant.

---X

Third-Party
Index No. 595366/2020

The following e-filed documents, listed by NYSCEF document number (Motion 002) 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107

were read on this motion to/for JUDGMENT – SUMMARY .

Plaintiff commenced this action to recover for alleged personal injuries he suffered on August 23, 2019, when he was opening a large wood panel door, the door became dislodged and fell down onto plaintiff, at the Four Seasons Hotel, located at 27 Barclay Street, New York, NY.

Defendants, Four Seasons Hotels Limited and 30 Park Place Hotel LLLC D/B/A Four Seasons Hotel New York Downtown, on the grounds that neither had actual or constructive notice of the alleged defect and that immediately preceding the accident there was not a readily apparent defective condition. Plaintiff opposes the instant motion and cross moves for summary

judgment. For the reasons set forth below, defendants' motions for summary judgment is granted, plaintiff's motion is denied, and the complaint is dismissed in its entirety[1].

Background

On August 23, 2019, plaintiff was employed by Harvard Security as the Fire Safety Director at the Four Seasons Hotel. As part of his employment duties, plaintiff was required to monitor the fire safety panel which was located behind bi-fold doors in the hotel lobby by the entrance.

Plaintiff testified that he mentioned to an employee, that he believed to be hotel maintenance person, that the doors were loose. Plaintiff did not recall when he spoke to the alleged hotel maintenance person. Other than this one occasion, plaintiff did not complain or mention the door to his employer or any other entity.

Plaintiff testified that just before the accident, the subject door opened the same way it always did, then got stuck at some point, then the door fell down.

Applicable Law

A party moving for summary judgment "must make prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The "facts must be viewed in the light most favorable to the non-moving party" (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012] [internal quotation marks and citation omitted]). Once the moving party has met this prima facie burden, the burden shifts to the non-moving party to furnish evidence in admissible form sufficient to raise a material issue of fact (*Alvarez*, 68 NY2d at 324).

[1] The third-party action was previously discontinued. *See* NYSCEF Doc. 68.

The moving party's "[f]ailure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers" (*id.*).

It is well settled that absent proof that a defendant actually created the dangerous condition or, had actual or constructive notice of the same, there can be no liability on a claim for premises liability (*Piacquadio v Recine Realty Corp.*, 84 NY2d 967, 969 [1994]; *Bogart v F.W. Woolworth Company*, 24 NY2d 936, 937, [1969]; *Armstrong v Ogden Allied Facility Management Corporation*, 281 AD2d 317 [1st Dept 2001]; *Wasserstrom v New York City Transit Authority*, 267 AD2d 36, 37 [1st Dept 1999]; *Allen v Pearson Publishing*, 256 AD2d 528, 529 [2d Dept 1998]; *Kraemer v K-Mart Corporation*, 226 AD2d 590 [2d Dept 1996]).

A defendant is charged with having constructive notice of a defective condition when the condition is visible, apparent, and exists for a sufficient length of time prior to the happening of an accident to permit the defendant to discover and remedy the same (*Gordon v American Museum of Natural History*, 67 NY2d 836, 837 [1986]). The notice required must be more than general notice of any defective condition (id. at 838; *Piacquadio* at 969). Instead, notice of the specific condition alleged at the specific location alleged is required and, thus, a general awareness that a dangerous condition may have existed, is insufficient to constitute notice of the particular condition alleged to have caused an accident (*Piacquadio* at 969). The absence of evidence demonstrating how long a condition existed prior to a plaintiff's accident constitutes a failure to establish the existence of constructive notice as a matter of law (*Anderson v Central Valley Realty Co.*, 300 AD2d 422, 423 [2d Dept 2002]. lv denied 99 NY2d 509 [2008]; *McDuffie v Fleet Fin. Group*, 269 AD2d 575 [2000]). Alternatively, a defendant may be charged with constructive notice of a hazardous condition if it is proven that the condition is one that recurs and about which the defendant has actual notice (*Chianese v Meier*, 98 NY2d 270, 278 [2002];

Uhlich v Canada Dry Bottling Co. of NY, 305 AD2d 107 [2003]). If such facts are proven, the defendant can then be charged with constructive notice of the condition's recurrence (id.; *Anderson* at 422).

