

Shmueli v Savoy Condominium, LLC

2023 NY Slip Op 31787(U)

May 24, 2023

Supreme Court, New York County

Docket Number: Index No. 160302/2016

Judge: Leslie A. Stroth

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LESLIE A. STROTH PART 12

Justice

-----X
SARIT SHMUELI, INDEX NO. 160302/2016
MOTION DATE 05/16/2023
MOTION SEQ. NO. 012
Plaintiff,

- v -

THE SAVOY CONDOMINIUM, LLC, DECISION + ORDER ON MOTION
Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 012) 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416

were read on this motion to/for JUDGMENT - SUMMARY

The instant motion arises out of an action by plaintiff Sarit Shmueli (plaintiff) to recover for injuries she suffered when she allegedly slipped and fell on a pool of soap and water on the lobby floor of 200 East 61st Street, New York, NY 10065 (the subject building) on June 2, 2016. Defendant The Savoy Condominium, LLC (defendant) moves for an order granting it pre-note of issue summary judgment pursuant to CPLR 3212. Plaintiff opposes the motion and cross-moves for an order granting her summary judgment pursuant to CPLR 3212.

I. Arguments¹

Defendant argues that plaintiff's action should be dismissed because plaintiff fails to identify the mechanism of her accident, asserting that there was no hazardous condition present. In contrast to plaintiff's claims, defendant maintains that there was no water on the floor and that

¹ In reviewing the parties' arguments on this motion, the Court only took into consideration arguments and facts pertaining to the instant action, which is limited to plaintiff's claims against defendants of negligence for allegedly creating a dangerous condition in the subject building's lobby that plaintiff claims caused her to slip and fall. Any claims of misconduct on behalf of any counsel involved in this matter are not relevant to the instant motion and would be more appropriate on a motion for sanctions and/or discovery.

porter Richard Garcia was using electric dry buffer to clean the floor, as evidenced in video footage of the accident. Further, defendant claims that it did not have actual or constructive notice of any dangerous condition underlying the accident nor did it create any dangerous condition. Additionally, defendant asserts that plaintiff's claims regarding harassment, retaliation, and foreclosure should be rejected as they were dealt with in prior actions. Therefore, defendant argues that plaintiff has failed to meet her evidentiary burden and that it is entitled to summary judgment.

In support of the motion, defendant submits the affidavit of Mr. Garcia, who works as a porter in the subject building and helped plaintiff get up after she fell. Mr. Garcia attests that he was operating an electric floor buffer in the lobby on the day of plaintiff's accident and that he observed the floor to be dry when plaintiff fell. He further states that there were yellow warning signs placed on the floor visible to all. However, he gives no detail as to what, if any, cleaner or substance he used as he operated the floor buffer just before plaintiff fell.

Defendant also submits an affidavit of Luis Gomez, who works as a concierge in the subject building. Mr. Gomez attests that he was present in the lobby at the time of plaintiff's accident and that he observed Mr. Garcia using an electric buffer to clean the floor, although he states that he was looking at a mobile device at the moment of plaintiff's fall. He further states that he observed the lobby floor to be clean and free of any debris or foreign substances. Lastly, defendant references video footage of the accident that it claims was submitted and shows that there was no water on the floor. However, the video footage was not provided to the Court or plaintiff. Therefore, no such footage or the conditions which defendant claims it shows could be considered by the Court.

In opposition, plaintiff asserts that there was a pool of soap and water on the left side of the lobby floor which caused her to slip and fall, that she did not see any sign warning that the

floor was wet, and that her feet and clothes were wet after she fell. She further alleges that she sustained permanent injuries from the fall which required her to undergo multiple surgeries. Plaintiff also argues that the affidavits of defendant's employees Mr. Garcia and Mr. Gomez are fraudulent, claiming that they contain statements which contradict prior signed statements they made. Additionally, plaintiff claims that defendant has not responded to her discovery requests and makes allegations of misconduct on the part of defendant's attorney, including the allegation that he is withholding additional video footage of the accident. Lastly, plaintiff maintains that defendant has retaliated against her for filing the instant action by attempting to evict her from her apartment at the subject building.

II. Analysis

On a motion for summary judgment pursuant to CPLR 3212, the movant must tender sufficient evidence to show the absence of any material issues of fact. *See Alvarez v Prospect Hospital*, 68 NY2d 320 (1986). Summary judgment is a drastic remedy, and, therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted. *See Dauman Displays, Inc. v Masturzo*, 168 AD2d 204 (1st Dept 1990). To establish a *prima facie* case on a slip and fall accident, a plaintiff "must show that the defendants either created a dangerous condition or had actual or constructive knowledge of the condition." *Lemonda v Sutton*, 268 AD2d 383, 384 (1st Dept 2000).

Issues of material fact exist which preclude summary judgment for either party at this time, including questions of fact as to what caused plaintiff's slip and fall, whether the floor was wet, and whether there were visible signs indicating that the floor was wet. Defendant claims that the floor was not wet, asserting that Mr. Garcia was dry buffing the floor and that there were warning signs placed on the floor to alert people of the dry buffing. The affidavits of Mr. Garcia and Mr.

Gomez also indicate that there was no water on the floor. In contrast, plaintiff maintains that the floor was wet, and this was the cause of her slip and fall. When asked during her deposition what caused her to slip, plaintiff stated, "The floor was wet...after I fell, my clothes and my feet were wet." Plaintiff's Deposition Transcript at 44, lines 8-17. Further, plaintiff testified that she did not see any yellow caution signs on the floor prior to her accident. *See id.* at 43, lines 18-21.

Therefore, as material issues of fact exist, defendant's motion for summary judgment is denied. Plaintiff's cross-motion for summary judgment similarly lacks sufficient proof in admissible form to eliminate issues of fact. These issues must be reviewed and evaluated at a trial by the trier of fact.

Accordingly, it is hereby

ORDERED that defendant The Savoy Condominium's motion for an order granting it summary judgment is denied; and it is further

ORDERED that plaintiff Sarit Shmueli's cross-motion for an order granting her summary judgment is denied; and it is further

ORDERED that that, within 30 days of entry of this order, defendant shall serve a copy of this order upon all parties, with notice of entry, and shall file such notice via NYSCEF.

The foregoing constitutes the decision and order of the Court.

5/24/2023
DATE


LESLIE A. STROTH, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

APPLICATION:

CHECK IF APPROPRIATE:

REFERENCE