

Matthew v New York City Hous. Auth.

2007 NY Slip Op 30884(U)

April 11, 2007

Supreme Court, New York County

Docket Number: 0116653/2004

Judge: Louis B. York

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

PRESENT: LOUIS B. YORK
J.S.C.
Justice

PART _____

Marvin Matthew

INDEX NO. 11665 3/04

- v -
NYC Housing Authority

MOTION DATE _____

MOTION SEQ. NO. 008

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM DECISION.

FILED

APR 24 2007

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 4/11/07

L. York
LOUIS B. YORK J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART: 2**

----- X
MARVIN MATTHEW,

Plaintiff,

INDEX NO. 116653/2004

- against-

NEW YORK CITY HOUSING AUTHORITY,

Defendants.

----- X
LOUIS B. YORK, J.:

In this lawsuit, plaintiff states that on May 22, 2004, at around 11:30 a.m., he slipped and fell in the stairwell of a building owned and controlled by defendant, and that he sustained injuries as a result of the incident. According to plaintiff, plaintiff was visiting his girlfriend Monique Booker, a resident of 419 East 93rd Street, the building in which the accident occurred. Ms. Booker lived in apartment 15G. Another friend of plaintiff's, Cyruss Tailor, lived in the same building, in apartment 11J. On a number of occasions prior to the accident, plaintiff stated, he would leave Ms. Booker's apartment and visit Mr. Tailor, often using one of the stairwells – usually, stairwell A – instead of the elevator.

On the date in question, plaintiff left Ms. Booker's apartment with Ms. Booker. Together, they went down stairwell B to visit Mr. Tailor. Plaintiff followed behind his girlfriend. When he was heading from the 13th to the 12th floor, he slipped and dislocated his knee. Ms. Booker called 911, and plaintiff was taken to New York Presbyterian Hospital for treatment. Plaintiff alleges that he slipped on urine; although he did not inspect the stairs at the time of his fall, there was a urine stain on his back after the fall. Apparently, plaintiff and Ms. Booker did not contact the maintenance

staff or fill out an accident report at the time.

In his Bill of Particulars, in paragraph 6, plaintiff alleges that defendant had both actual and constructive knowledge of the urine condition on the stairs. He alleges that there was actual notice because “defendants, their agents, servants, employees, contractors and sub-contractors actually observed the condition” and because these same parties “caused and created” the condition. As for constructive notice, plaintiff contends that “the condition existed for a sufficient period of time so that the defendants, their agents, servants, contractors, sub-contractors, and/or employees knew or with the exercise of reasonable care, should have known that the condition existed” and that the condition was a recurring one in a common area.

Defendant notes that, according to plaintiff’s statutory hearing and deposition testimony, there was adequate lighting in the stairwell at the time of the accident. Plaintiff also stated on the record that he had not noticed urine in the stairwell in question on the three or four times he’d accessed it over the past ten or more years, and that he didn’t know how long the urine had been there that day.

At the deposition, defendant produced Thomas Aviles¹, a superintendent of the grounds at the subject building. He supervised the maintenance of the janitorial duties inside the building on weekends and, with less regularity, on some weekdays; the incident in question occurred on a Saturday. On weekdays, he stated, two maintenance workers serviced each building; this was reduced to one worker per building on the weekends.

¹ In the deposition transcript, this individual is referred to as “Thomas Abiles” rather than “Thomas Aviles.” The Court adopts the spelling used by defendant in its motion papers, as this is the more common name and therefore more likely to be accurate; and, because counsel likely knows how to spell the name of its witness.

At the deposition, Mr. Aviles stated that the first thing he did every weekend day was check the grounds. Then, "at certain times, I check down buildings." Dep. at 58. This did not mean that he checked the entire building, but that he spent 15-20 minutes looking over the compactors, a building or whatever he'd set out to inspect that day. He looked at the buildings on both Saturdays and Sundays, but did not examine every building each day. On the date of the incident, Mr. Aviles did check the building in question sometime between 8:20 a.m. and 10:20 a.m. (Aviles Dep. at 101).

