Mustafai v Pret a Manger
2023 NY Slip Op 33921(U)
November 3, 2023
Supreme Court, New York County
Docket Number: Index No. 157304/2019
Judge: Lori S. Sattler

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 02TR

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LULZIME MUSTAFAI,

Plaintiff,

- v -

PRET A MANGER, PRET A MANGER (USA) LIMITED

Defendant.

INDEX NO. 157304/2019

MOTION DATE 01/04/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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HON. LORI S. SATTLER:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40
were read on this motion to/for JUDGMENT - SUMMARY.

In this premises liability action, Defendants Pret a Manger and Pret a Manger (USA) Limited ("Defendants") move for an order granting summary judgment pursuant to CPLR 3212 dismissing plaintiff Lulzime Mustafai's ("Plaintiff") Complaint. Plaintiff opposes the motion.

Plaintiff fell and suffered injuries on February 4, 2019 while in the Pret a Manger store located at 50 Broadway in Manhattan. A surveillance video of the incident shows that Plaintiff fell in an area next to the entrance as she was leaving the store. The video shows other patrons walking over the same spot without incident before and after Plaintiff fell, and shows that Plaintiff walked over the same spot on her way in. Plaintiff testified that, after she fell, she noticed that the portions of her body that made contact floor were "pretty wet" and that, although unable to identify the exact substance, she "guess[ed] it was some liquid substance" (NYSCEF Doc. No. 26, Plaintiff EBT at 23-24). According to Plaintiff, it had been a cold and dry day (*id.* at 17). Plaintiff stated that she did not notice a puddle on the ground by where she fell and did not report the incident to anyone at the store before leaving (*id.* at 24, 26-28).

Defendants' produced their senior safety manager, Anna Szelejewska, who testified about Defendants' procedures for dealing with spills on store floors. Although Defendants apparently had a procedure in place for mopping up spills, she testified that they did not have a procedure to log every spillage or to actively inspect for spillage (NYSCEF Doc. No. 39, Defendant EBT at 25, 35). She testified that she did not perform a search of Defendants' records in relation to any spillages or inspections for cleanliness on or before February 4, 2019 (*id*. at 36) and that "[w]e do not have inspections to go and check if there is a spillage on the floor (*id*. at 35). She further testified that she did not remember if she visited the 50 Broadway store after Plaintiff's accident (*id.* at 29).

Plaintiff commenced this action alleging negligence on July 25, 2019. Defendants now move for summary judgment dismissing the Complaint, claiming that there is no dispute of material fact as to the presence of a dangerous condition on the premises that could have caused Plaintiff's injuries.

"Summary judgment is a drastic remedy, to be granted only where the moving party has 'tender[ed] sufficient evidence to demonstrate the absence of any material issues of fact'" (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). On a motion for summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (*Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 853 [1985], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). "Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Winegrad*, 64 NY2d at 853). The Court must view the evidence "in a light

most favorable" to the nonmoving party and accord the nonmovant "the benefit of every reasonable inference" (*Negri v Stop & Shop, Inc.*, 65 NY2d 625, 626 [1985]).

A property owner owes a duty to exercise reasonable care in maintaining its property in a reasonably safe condition under the circumstances (*Powers v 31 E 31 LLC*, 24 NY3d 84, 94 [2014]; *Galindo v Town of Clarkstown*, 2 NY3d 633, 636 [2004]). A plaintiff seeking to impose liability based on a dangerous condition must demonstrate that the property owner created or had actual or constructive notice of the dangerous condition that precipitated the injury (*Ceron v Yeshiva Univ.*, 126 AD3d 630, 632 [1st Dept 2015], *citing Mercer v City of New York*, 88 NY2d 955, 956 [1996]; *Kelly v Berberich*, 36 AD3d 475, 476 [1st Dept 2007]). "A defendant who moves for summary judgment in a slip-and-fall action has the initial burden of making a prima facie demonstration that it neither created the dangerous condition (assuming that the condition existed), nor had actual or constructive notice of its existence" (*Ceron*, 126 AD3d, at 632, *citing Manning v Americold Logistics, LLC*, 33 AD3d 427 [1st Dept 2006]).

Here, Defendants fail to meet their prima facie burden of demonstrating that they neither caused nor had actual or constructive notice of a dangerous condition in the 50 Broadway store. Plaintiff's testimony that it was a dry day and that the parts of her body that touched the floor were wet after she fell create a question of fact as to whether there was a liquid on the floor that caused her fall. The testimony of Defendants' senior safety manager that there was not a uniform procedure for inspecting for spills, recording spills, and lack of knowledge as to whether there was any record of spills on the premises for the date of Plaintiff's accident raises further questions about Defendants' actual or constructive notice. As the evidence lends itself to competing conclusions as to the existence of a defective condition and Defendants' notice of any condition, a jury must be charged with "[c]redibility determinations, the weighing of the

evidence, and the drawing of legitimate inferences" from the facts (*Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 315 [2005] [internal quotations and citations omitted]).

Accordingly, it is hereby:

ORDERED that Defendants' motion for summary judgment is denied.

11/3/2023
DATE

LORI S. SATTLER, J.S.C.

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