

Walters v Northern Trust Company of New York

2005 NY Slip Op 30073(U)

July 8, 2005

Supreme Court, New York County

Docket Number:

Judge: Shirley W. Kornreich

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

SHIRLEY WERNER KORNREICH
J.S.C.

PRESENT: _____

PART 54

Justice

0111571/2003

WAITERS, TERRICK
vs
NORTHERN TRUST COMPANY

SEQ 1

SUMMARY JUDGMENT

NO. _____
ON DATE: 3/17/05
IN SEQ. NO. _____
IN CAL. NO. _____

The following papers, numbered 1 to 7 were read on this motion to for S.J.

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

4 (2-3)
6 (7)

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed Decision and Order.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

FILED
JUL 12 2005
NEW YORK
COUNTY CLERK'S OFFICE

Dated: July 8, 2005

SHIRLEY WERNER KORNREICH
J.S.C.

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

-----X
TERRICK WAITERS,

Plaintiff,

Index No.: 111571/03

-against-

**DECISION
and
ORDER**

NORTHERN TRUST COMPANY OF NEW YORK,
TOWER REALTY MANAGEMENT CORPORATION
and 40 BROAD DELAWARE, INC. c/o GSIC REALTY
CORPORATION,

Defendants.

-----X
TOWER REALTY MANAGEMENT CORPORATION
and 40 BROAD DELAWARE, INC. c/o GSIC REALTY
CORPORATION,

Third-Party Plaintiffs,

-against-

COLLINS BUILDING SERVICES, INC.,

Third-Party Defendant.

-----X
KORNREICH, SHIRLEY WERNER, J.:

This is an action to recover for personal injuries suffered when plaintiff slipped and fell in the tenth-floor bathroom located at 40 Broad Street, New York, N.Y. (the "Building"). Before the Court at present are two summary judgment motions, submitted by defendants Northern Trust Company of New York, Tower Realty Management Corporation and 40 Broad Delaware, Inc. c/o Gsic Realty Corporation. Both of these motions are consolidated herein for unitary disposition.

I. **Motions**

Defendant Northern Trust Company of New York ("NTNY"), the sole tenant of the tenth floor of the Building, moves for summary judgment dismissing the complaint and any cross-

* 3]

claims against it. In support of its motion, it submits the affirmation of counsel, as well as copies of: the pleadings; the transcript of plaintiff's examination before trial ("EBT"); transcripts from the EBTS of NTNY, by its witness Francis J. Murgolo, Tower Realty Management Corporation ("Tower"), by Jim Eschmann, and third-party defendant Collins Buildings Services, Inc. ("CBS"), by David L. Martinez. Defendants Tower and 40 Broad Delaware, Inc. c/o GSIC Realty Corporation ("40 Broad") the Building owner and agent (collectively, the "Building Defendants") also move for summary judgment dismissing both the complaint, as against them, and all cross-claims. In support, they have submitted the affirmation of counsel and copies of: the amended summons and complaint; defendants' verified answers; the third-party summons and complaint; the third-party answer; the verified bill of particulars; the Assignment and Assumption of Lease, executed between co-defendant NTNY and Northern Trust Company International Business Corporation ("NT Int'l"); the Continuing Service Contract, executed between 40 Broad and third-party defendant CBS; and the transcript of plaintiff's EBT. Plaintiff has opposed, submitting his affidavit, the affirmation of counsel, as well as copies of: transcripts of the EBTS of plaintiff, NTNY and CBS; the verified bill of particulars; and plaintiff's Notice for Discovery and Inspection, dated February 3, 2004. Both sets of moving defendants have replied.

II. *Facts*

Plaintiff, Terrick Waiters, was employed by CBS, a company with which the Building had contracted to provide cleaning services. He was responsible for cleaning the Building's lavatories on the eleventh floor and below. *See* EBT of Terrick Waiters, pp. 6-7. Plaintiff's complaint alleges that, due to defendants' negligence, he slipped and fell in the tenth floor men's

bathroom (the "Subject Bathroom") on October 9, 2001, while performing his duties. Compl., paras. 9-10. According to his bill of particulars, defendant NTNY "had installed a marble or similar type floor in the 10th Floor men's bathroom which was different from the restroom floors installed in other bathrooms within the building. The floor where the incident occurred was extremely slippery." Plaintiff's October 31, 2003 Verified Bill of Particulars, para. 7. A second bill of particulars provided that defendants were negligent "in creating, installing, and maintaining a floor in the 10th floor men's restroom which was extremely slippery [and] in failing to install a non-skid, slip-resistant floor surface and/or material upon the 10th floor men's restroom floor[.]" Plaintiff's December 23, 2003 Verified Bill of Particulars, para. 4.

At his deposition, plaintiff testified that on October 9, 2001, he was employed by CBS doing "bathroom work." Waiters EBT, pp. 6-7, 11. His job consisted of wiping down the toilets, windows and sink; changing the toilet paper; and mopping the floor of the Building's bathrooms on the eleventh floor and below. *Id.*, p. 12. He reported to a supervisor named "Carlos" and performed his duties alone, although sometimes the supervisor would verify that the bathrooms were cleaned correctly. *Id.*, p. 13.

