

Lloyd v New York City Tr. Auth.

2009 NY Slip Op 31550(U)

July 13, 2009

Supreme Court, New York County

Docket Number: 402896/2006

Judge: Harold B. Beeler

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

PRESENT: _____

PART 21

Index Number : 402896/2006
LLOYD, MICHELLE
 VS.
HOUSING AUTHORITY
 SEQUENCE NUMBER : 001
 SUMMARY JUDGMENT

INDEX NO. _____
 MOTION DATE _____
 MOTION SEQ. NO. _____
 MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MOTION IS DENIED IN ACCORDANCE WITH THE ATTACHED MEMORANDUM DECISION.

FILED
 JUL 15 2009
 COUNTY CLERK'S OFFICE
 NEW YORK

Dated: 7/13/09

Adel Be
 J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

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

At IAS Part 21 of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse thereof, 71 Thomas Street, New York, New York on the 13th of July, 2009.

PRESENT: HON. HAROLD R. BELER,
Justice

MICHELLE LLOYD,

-against-

NEW YORK CITY TRANSIT AUTHORITY,
Defendant.

FILED
JUL 15 2009
COUNTY CLERK'S OFFICE
NEW YORK

INDEX NUMBER 402896/2006
Motion Sequence 001
DECISION & ORDER

Defendant New York City Transit Authority moves for summary judgment dismissing the complaint against it. Plaintiff opposes.

On January 6, 2003, at about 9 AM, plaintiff was allegedly injured when she tripped on subway stairs in the Canal Street station leading from the "J" to the "W" train.

She went the same way every weekday for a month to her new job before the accident.

Debris on the subway stairs was a recurring condition according to plaintiff's affidavit:

"Staircase . . . was invariably cluttered with debris on its steps. Debris typically included paper from newspapers and magazines, soda cans and food, among other litter. The staircase did not appear to be cleared on a regular basis, as I would find the condition of the staircase essentially unchanged from day to day as I would ride to work. On the date of my accident, the staircase was, as usual, covered in debris. For some reason, one of the items of debris cause[d] me to slip and fall. After I fell, I looked to see that there were chicken bones mixed in with the rest of the debris."

In order to impose liability on defendant, plaintiff must produce some proof tending to show that defendant created the dangerous condition causing injury to plaintiff or had either

actual or constructive notice of the dangerous condition. *Lewis v Metropolitan Transportation Authority*, 99 AD2d 246 (1st Dept 1984), *affd* 64 NY2d 670 (1984). With respect to constructive notice of a dangerous condition, a defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit defendant's employees to discover and remedy it. *Gordon v American Museum of Natural History*, 67 NY2d 836 (1986). Constructive notice may be demonstrated by evidence of a recurring dangerous condition in the area of the accident that was routinely left unaddressed by the defendant. *Mullin v 100 Church LLC*, 12 AD3d 263 (1st Dept 2004).

Plaintiff's observations about the condition of the subway staircase are insufficient by themselves to establish a recurring condition. "[A] 'general awareness' that a dangerous condition may be present is legally insufficient to constitute notice of the particular condition that caused plaintiff's fall." *Piacquadio v Recine Realty Corp.*, 84 NY2d 967, 969 (1994). *See also DeJesus v New York City Hous. Auth.*, 53 AD3d 410, 410 (1st Dept 2008) ("It is well settled that neither a general awareness of the presence of litter or some other dangerous condition nor plaintiff's observation of trash in the general area is legally sufficient to charge defendant with constructive notice of the piece of carpet she slipped on"); *Smith v Funnel Equities, Inc.*, 282 AD2d 445, 446 (2d Dept 2001) ("Even if the injured plaintiff's deposition testimony could establish that the defendants possessed a general awareness of a hazardous condition, this would be legally insufficient to constitute constructive notice of the particular condition that caused the accident"); *Carlos v New Rochelle Mun. Hous. Auth.*, 262 AD2d 515, 516 (2d Dept 1999) ("To withstand the motion for summary judgment, the plaintiff was required to show by specific factual references that the defendant had knowledge of the allegedly recurring condition of

actual or constructive notice of the dangerous condition. *Lewis v Metropolitan Transportation Authority*, 99 AD2d 246 (1st Dept 1984), *affd* 64 NY2d 670 (1984). With respect to constructive notice of a dangerous condition, a defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit defendant's employees to discover and remedy it. *Gordon v American Museum of Natural History*, 67 NY2d 836 (1986). Constructive notice may be demonstrated by evidence of a recurring dangerous condition in the area of the accident that was routinely left unaddressed by the defendant. *Mullin v 100 Church LLC*, 12 AD3d 263 (1st Dept 2004).

Plaintiff's observations about the condition of the subway staircase are insufficient by themselves to establish a recurring condition. "[A] 'general awareness' that a dangerous condition may be present is legally insufficient to constitute notice of the particular condition that caused plaintiff's fall." *Piacquadio v Recine Realty Corp.*, 84 NY2d 967, 969 (1994). *See also DeJesus v New York City Hous. Auth.*, 53 AD3d 410, 410 (1st Dept 2008) ("It is well settled that neither a general awareness of the presence of litter or some other dangerous condition nor plaintiff's observation of trash in the general area is legally sufficient to charge defendant with constructive notice of the piece of carpet she slipped on"); *Smith v Funnel Equities, Inc.*, 282 AD2d 445, 446 (2d Dept 2001) ("Even if the injured plaintiff's deposition testimony could establish that the defendants possessed a general awareness of a hazardous condition, this would be legally insufficient to constitute constructive notice of the particular condition that caused the accident"); *Carlos v New Rochelle Mun. Hous. Auth.*, 262 AD2d 515, 516 (2d Dept 1999) ("To withstand the motion for summary judgment, the plaintiff was required to show by specific factual references that the defendant had knowledge of the allegedly recurring condition of

garbage and debris on the stairwell”).

Therefore, defendant’s motion for summary judgment is granted and the complaint against it is dismissed. The Clerk shall enter judgment accordingly.

This constitutes the decision and order of the Court. Any other requested relief not expressly granted is denied.

DATE: July 13, 2009

ENTER:



HAROLD B. BEELER, J.S.C.

**HAROLD BEELER
J.S.C.**

FILED

JUL 15 2009

**COUNTY CLERK'S OFFICE
NEW YORK**