Mr. Aviles also explained the rules for general maintenance of the buildings, including the mopping and cleaning of the stairwells. One person was responsible for the maintenance of the building for the day, including the condition of the stairwell. As to mopping, the direction on the weekend was not that the stairs were to be mopped daily, but that the janitors were to mop where and when it was needed. Defendant also supplied plaintiff with a copy of the maintenance schedule, which defendant submits in support of the current motion. According to the schedule, the last required mopping of the stairwell floors in question was to have taken place sometime between 12:35 p.m. and 3:00 p.m. on Friday, the date before the accident; and, on the weekend, any spills were to be cleaned up immediately. There is no evidence that these rules were followed on the Friday and the Saturday morning hours that are relevant here.

Upon questioning, Mr. Aviles indicated that it was not uncommon to find urine in the staircases; he also stated that he had received tenant complaints about this situation. He further stated that ESS, or emergency complaints, were recorded in the log book for the building; and, other complaints about the premises were recorded depending on the situation. However, he added that when he was on duty as supervisor, he generally did not make a record when someone complained about debris, urine or a mess in the building, including the stairwell; he did not treat these complaints

as emergency complaints, but simply took care of the problems “right away.” *Id.* at 61. When a staff member did not act according to schedule or promptly comply with directives, Mr. Aviles would issue a verbal warning for the first offense and subsequently write up a memo; he stated that he did write people up on occasion for not mopping on the weekends. The frequency and dates of these reports is not clear from the testimony and arguments of the parties in connection with this motion.

In addition, Mr. Aviles testified about another logbook notation. On Friday, May 21, the day before the accident, there was a staff meeting. The building records indicate that at the meeting, the supervisor spoke to his or her staff “in reference to building not being properly maintained on weekends, stairs with urine, corridors not being spot mopped . . .” and other unrelated problems (Work log for 5/21/04; Aviles Dep. at 90).

There is also other evidence before the Court at this time. In opposition to the motion for summary judgment plaintiff submits the affidavit of Ms. Booker, plaintiff’s girlfriend. She states that plaintiff’s clothes were wet and smelled of urine immediately after his fall. She also alleges that during her seven to eight years as a resident of the building in question, “there has regularly been urine, beer bottles, garbage, feces, debris and the constant smell of urine in both staircases” Aff. Of Monique Booker at ¶ 5. Finally, she says that she has regularly called to complain about the condition of the stairwells, and that many other tenants do the same.

After the accident, on June 7, 2004, plaintiff prepared a Notice of Claim as required by the General Municipal Law. Defendant received the Notice on June 10, 2004. The 50-H hearing took place around October 19, 2004; it was subscribed and sworn to on November 30, 2004. Plaintiff filed his Complaint, dated November 12, 2004; defendant’s Verified Answer followed around December 29, 2004. Discovery is now complete and plaintiff has filed the Note of Issue. Currently,

defendant moves for summary judgment dismissing the Complaint, alleging that plaintiff has not shown either actual or constructive notice of the alleged defect. For the reasons below, the Court denies the motion.

Summary judgment is a drastic remedy which Courts should not grant if there is doubt as to the existence of a triable issue. To obtain summary judgment, a defendant-movant must establish, with evidentiary proof in admissible form sufficient to warrant the court as a matter of law in directing judgment in his favor, that no cause of action exists. If the movant can make this showing, the burden shifts to the opposing party to establish through evidentiary proof in admissible form that material issues of fact exist which necessitate a trial. Jones v. AMC Bay Plaza Cinema 13, 2006 N.Y. Slip Op. 51653(U) (Sup. Ct. N.Y. County Aug. 31, 2006) (avail at 13 Misc.3d 1203(A), 824 N.Y.S.2d 755 (Table), 2006 WL 2517011 , at *3). Moreover, the Court notes that the motion must be decided on “the version of the facts most favorable to the plaintiff.” Mullin v. 100 Church LLC, 12 A.D.3d 263, 264, 784 N.Y.S.2d 545, 546-47 (1st Dept. 2004).