Generally, when cleaning the Subject Bathroom, plaintiff "had to use a dry mop [and] couldn't use a wet mop . . . [b]ecause the tiles it was slippery if you use a wet mop. It was like marble tile there. It would be real slippery, you could fall and hurt yourself[.]" Waiters EBT, p. 31-32. Indeed, plaintiff testified that in regard to the Subject Bathroom's floor, he was told to "use a dry mop, not too use anything too heavy" and that he couldn't "use nothing wet."¹ *Id.*, pp.

¹ Although plaintiff noted that "sometimes the tenants used to complain about the floor being too wet," and that "[m]ost people complain about how slippery the floor is when it's wet[.]" counsel for NTNY moved to strike these portions of Mr. Waiters' statements and the

57, 143. Additionally, plaintiff stated that, prior to his accident he would find the floor to be slippery “sometimes after [he] mop[ped] it or *sometimes if water from the sink falls on the floor.*” *Id.*, p. 142 (emphasis supplied).

At the time of plaintiff’s accident, NTNY had been a tenant on the tenth floor for a few months. Waiters EBT, pp. 146-147. Prior to taking occupancy of the floor, NTNY redesigned and reconstructed it, installing a new floor in the Subject Bathroom. *Id.* at 147. While “[e]very other bathroom [in the Building] has the square little, small little square [tiles] . . . [t]he tenth floor customize their whole floor. They put their own tiles down.” *Id.*, p. 56.

Francis J. Murgolo, NTNY’s Senior Vice President, confirmed this, testifying that during the tenth floor renovation, completed in August 2000, “[t]he walls and the floor [of the Subject Bathroom] were replaced.” EBT of Francis J. Murgolo, p. 18. Mr. Murgolo described the floors as being constructed of a “light beige” marble tile. *Id.*, p. 19. Jim Eschmann, Tower’s property manager explained that in October 2001, he oversaw the Building’s daily operation and that he neither knew the “make-up of the [Subject Bathroom’s] tile” nor did he recall the tile’s color, although he thought he recalled it being “light cream” in color. EBT of Jim Eschmann, pp. 6, 11.

On the other hand, CBS’ director of labor relations, David Martinez, described the Subject Bathroom’s tile as “[b]luish, it’s like two color, bluish-white” and made up of “tiny squares.” EBT of David L. Martinez, p. 61. When asked if the Subject Bathroom’s floor differed from other floors in the Building, he testified that “[i]t look[ed] the same to me.” *Id.*, p. 67.

III. *Conclusions of Law*

Court will not consider this hearsay testimony.

To prevail on a motion for summary judgment, the movant must establish a prima facie showing of entitlement to judgment as a matter of law by producing sufficient evidence to demonstrate the absence of any material issue of fact. *Giuffrida v. Citibank Corp.*, 100 N.Y.2d 72, 81 (2003). Once a prima facie showing is made, the burden then shifts to the non-moving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues that require a trial. *Zuckerman v. New York*, 49 N.Y.2d 557, 560 (1980). Defendants' motions for summary judgment are addressed below.

In order to recover for negligence, plaintiff must establish that defendant created, or had actual or constructive notice, of the hazardous condition which precipitated his injury. *See Mejia v. N.Y. City Transit Auth.*, 291 A.D.2d 225, 226 (1st Dept. 2002). Here, the defendants argue that the evidence does not demonstrate that they created or had any notice of the allegedly hazardous condition that caused plaintiff's injury. However, these arguments are founded on the premise that the water, which was allegedly on the bathroom floor, is the hazardous condition that caused the injury. These arguments are unpersuasive since there is a question of fact as to whether *the floor itself* is the condition at issue.

Indeed, plaintiff contends that the marble floor in the Subject Bathroom would become so slippery when wet that he was instructed not to use a wet mop to clean it. He also stated that sometimes the floor was slippery merely from water from the sink that had fallen onto the floor. None of the defendants have produced evidence to refute this contention. Despite defendants' various contentions that there is no evidence to suggest that they had notice of the water on the floor, plaintiff's deposition testimony creates a material issue of fact as to whether the floor itself, created by either NTNY with the Building's knowledge, or vice versa, was the allegedly

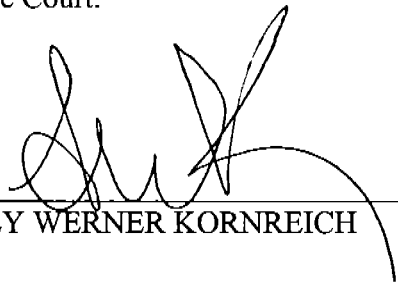
dangerous condition that caused him to slip and fall and, therefore, trial is required. Thus, a material issue of fact exists as to whether the party that installed the slippery floor tiles in close proximity to sinks, toilets and other water sources is liable for causing and/or creating this condition. *See Zuckerman, supra.*

Defendants' arguments that they cannot be held liable for negligence since the "water condition" that caused plaintiff to fall was a condition that plaintiff was called upon to remedy is unpersuasive. In light of the fact that the condition that caused the plaintiff to fall is arguably the marble tile, and not the water upon it, this argument is to no avail. Consequently, summary judgment may not be awarded to defendants. Accordingly, it is

ORDERED that defendants' motions for summary judgment are denied in their entirety.

The foregoing constitutes the decision and order of the Court.

Date: July 8, 2005
New York, New York


SHIRLEY WERNER KORNREICH

FILED
JUL 12 2005
NEW YORK
COUNTY CLERK'S OFFICE