

Prassl v New York Hotel Trades Council & Hotel Assn. of N.Y. City Health Ctr., Inc.
2009 NY Slip Op 32078(U)
September 10, 2009
Supreme Court, New York County
Docket Number: 108374/07
Judge: Walter B. Tolub
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: WALTER B. TOLUB

PART 15

Index Number: 108374/2007
PRASSL, SOPHIA
 VS.
NEW YORK HOTEL TRADES
 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

IS DECIDED

IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

FILED

SEP 11 2009

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 9/11/09

WALTER B. TOLUB 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):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15

-----x
SOPHIA PRASSL,

Plaintiff,

-against-

THE NEW YORK HOTEL TRADES COUNCIL AND
HOTEL ASSOCIATION OF NEW YORK CITY
HEALTH CENTER, INC.,

Defendant.
-----x

Index No. 108374/07

Mtn Seq. 001

FILED
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NEW YORK

WALTER B. TOLUB, J.:

This is Defendants' motion to dismiss pursuant to
§3212.

Facts

Plaintiff commenced this action to recover for injuries she claims she sustained when she slipped and fell at Defendant's building. On the day of the incident there was an ongoing snow and or ice/sleet storm (Defendants Exs. F, G and H).

Plaintiff claims that she slipped and fell on icy slush in the waiting area of a medical office. The office is on the fifth floor of the Defendant's building located at 773-775 Ninth Avenue, New York, NY (Building). The Building has six floors with a front awning stretching almost to the curb.

Prior to Plaintiff's accident, Defendant had placed mats along the first floor entrance from the lobby area all the way to the elevators. Additionally, there were mats placed in each of the two elevators (Defendants' Ex. E at 15-16, 20-22, 27).

* 3]

Plaintiff argues that Defendant was negligent in the maintenance of the building by permitting a dangerous condition to exist. Defendant argues that it exercised reasonable care by placing mats in the building, and that since it did not cause the condition and did not have sufficient notice of the condition it cannot be held liable for Plaintiff's injuries which took place during an ongoing storm. By this motion, Defendant seeks to dismiss the action in its entirety.

Discussion

As with any motion for summary judgment, success is wholly dependent on whether the proponent of either of the respective motions has made a "prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact" (Wolff v New York City Trans. Auth., 21 AD3d 956 [2d Dept 2005], quoting Winegrad v New York University Med. Ctr., 64 NY2d 851, 853 [1985] [internal quotes omitted]). A party is entitled to summary judgment if the sum total of the undisputed facts establish the elements of a claim or a defense as a matter of law. This means that none of the material elements of the claim or defense are in dispute (Barr, Atlman, Lipshie, Gerstman, *New York Civil Practice Before Trial*, [James Publishing 2006] §37:180).

On defendant's motion for summary judgment, defendant may demonstrate the lack of several prima facie elements of

plaintiff's case, however, to prevail, defendant only needs to demonstrate the absence of a single element (Barr, Atlman, Lipshie, Gerstman, *New York Civil Practice Before Trial*, [James Publishing 2006] §37:182). Once defendant presents evidence showing the absence of facts necessary to establish a prima facie case, the burden shifts to the plaintiff (Barr, Atlman, Lipshie, Gerstman, *New York Civil Practice Before Trial*, [James Publishing] §37:190).

Plaintiff argues that the Defendant was on notice that there was a storm on the day of the incident, that the potential for a hazardous conditions existed and that Defendant did not exercise reasonable care. Additionally, Plaintiff argues that there is a question of fact as to whether adequate measures were taken to inspect the premises for dangerous conditions thereby providing the Defendant with notice of a dangerous condition.

An owner or possessor of real property has the general duty to take reasonable measures to maintain the property in a reasonably safe condition (Kush v. Buffalo, 59 NY2d 26 [1983]). To be held liable for negligence in a premises liability case, a defendant must either create the unsafe condition giving rise to the injury or have actual or constructive notice thereof and a reasonable time within which to remedy it (Boccaccino v. Our Lady of Pity R. C. Church, 18 AD2d 1055 [1st Dept 1963]; Freidah v. Hamlet Golf & Country Club, 272 AD2d 572 [2nd Dept 2000]). It

follows that a possessor of land is not an insurer of an entrant's safety (Gilson v. Metropolitan Opera, 5 NY3d 574 [2005]). An owner or possessor of property is therefore not negligent or liable by virtue of the mere fact that one sustained an injury while on the property of Defendant.

On a stormy day, such as the day of this incident¹, the presence of a normal amount of water on the floor does not provide notice nor does it establish a want of reasonable care (Seiden v. National Commercial Bank & Trust Co., 52 Misc.2d 132 [NY City Ct. 1963]). An owner of real property cannot be expected to prevent the presence of some water on the floor during the course of a snowy or rainy period (Solazzo v. NYCTA, 21 AD3d 735 [1st Dept 2005]; Spaulding v. Christakos, 295 NY 973 [1946]).

In the absence of proof that the premises was inherently dangerous, or of the failure to use care to remedy the dangerous conditions after actual or constructive notice, Defendant cannot be held liable for injuries sustained by the Plaintiff (Miller v. Gimble Bros, Inc., 262 NY 107 [1933]). As such, Defendant's motion for summary judgement must be, and is, granted.

Accordingly, it is

¹At 10:30 AM on February 14, 2007, there was an ongoing storm in progress, with sleet falling and approximately 1-1.5 inches of snow and ice cover on untreated, undisturbed and exposed outdoor surfaces in the area of the Building (Defendant Ex. F, g and H).

ORDERED that Defendant's motion for summary judgment is granted and the Complaint is dismissed; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 9/10/09

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HON. WALTER B. TOLUB, J.S.C.

FILED
SEP 11 2009
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NEW YORK