

Telyas v Aronson's Floor Covering, Inc.

2007 NY Slip Op 32098(U)

July 2, 2007

Supreme Court, New York County

Docket Number: 0117915/2004

Judge: Joan Madden

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

PRESENT: Hon Joan A. Middle
Justice

PART 11

Lava Veljas
- v -
Aranson's Floor Cores

INDEX NO. 117915/04
MOTION DATE 3-29-07
MOTION SEQ. NO. 002
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 is ~~denied~~ decided in accordance with the annexed memorandum Decision + order.

FILED
JUL 13 2007
NEW YORK
COUNTY CLERK'S OFFICE

Dated: July 2, 2007

[Signature]
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 11

-----X

HAVA TELYAS and YAKOV TELYAS ,

Plaintiffs,

-against-

Index No. 117915/04

ARONSON'S FLOOR COVERING, INC., and
220 CENTRAL PARK SOUTH, LLC,

Defendants.

-----X

FILED
JUL 13 2007
NEW YORK
COUNTY CLERK'S OFFICE

Joan A. Madden, J.:

In this personal injury action, defendants Aronson's Floor Covering, Inc. ("Aronson's") and 220 Central Park South LLC ("Central Park South") separately move for summary judgment dismissing the complaint against them (motion seq. nos. 002, 003).¹ Central Park South also seeks summary judgment on its cross-claim against Aronson's for common law indemnification. Plaintiff opposes the motions, and Aronson's opposes that part of Central Park South's motion seeking summary judgment on the cross-claim.

Background

Plaintiff Hava Telyas (hereinafter "plaintiff")² alleges that she sustained personal injuries on or about May 25, 2003³ at approximately 3:30 pm, when she tripped and fell on the carpeting

¹Motion seq. nos. 002 and 003 are consolidated for disposition.

²Plaintiff Yakov Telyas, who is plaintiff's husband, has asserted a derivative claim for loss of consortium.

³Although plaintiff could not recall the specific date of the incident she testified that it occurred on the Sunday of Memorial Day weekend.

Swedlow's affidavit, the installation occurred several weeks before the plaintiffs went on vacation. The manufacturer specifications indicates that the average pile height is .188 inch which, according to Swedlow, means that the height differential of the carpet is approximately 1/8th of an inch.

Central Park South also moves for summary judgment, asserting that any defect in the carpeting was trivial. In support of its motion, Central Park South submits the affidavit of Jean G. Miele, AIA ("Miele") who has been a licensed and practicing architect in New York since 1965, and whose "experience as an architect includes knowledge and design of safe walking surfaces in residential buildings."

Miele states that he performed a site inspection of the Building, reviewed relevant portions of plaintiff's deposition transcript and photographs of the carpet, located the area where Teylas tripped, and that the carpeting was in the same condition as depicted in the photographs marked at plaintiff's deposition. Miele described the carpet as "a multi leveled sculptured carpet...formed from high and low pile areas" and stated that "[t]his type of carpeting is frequently used in commercial spaces because it hides dirt and footprints associated with high traffic areas, such as the lobby in this case."

Miele measured the pile height between carpet areas and found that "the height differential between the ground and the first pile level is 1/16th of an inch and the height differential between the ground and the second pile level was 1/8th of an inch."⁵ Miele opines that "[f]rom an architectural design standpoint such a height differential does not pose a tripping

⁵Thus, the height differential between the first and second pile levels was 1/16th of an inch.

hazard, trap or snare to tenants of others walking in the lobby area....and that deviations in the level of the face of the subject carpeting does not rise to the level constituting a hazard to pedestrians.” He further opines that “to a reasonable degree of architectural certainty, it not possible for one to catch one’s foot or to lose their balance due to such a trivial height differential.” According to Miele, “[t]he standard mats used in multiple dwellings and commercial buildings to overlay stone or terrazzo floors in inclement weather have a significantly greater height differential.”

In opposition to the summary judgment motions, plaintiffs argue that whether a defect is trivial depends on the circumstances of the case and is generally a matter for the trier of fact, and that the height differential of the carpet presented a trap and constituted a tripping hazard. In support of their opposition, plaintiffs submit plaintiff’s affidavit in which she states that she tripped “because the carpet was not flat, which made the carpet unsmooth to walk on [and that this] ‘unsmooth condition was caused by the carpet’s height differential design,” and that “[t]his difference in height was repeated through the entire layout of the carpet. I was unable to see this height differential and did not notice it before I fell, as the raised and lower portions of the carpeting were the same dark brown color. The area where I fell was of a different height than the area I was on immediately prior to the accident. In a split second I was caused to trip and fall.” Plaintiff also states that before she fell she “was looking straight and forward to the passageway because I needed to go to the grocery store”

Discussion

On a motion for summary judgment, the proponent "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, 852 (1985). Once the proponent has made this showing, the burden of proof shifts to the party opposing the motion to produce evidentiary proof in admissible form to establish that material issues of fact exist which require a trial. Alvarez v. Prospect Hospital, 68 NY2d 320, 324 (1986).

