

Wieclawek v Vukelic

2010 NY Slip Op 31474(U)

June 11, 2010

Sup Ct, Queens County

Docket Number: 15494/2008

Judge: Robert J. McDonald

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Vukelic asserts that the plaintiff “fell merely because the marble steps were slippery” and the “record is devoid” of any evidence that there was a defective condition.

The plaintiff testified at a pre-trial deposition held April 9, 2009. The accident occurred on the marble surface of the stairs from the plaintiff’s apartment [15]. “Q. What, if anything, cause you to fall? A. Was that the stairs was very slippery.” [19] She stated that she looked down at the stairs before stepping down and she did not see anything [19]. “Q. When did you complain about the condition of the stairs to the superintendent? A. I slip many times as I just mention like that stairs are very slippery.” [25] She testified she had slipped five times previously [25]. She moved into the building in October 2005 and slipped two months later on the floor which she told the superintendent about. “Q. What did you say to the superintendent about the stairs the first time you made the complaint? A. The stairs are very slippery, you need protection or something.” [26-27].

The defendant Marija Vukelic testified at a pre-trial deposition held June 18, 2009. They are the landlords of the building. It is a four floor walk-up with four apartments on each floor [12]. She testified she went to the building three or four times a month [14]. There are railings on the left side of the stairwell made of metal and wood. [18]. These were never changed [19]. “Q. The staircase, did it have windows in it? A. Yes. Q. Where were the windows? Were they at each floor, in between floors, something else? A. Each floor. Q. And the windows themselves, did they open? A. Yes.” [19]. Although she said that there were window guards, in the summer they were open but in the winter they were closed [20]. There were ceiling lights on each level which used regular light bulbs [20]. She could not state when they were turned on, it was something that the superintendent took care of, but they worked on a timer [21-22]. It was the superintendent’s job to take care of the stairway [23]. He would clean the stairway but the witness was unable to state when [24]. He would mop two times weekly [25]. She testified that she had never received any complaints about the building [27]. “Q. Duly noted. The marble staircases that are in that building, back in October of 2007, did they have any kind of grip, any kind of traction strip on them, or were they just plain marble? A. Plain, yes.” [27-28]. Ms. Vukelic stated that she last time she had been at the building was one week prior to the accident [28]. She did not notice whether any of the steps had been worn down or smoothed down or whether they were cracked or broken, although she stated that she never received any complaints from the tenants or superintendent [29]. The procedure was that if there were any kind of complaint it would be made to the superintendent and then conveyed to Ms. Vukelic who would call the appropriate repair person [30]. She would not write it down because “I have a good memory” [31]. No one identified themselves as having been a witness to the plaintiff’s accident [37]. Ms. Vukelic said that the plaintiff hold her that she had knocked on the superintendent’s door and he didn’t want to open it, which she asserted was untrue [38]. Later Ms. Vukelic corrected herself to state that the superintendent had actually looked through the peephole, saw the plaintiff and he closed the door [39,42]. The truth, Ms. Vukelic stated, was that the superintendent had heard nothing and was unaware of the plaintiff’s fall [40]. Ms. Vukelic stated that she saw where the plaintiff had fallen subsequent to the fall and found “the steps in excellent condition” [40]. From 1986 through 2007 no repairs were made to the steps [43].

The defendant submits that there is no evidence submitted which would establish that there was a dangerous or defective condition on the steps leading up to the plaintiff’s apartment and the

plaintiff did not exercise reasonable care as required. That the conclusory language used the plaintiff fails to establish any negligence by the plaintiffs.

The principle argument that plaintiff's counsel makes in the opposition papers is that the plaintiff was not proficient in English. However, she was represented by counsel at the deposition and at any time he could have halted the deposition. Further, from a reading of the deposition it appears that the plaintiff had sufficient command to answer the questions put to her.

Summary Judgment is appropriate only where through admissible evidence, which eliminates all material issues of fact, the proponent establishes facts which support their position (*Alvarez v Prospect Hospital*, 68 NY2d 320). Upon demonstrating entitlement the burden shifts to the opponent to rebut the proffered evidence (*Bethlehem Steel Corp v Solow*, 51 NY2d 870). Such facts offered in opposition must be in evidentiary form and naked allegations are therefore insufficient (*Zuckerman v City of New York*, 49 NY2d 557). Summary Judgment is not available when the evidence submitted is subject to argument or debate (*Sillman v Twentieth Century-Fox Film Corp*, 2 NY2d 395; *Stone v Goodson*, 8 NY2d 8 rehearing den 8 NY2d 934).

The plaintiff has failed to demonstrate any ground for finding the defendant negligent. There was no allegation that the marble floors were wet, or dirty, or that the floor had recently been polished or waxed, indeed, no reason is set out other than the allegation that the marble floor was "slippery". There is no basis set out by the plaintiff as to why the defendant should be liable for her fall (*Murphy v Conner*, 84 NY2d 969, 971). The naked allegation that the marble floor was slippery does not support a cause of action (*Brandefine v National Cleaning Contractor, Inc*, 265 AD2d 441).

While summary judgment in personal injury cases is the exception, where the facts presented demonstrate that the plaintiff is unable to demonstrate negligence on the part of the defendant, summary judgment is appropriate (*Winegrad v New York University Medical Center*, 64 NY2d 851).

Accordingly, defendants' motion for summary judgment pursuant to CPLR 3212 dismissing the complaint is granted.

So Ordered.

Dated: June 11, 2010

Robert J. McDonald, J.S.C.