After careful consideration, the Court denies the motion. Although a fact finder ultimately could find the defendant’s arguments and evidence persuasive, issues of fact preclude the granting of summary judgment. As stated, the notation in the log book indicates that, the day before the accident in question, the maintenance staff was reprimanded about the type of recurring condition that caused the accident here. Standing alone, the log book notation is sufficient to raise a triable issue regarding actual notice of a recurring condition. See Coletta v. City of New York, 291 A.D.2d 597, 597, 737 N.Y.S.2d 862, 863 (2nd Dept. 2002). The deposition of Mr. Aviles, detailed above, also raises an issue regarding notice.

In addition, the affidavit of Monique Booker, plaintiff’s girlfriend, creates a triable issue

when considered along with the other evidence. The Court notes that, as defendant asserts, Ms. Booker's statement that other individuals have complained to the supervisor about the stairwell is hearsay; accordingly, the Court disregards that portion of her affidavit. However, her statement that she has lodged several complaints over the years is of evidentiary value. The fact that Ms. Booker is plaintiff's girlfriend and possibly biased on his behalf does not mean that her sworn statement lacks evidentiary value. Instead, this simply presents issues of credibility inappropriate for consideration on a motion for summary judgment. See Welch v. Riverbay Corp., 273 A.D.2d 66, 66, 709 N.Y.S.2d 58, 59 (1st Dept. 2000); Young v. New York City Housing Auth., Index No. 50480/2001 (Sup. Ct. Kings County Feb. 26, 2007)(avail at 14 Misc. 3d 1235 (A); 2007 WL 586618, at *4). Similarly, the fact that Ms. Booker did not set forth the exact dates and times of her calls to the office about the stairwell, and that she did not specify the individual maintenance workers to whom she articulated her numerous complaints, is not dispositive. See Modzelewska v. City of New York, 31 A.D.3d 314, 314, 819 N.Y.S.2d 498, 499 (1st Dept. 2006). Instead, it also is something that defendant can attempt to use at trial to challenge the witness' credibility.

Moreover, the evidence submitted in support of the motion is not dispositive. The fact that plaintiff – who is not a resident of the building and who almost never used that particular stairwell, had not noticed urine in that stairwell before – means little. Instead, the issue is whether defendant and its employees had notice of the recurring condition. For the reasons stated above, it is clear that notice of the general problem existed. The fact that the stairwell was reasonably well lit does not resolve the question of whether defendant properly maintained the stairs in respects other than lighting. The guidelines for maintenance, including the weekday and weekend cleanup routine, do not irrefutably show defendant's right to judgment. If the cleaning routines set forth regarding the

stairs and the mandates that Mr. Aviles described with respect to them were performed every weekday and weekend, the staff meeting the day before the accident would not have singled out the failure to comply with this regimen as a major problem in the building.

Mr. Aviles' testimony that he performed a check down of the building, looking for problems, may persuade a jury that defendant had checked the stairwell on the date in question and did not have notice of the problem, and that defendant otherwise was not negligent in its maintenance of the stairs. However, it does not definitively dispose of the lawsuit – especially as Mr. Aviles did not particularize the details of his search. As indicated earlier, other deposition testimony of Mr. Aviles suggests that the check down is not a thorough examination of the entire building. Mr. Aviles' failure to note hazardous conditions in the stairwell also is not dispositive, as elsewhere in the transcript he stated that he generally did not list urine in the stairwell as a hazardous condition.


Finally, defendant notes that, two hours after the accident, a tenant reported urine in the stairwell and a maintenance worker was dispatched to clean the stairs. This, too, does not dispose of the issues in the case, as it is not clear how long the urine had been there and/or whether defendant should have known and remedied the problem earlier.

Accordingly, for the reasons stated above, it is

ORDERED that the motion is denied.

ENTER:

DATED: 4/11/07

FILED
APR 24 2007
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NEW YORK

Louis B. York, J.S.C.