"[W]hether a dangerous or defective condition exists on the property of another so as to create liability 'depends on the peculiar facts and circumstances of each case and is generally a question of fact for the jury,' " Trincere v County of Suffolk, 90 NY2d 976, 977 [1997], citing Guerrieri v Summa, 193 AD2d 647, 647 (2d Dept 1993). In determining whether an alleged defect is trivial as a matter of law, the court must examine all the facts presented, including the width, depth, elevation, irregularity and appearance of the alleged defect, along with the time, place and circumstances of the injury. Trincere v County of Suffolk, 90 NY2d at 977, citing, Caldwell v Village of Isl. Park, 304 NY 268 (1952). When the defect is trivial and does not constitute a trap, snare or nuisance, summary judgment is appropriate. Trincere v County of Suffolk, 90 NY2d at 977; Hecht v City of New York, 60 NY2d 57 (1983); Riscer v. New York City Housing Authority, 260 AD2d 564 (2d Dept 1999).

In this case, defendants have established a prima facie defense that the textured carpeting was not dangerous or defective condition based on evidence that the height differential involved is, at most, between 1/16th and 1/8th of an inch, and the expert's opinion that such a height differential does not pose a tripping hazard, trap or snare. See Martin v. Lafayette Morrison Housing Corp., 31 AD3d 300 (1st Dept 2006)(slight height differential of approximately 1/2 inch between rubber surface of playground and adjoining cement walkway which did not constitute a

trap or snare was insufficient to establish the existence of a dangerous or defective condition for which a property owner could be held liable); Morales v. Riverbay Corp., 226 AD2d 271 (1st Dept 1996)(holding that differences in elevation of about an inch without more are not actionable).

Furthermore, plaintiff's statements that carpeting was "unsmooth" and that the design caused her not to notice the height differential is insufficient to controvert defendants' showing. Notably, plaintiff does not claim that the carpet was installed improperly, or was ripped or otherwise defective, and plaintiffs submit no expert affidavit or other evidence that the carpet's design was dangerous or defective. Compare, Sanna v. Wal-Mart Stores, Inc., 271 AD2d 595 (2d Dept 2000)("plaintiffs... raised triable issue of fact as whether missing area of carpet, allegedly one-half inch lower than surrounding carpet, which was similar in color to the adjacent carpeted area and located in a dimly lit cart coral of the defendant's retail store, posed a trap to the unwary"); Argenio v Metropolitan Transp. Auth., 277 AD2d 165 (1st Dept 2000)(triable issue of fact was raised by expert affidavit averring that depression in floor of Grand Central station which was two inches wide, two inches long and one-quarter inch deep was of sufficient size to entrap the toe of sneaker worn by plaintiff); Williams v. Long Island Railroad, 29 AD3d 900 (2d Dept 2006)(affidavit of plaintiff's expert together with plaintiff's deposition testimony, and photographs showing worn condition of staircase where plaintiff fell raised triable issues of fact as to whether staircase constituted a tripping hazard).

Furthermore, to the extent the plaintiff apparently argues that the location of the carpeting in the passageway on the way to the exit caused her attention to be towards the door, this argument does not raise a triable issue of fact as there is no evidence the carpeting in the

passageway created a trap or other hazard. Compare Tesak v. Marine Midland Bank, N.A., 254 AD2d 717 (4th Dept 1998)(plaintiff sustained her burden of showing that summary judgment was unwarranted based on her statements that she fell after her foot became caught in the crevice between two slabs of concrete, and her submission of an expert affidavit stating that the defect constituted a trap as it was located near the entrance of a bank where person’s attention would be drawn to the door). Moreover, the circumstances here, which involve a fall in a well lit lobby of a residential building, are not comparable to those cases involving public areas where an alleged defect is not readily observable. Compare Argenio v Metropolitan Transp. Auth., 277 AD2d at 165 (plaintiff’s testimony that she was looking straight ahead as she walked and that there were many people around her in crowded train station rendered observation of depression on which she fell less likely).

Accordingly, defendants are entitled to summary judgment dismissing the complaint against them as there is no evidence that the condition or design of the subject carpeting was dangerous or defective such as to give rise their potential liability to plaintiffs, and the court need not reach the issue of notice. Finally, to the extent it is not moot, Central Park South’s motion seeking summary judgment on its cross-claim against Aronson’s for common law indemnification is denied as there is basis for finding that plaintiff’s injuries were caused by Aronson’s negligence.

Conclusion

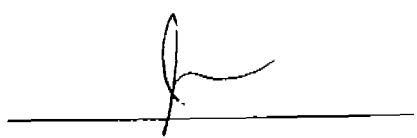
Accordingly, it is

ORDERED that the motion for summary judgment by defendant Aronson’s Floor Covering, Inc. (motion seq. no. 002) is granted; and it is further

ORDERED that the motion for summary judgment by defendant 220 Central Park South LLC (motion seq. no. 002) is granted to the extent of dismissing the complaint against it and denied insofar as it seeks summary judgment on its cross-claims against Aronson's Floor Covering, Inc.; and it is further

ORDERED that the Clerk is directed to enter judgment dismissing the complaint and all cross claims.

DATED: ~~June~~ ^{July 2}, 2007



J.S.C.

FILED
JUL 13 2007
NEW YORK
COUNTY CLERK'S OFFICE