SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. PAUL A. GOETZ** **PART** **47**

Justice

----------X

TERRENCE J. LEYDEN,

Plaintiff,

- v -

RHC OPERATING LLC,RHC EQUITY LLC,INTERSTATE HOTELS & RESORTS, INC.,ROOSEVELT HOTEL CORPORATION N.V.,

Defendants.

----------X

INDEX NO. 158911/2018

MOTION DATE 07/25/2023

MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130

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

In this personal injury action arising out of a slip and fall from a staircase at the Roosevelt Hotel located at 45 East 45th Street, New York, New York (the hotel), defendants RHC Operating LLC, RHC Equity LLC, Interstate Hotels & Resorts, Inc., and Roosevelt Hotel Corporation N.V. move for summary judgment, pursuant to CPLR § 3212, to dismiss plaintiff Terrence J. Leyden's complaint (mot seq no 005). Defendants argue they are entitled to summary judgment because plaintiff cannot identify the proximate cause of his fall, the staircase that plaintiff fell from was not a dangerous condition, and defendants did not have notice of any dangerous condition alleged by plaintiff. Plaintiff responds that summary judgment should be denied because defendants fail to contest plaintiff's statutory violations, fail to demonstrate that they lacked notice of the alleged dangerous conditions, plaintiff demonstrated the proximate cause of his injuries, and plaintiff's supporting evidence of the alleged dangerous conditions creates triable issues of fact. In response to plaintiff's opposition, defendants add that plaintiff

only cites to alleged code violations without arguing their applicability, and the only applicable building code, the 1916 NYC Building Code, is inapplicable.

BACKGROUND

On December 27, 2017, while plaintiff was staying at the hotel, he descended staircase D when the toes of both his feet remained stationary on the second step from the seventh-floor landing and the rest of his body fell forward (Plaintiff's EBT, p 117, NYSCEF Doc No 118 ["My both toes, both toes caught on the second step up from the ground. They remained stationary and my body went forward. I fell on the ground, on the landing on the 7th floor."]). Plaintiff testified that he was holding onto a handrail as he descended the staircase; however, he was not holding onto it when he fell because it terminated before the second to last step (*id.* at pp 164-65). Plaintiff also testified that though the lighting was "dimly lit," he had "no problem visualizing [and] seeing what was ahead of [him]" (*id.* at pp 102, 107). Plaintiff opined that "[t]he stairs were relatively steep" (*id.* at p 123). Plaintiff admitted that "[t]here was no specific piece of the stairwell . . . [or] impediment" that caused plaintiff to fall (*id.* at p 124).

Ernie Boyd, Director of Loss Prevention for the hotel, testified that he was not aware of any prior instances of people being injured on the staircase prior to plaintiff's accident nor did he ever receive any complaints of the stairwell lighting (Boyd EBT, pp 42, 59, NYSCEF Doc No 123). Lucius Thomas, a security officer of the hotel who would roam the hotel's stairwells to check their condition did not recall any issues with the staircase's handrails, lighting, steps, or flooring nor did he recall receiving any complaints about the staircase (Thomas EBT, pp 12, 17, 64, NYSCEF Doc No 121).

Defendant submits an affidavit from Andrew R. Yarmus, P.E., an engineer with a Bachelor of Science in Civil and Environmental Engineering who states that the 1916 NYC

Building Code is applicable to the hotel since it was opened in 1924 and all later codes are inapplicable (Yarmus Aff, ¶ 6, NYSCEF Doc No 129; Yarmus CV, NYSCEF Doc No 130). He opines that the stairway complies with section 153 of the 1916 NYC Building Code, which provides that:

> 6. Hand rails — Stairs shall have walls or well secured balustrades or guards on both sides, and shall have hand-rails on both sides. When the required width of a flight of stairs exceeds 88 inches, an intermediate hand-rail, continuous between landings, substantially supported and terminating at the upper end in newels or standards at least 6 feet high, shall be provided.

(*id.* at ¶¶ 7-10).

DISCUSSION

"It is well settled that 'the proponent of a summary judgment motion must make a 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" (*Pullman v Silverman*, 28 NY3d 1060, 1062 [2016], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). "Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). "Once such a prima facie showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to raise material issues of fact which require a trial of the action" (*Cabrera v Rodriguez*, 72 AD3d 553, 553-54 [1st Dept 2010]). "The court's function on a motion for summary judgment is merely to determine if any triable issues exist, not to determine the merits of any such issues or to assess credibility" (*Meridian Mgt. Corp. v Cristi Cleaning Serv. Corp.*, 70 AD3d 508, 510-11 [1st Dept 2010] [internal citations omitted]). The evidence presented in a summary judgment motion must be examined "in the light most

favorable to the non-moving party" (*Schmidt v One New York Plaza Co., LLC*, 153 AD3d 427, 428 [2017], quoting *Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 339 [2011]) and bare allegations or conclusory assertions are insufficient to create genuine issues of fact (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*id.*).

Owners and landlords are not liable for a slip and fall without plaintiff being able to demonstrate negligence (*see Marazita v City of New York*, 202 AD3d 951, 952 [2d Dept 2022]). And to demonstrate negligence, a plaintiff must demonstrate proximate cause (*Dennis v Lakhani*, 102 AD3d 651, 652 [2d Dept 2013] [internal quotations and citations omitted] ["In a slip-and-fall case, a plaintiff's inability to identify the cause of the fall is fatal to the action because a finding that the defendant's negligence, if any, proximately caused the plaintiff's injuries would be based on speculation. Where it is just as likely that some other factor, such as a misstep or a loss of balance, could have caused a slip and fall accident, any determination by the trier of fact as to causation would be based upon sheer conjecture."]).

Here, defendants have successfully met their *prima facie* burden by establishing that plaintiff has failed to identify the cause of his fall (*Dennis*, 102 AD3d at 652; *see also Siegel v City of New York*, 86 AD3d 452 [1st Dept 2011]). Though plaintiff testified that the stairwell was dimly lit, he stated that he did not have an issue seeing what was in front of him (NYSCEF Doc No 118, pp 102, 107). Though plaintiff testified that the stairs were relatively steep, the pictures submitted of the staircase show that they are not particularly steep or narrow (NYSCEF Doc No 118, p 123; Photographs, NYSCEF Doc No 120). Most fatal, plaintiff does not assert what caused him to fall except for a combination of various circumstances, stating that "[t]here was no specific piece of the stairwell . . . [or] impediment" that caused plaintiff to fall (NYSCEF Doc

No 118, p 124). Finally, plaintiff's assertion that defendants violated section 153 (6) of the 1916 NYC Building Code because the staircase did not have an "intermediate hand-rail, continuous between landings" is incorrect because the section only applies to staircases with a width exceeding 88 inches whereas the staircase in the hotel was just 42.75 inches wide (*see* NYSCEF Doc No 129, ¶ 9). Therefore, defendants have met their *prima facie* burden and plaintiff has failed to rebut their showing.

Accordingly, defendants' motion for summary judgment to dismiss plaintiff's complaint will be granted.

CONCLUSION

Based on the foregoing, it is

ORDERED that defendants' motion for summary judgment to dismiss plaintiff's complaint is granted and the complaint is dismissed and the Clerk is directed to enter judgment accordingly with costs and disbursements to defendants.

20230922164107PGOETZ17EB2C1464B204CC6B41E89A8C2EAC09F

9/22/2023
DATE

PAUL A. GOETZ, 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