Generally, on a motion for summary judgment a defendant establishes prima facie entitlement to summary judgment when the evidence establishes the absence of actual or constructive notice (*Hughes v Carrols Corporation*, 248 AD2d 923, 924 [3d Dept 1998]; *Edwards v Wal-Mart Stores, Inc., 243 AD2d 803* [3d Dept 1997]; *Richardson-Dorn v Golub Corporation*, 252 AD2d 790 [3d Dept 1998]). If defendant meets its burden it is then incumbent on plaintiff to tender evidence indicating that defendant had actual or constructive notice (*Strowman v Great Atlantic and Pacific Tea Company, Inc.*, 252 AD2d 384, 385 [1st Dept 1998]).

Further, constructive notice will not be imputed where the defect is latent. *Bean v Ruppert Towers Hous. Co.*, 274 AD2d 305 [1st Dept 2000]; *Barrerra v New York City TR. Auth.*, 61 AD3d 425 [1st Dept 2009].

The Court finds that defendants have established that the defect that caused the accident were latent defects. Defendants have established a lack of actual notice and constructive notice as the record is devoid of any complaints or visible defects with the subject door. The Court finds that he complaint allegedly made by plaintiff to a maintenance person is a feigned issue of fact, as there is no indication who the person was that the alleged complaint was made to, nor that such person had any responsibility to either fix the door or alert someone about the door.

<u>Plaintiff's untimely Cross-Motion</u>

Notwithstanding the tardiness of plaintiff's cross-motion, in addition to a lack of good cause shown for the delay, the Court will address the merits of plaintiff's motion. Plaintiff

opposes the instant motion for summary judgment and simultaneously cross-moves for summary judgment. Plaintiff fails to meet its burden with respect to its contention that the doctrine of res ipsa loquitur applies. Moreover, plaintiff fails to raise a triable issue of fact to rebut defendants' prima facie showing.

Plaintiff's reliance on the doctrine of res ipsa loquitur is unavailing. A plaintiff may rely on the doctrine of res ipsa loquitur to establish a defendant's liability when: "(1) the event is of the kind that ordinarily does not occur in the absence of someone's negligence; (2) the event was caused by an agency or instrumentality within the exclusive control of the defendant; and (3) the accident was not due to any voluntary action or contribution on the part of the plaintiff" (*Valdez v Upper Creston, LLC*, 201 AD3d 560, 561 [1st Dept 2022]). Granting summary judgment on liability based upon res ipsa loquitur is granted only in rare instances (*see Maroonick v Rae Realty, LLC*, 205 AD3d 423 [1st Dept 2022]), and "only when the plaintiff's circumstantial proof is so convincing and the defendant's response so weak that the inference of defendant's negligence is inescapable" (*Morejon v Rais Constr. Co.*, 7 NY3d 203, 209 [2006]). Plaintiff has not established that this is one of those instances (*see Barney-Yeboah v Metro-North Commuter R.R.*, 25 NY3d 945, 946 [2015], *revg* 120 AD3d 1023 [1st Dept 2014] [denying summary judgment to plaintiff who was struck by a ceiling panel on a train that led to the train's HVAC system]). Furthermore, plaintiff has not established that the door was under the exclusive control of defendants.

Plaintiff cites to a plethora of cases regarding transitory conditions and the burden to inspect the locations. Those cases are distinguishable from the instant action, where the undisputed testimony of the non-party repairman, Mr. Omar Rodriguez, a witness subpoenaed by the plaintiff, establishes that the defect that caused plaintiff's accident was a latent defect, not

readily apparent. Further, plaintiff's expert affidavit creates a feigned issue of fact as he opines that the door not being flush with the wall, according to a video and not a physical inspection of the premises, caused the accident. The expert affidavit does not dispute that the wear and tear of pivots caused the door to become dislodged, consistent with the testimony of Mr. Rodriguez.

Here, as indicated above, the Court finds that defendants have established that they had neither actual nor constructive notice of the alleged defect. As such based on the precedent discussed above, the defendants have made out *prima facie* entitlement to judgment as a matter of law. The Court has reviewed plaintiff's remaining contentions and finds them unavailing. Accordingly, it is hereby

ADJUDGED that defendants' motion for summary judgment is granted and the plaintiff's cross-motion for summary judgment is denied; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment of dismissal accordingly.

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5/19/2023
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:	X	**CASE DISPOSED**			**NON-FINAL DISPOSITION**		
	X	**GRANTED**	☐ **DENIED**		**GRANTED IN PART**	☐ **OTHER**
APPLICATION:		**SETTLE ORDER**			**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**			**FIDUCIARY APPOINTMENT**	☐ **REFERENCE**