

Valentin v Columbia Univ.

2010 NY Slip Op 32219(U)

August 17, 2010

Supreme Court, New York County

Docket Number: 400055/07

Judge: Jane S. Solomon

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

PRESENT: JANE S. SOLOMON

PART 55

Index Number : 400055/2007

VALENTIN, NELIDA A.

VS.

COLUMBIA UNIVERSITY

SEQUENCE NUMBER : 001

SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE 3/8/10

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

this motion to/for _____

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED
<u>1-3</u>
<u>4-6</u>
<u>7-9</u>

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

Cross-Motion: Yes No


Upon the foregoing papers, it is ordered that this motion is decided in accordance with the enclosed memorandum decision and order.

FILED

AUG 20 2010

NEW YORK COUNTY CLERK'S OFFICE

Dated: 8/17/10


JANE S. SOLOMON J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 55

-----X
NELIDA VALENTIN,

Plaintiff,

-against-

COLUMBIA UNIVERSITY,

Defendant.

DECISION and ORDER

Index No. 400055/07

FILED

AUG 20 2010

NEW YORK
COUNTY CLERK'S OFFICE

-----X
JANE S. SOLOMON, J.S.C.:

Defendant Columbia University moves for summary judgment dismissing the complaint in this personal injury lawsuit arising from an alleged "trip and fall" accident. Plaintiff Nelida Valentin (Valentin) cross-moves for summary judgment as to liability.

On June 16, 2006, Valentin was walking on the campus of Columbia University in an area known as "College Walk", located between Broadway and Amsterdam Avenue, at 116th Street. The surface of College Walk is comprised of hexagonal stone pavers. Valentin claims that she was caused to fall when she stepped on a loose paver, and her foot became caught between that paver and an adjoining one. As a result, she fell forward, landed on her hands and knees, and sustained serious injuries, including a fractured knee that has required two surgeries, and may require a total knee replacement.

Valentin could not recall precisely where she fell. She had never been to College Walk before. She had passed a security guard station on Broadway a short time before falling (she could not estimate how far), and fell near some trees. She

has never returned to the accident site, but her son visited the area more than a month after the accident, and photographed what appears to be a close-up of a group of pavers with gaps between them (Notice of Motion, Ex. E). Nothing in the photograph places it at College Walk, such as a view of the security guard station or trees; the photograph shows only some pavers. At her deposition, taken on October 17, 2008, Valentin testified that she had never seen this photograph before, but identified it as depicting the place where she fell.

Valentin's fall was witnessed by her co-worker, Yolanda Dessus, who happened to be walking behind her that afternoon (they both work at St. Luke's Hospital Center). Valentin submits Dessus's affidavit, stating that the walkway in the area where Valentin fell had loose, uneven pavers (Dessus Aff., Notice of Cross-motion, Ex. A). Dessus also states that she had walked in that area many times over the years, and all that time, she had observed loose and uneven pavers.

Columbia University produced three witnesses for deposition: Ernest Kovaris, the supervisor of the masonry shop in 2006; Blanche Dawson, the security officer who came to Valentin's assistance on the day of the accident; and David Alvarez, the security desk sergeant on the day of the accident.

Mr. Kovaris had been the masonry shop supervisor for six years prior to the accident. He had never heard of a person being injured in an accident caused by loose pavers. He described the pavers as being in good condition, and when a loose

or broken paver was found, it was replaced. Officer Dawson, who had worked there for four years before the accident, was unaware of anyone being injured on College Walk, although she had once tripped there herself. She did not suffer any injury, and ascribed the fall her "own stupidity" (Dawson EBT, Notice of Cross-motion, Ex. F, 69). Sergeant Alvarez testified that he knew of many incidents where people had tripped and fallen on College Walk, but could only recall one other time when an accident report was made, sometime between 2003 and 2005. In the eight years he had worked as a security officer there, he recalled many instances where pavers were cracked or turned around, and that repairs were made.

Columbia University argues, assuming the accident occurred just as Valentin describes it, that the complaint must be dismissed because it had no notice of the specific defective condition that caused her to fall.

Here, there is no evidence to raise a triable issue of fact that Columbia University had notice of the hazardous condition over which Valentin fell (*Casado v. OUB Houses Hous. Co.*, 59 AD3d 272 [1st Dept 2009]). Valentin has adduced testimony that there were instances in the years before her accident when loose or broken pavers were present on College Walk, and that she tripped over a loose paver on June 16, 2006, but none that Columbia University had notice that the paver she tripped over on June 16, 2006 was loose or broken. Although Ms. Dessus claims in her affidavit that she was aware of many loose

pavers on College Walk for years before the accident, there is no evidence that she or anyone else put Columbia University on notice of the condition, nor is there evidence of how long prior to the accident the particular paver upon which plaintiff tripped was defective such that Columbia University may be charged with constructive notice of that condition (see, *Segretti v Shorestein Co., East, LP*, 256 AD2d 234 [1st Dept 1998])["To constitute constructive notice, a defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit (the owners') employees to discover and remedy it"] [citations omitted]). Indeed, the evidence that Columbia University discovered loose or broken pavers over the years, and caused them to be repaired, is not evidence of negligence.

In her cross-motion, Valentin contends that the testimony of Columbia University employees shows that it knew that College Walk generally was hazardous. 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]). Valentin further argues that she does not need to show that Columbia University had notice of a hazardous condition because it created the condition when pavers were installed on College Walk.

Finally, Columbia University contends that Valentin cannot show a causal relationship between her alleged injury,


i.e., the fractured knee, and the June 16, 2006 accident. There is conflicting evidence on this question, and summary judgment would not be granted on this basis if Valentin could demonstrate a triable issue of fact on liability. Accordingly, it hereby is

ORDERED that the motion for summary judgment by defendant Columbia University is granted, and the complaint is dismissed, with costs and disbursements as taxed by the Clerk of the Court upon submission of an appropriate bill of costs, and the Clerk shall enter judgment accordingly; and it further is

ORDERED that plaintiff's cross-motion for summary judgment is denied.

Dated: August 17, 2010

ENTER:



J.S.C.

JANE S. SOLOMON

FILED
AUG 20 2010
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