

Ahye v 22 Hawthorne St. LLC

2023 NY Slip Op 32974(U)

August 28, 2023

Supreme Court, Kings County

Docket Number: Index No. 518476/2021

Judge: Francois A. Rivera

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.

At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 28th day of August 2023

HONORABLE FRANCOIS A. RIVERA

-----X
DELENE AHYE,

Plaintiff,

DECISION & ORDER

Index No.: 518476/2021

-against-

22 HAWTHORNE STREET LLC,

Defendant.
-----X

Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of motion filed on January 10, 2023, under motion sequence number one by defendant 22 Hawthorne Street LLC (hereinafter the defendant) for an order pursuant to CPLR 3212 granting summary judgment in the defendant’s favor on the issue of liability and dismissing the complaint of plaintiff Delene Ahye (hereinafter the plaintiff). This motion is opposed by the plaintiff.

- Notice of Motion
- Affidavit in Support
- Statement of Material Facts
- Affirmation of Counsel in Support
 - Exhibits A-I
- Affirmation in Opposition
- Counterstatement of Material Facts
- Memorandum of Law in Reply

BACKGROUND

On July 26, 2021, plaintiff commenced the instant action for damage for personal injuries by filing a summons and complaint with the Kings County Clerk’s office (KCCO). On December 6, 2021, the defendant joined issue by interposing and filing an

answer with the KCCO.

The complaint alleges thirty-two allegations of fact in support of a single cause of action for negligence as follows. On August 13, 2020, the plaintiff was lawfully in apartment 3F at a building owned by the defendant known as 22 Hawthorne Street, (hereinafter the subject premises). While at the subject premises the plaintiff was caused to sustain serious and permanent physical injury because of the dangerous and defective condition of the ceiling in her apartment, which was caused to fall upon the plaintiff (hereinafter the subject accident). The subject accident was caused by the defendant's negligent ownership, operation, control, supervision, direction, inspection, maintenance, repair, and management of the subject premises.

LAW AND APPLICATION

In a premises liability case, a defendant moving for summary judgment has the burden of establishing, prima facie, that it did not create the allegedly dangerous condition or have actual or constructive notice of its existence for a sufficient length of time to have discovered and remedied it (*see Cabanas v. Qiu Yu Zou*, 215 AD3d 726, 726–28 [2d Dept 2023]; *Mowla v Baozhu Wu*, 195 A.D.3d 706, 707 [2d Dept 2021]). A defendant has constructive notice of a dangerous condition when the condition is visible and apparent and has existed for a sufficient length of time to afford the defendant a reasonable opportunity to discover and remedy it (*see Gordon v American Museum of Natural History*, 67 NY2d 836, 837–838 [1986]). To meet its initial burden on the issue of lack of constructive notice, the defendant must offer some evidence as to when the area in question was last cleaned or inspected relative to the time when the plaintiff's

injury (*Birnbaum v New York Racing Assn., Inc.*, 57 AD3d 598, 598–599 [2d Dept 2008]).

In support of the instant motion for dismissal, the defendant submitted, among other things, four sworn documents, namely, the affirmation of its counsel, the affidavit of its property manager, the affidavit of a professional engineer, and the deposition transcript of the plaintiff.

The plaintiff's deposition testimony supported her contention of how the accident occurred. The defendant's property manager opined that the plaintiff's claim that she was injured by a ceiling collapse in her kitchen was a complete fabrication. The opinion was based on unsubstantiated speculation. The affidavit of the defendant's professional engineer opined that the plaintiff's injuries could not have occurred in the manner that the plaintiff claimed because of the nature of the work that was being conducted in the apartment. The opinion was speculative and conclusory. The affirmation of the defendant's counsel demonstrated no personal knowledge of the underlying facts of the plaintiff's claim or of the defendant's defense. An attorney's affirmation that is not based upon personal knowledge is of no probative or evidentiary significance (*Nerayoff v Khorshad*, 168 AD3d 866, 867 [2d Dept 2019], citing *Warrington v Ryder Truck Rental, Inc.*, 35 AD3d 455, 456 [2d Dept 2006]).

The defendant's evidentiary submission focused on the contention that the subject accident was a concoction, a fabrication, and that the scene of the subject accident was staged by the plaintiff. The defendant's evidentiary submission, however, merely raised triable issue of fact regarding the plaintiff's credibility. Although the defendant

submitted a memorandum of law arguing that it had no notice of the dangerous or defective condition of the ceiling that allegedly collapsed on the plaintiff, the defendant's evidentiary submissions did not address or support the defendant's claim of lack of constructive notice.

CONCLUSION

The motion of defendant 22 Hawthorne Street LLC for an order pursuant to CPLR 3212 granting summary judgment in the defendant's favor on the issue of liability and dismissing the complaint of plaintiff Delene Ahye is denied.

The foregoing constitutes the decision and order of this Court.

ENTER:

Francois A. Rivera

J.S.C.

**FRANCOIS A. RIVERA
J.S.C.**