Washington v Albany Housing Authority
2011 NY Slip Op 33210(U)
November 15, 2011
Sup Ct, Albany County
Docket Number: 8205-10
Judge: Joseph C. Teresi
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STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

TONYA WASHINGTON and
WILLIAM WASHINGTON,

Plaintiffs,

-against-

DECISION and ORDER
INDEX NO. 8205-10
RJI NO. 01-11-102931

ALBANY HOUSING AUTHORITY,

Defendant.

Supreme Court Albany County All Purpose Term, November 30, 2011
Assigned to Justice Joseph C. Teresi

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TERESI, J.:

On January 20, 2010, Tonya Washington (hereinafter "Ms. Washington") slipped on ice and fell to the ground. She walking from her home to her car, on a sidewalk maintained and controlled by Defendant in the Ida Yarbrough housing complex (hereinafter "Ida Yarbrough"). Plaintiffs commenced this action seeking damages, and derivative damages, caused by Ms. Washington's fall. Issue was joined, discovery is complete and a jury trial date certain is set.

Defendant now moves for summary judgment dismissing the complaint. Plaintiffs oppose the motion. On this record, because Defendant failed to establish its entitlement to judgment as a matter of law, its motion is denied.

In a slip and fall action the Defendant bears "the threshold burden when seeking summary judgment of establishing that [it] maintained the premises in a reasonably safe condition and neither created nor had actual or constructive notice of the allegedly dangerous condition." (Connolly v United Health Servs., Inc., 77 AD3d 1274 [3d Dept. 2010], quoting Candelario v Watervliet Hous. Auth., 46 AD3d 1073 [3d Dept. 2007]; Managault v Rensselaer Polytechnic Inst., 62 AD3d 1196 [3d Dept. 2009]). "Where, as here, only constructive notice is asserted,[1] a defendant may meet its burden of affirmatively demonstrating a lack of such notice by offering proof of regularly recurring maintenance or inspection of the premises." (Kropp v Corning, Inc., 69 AD3d 1211, 1212 [3d Dept. 2010]).

Only if the Defendant establishes its right to judgment as a matter of law will the burden shift to Plaintiffs to establish, by admissible proof, the existence of a genuine issue of fact. (Zuckerman v. City of New York, 49 NY2d 557 [1980]).

Here, Defendant failed to proffer sufficient evidentiary proof of their entitlement to judgment as a matter of law.

Preliminarily, Defendant's attorney's affidavit is of no "probative value". (2 North Street Corp. v. Getty Saugerties Corp., 68 AD3d 1392, 1395 [3d Dept. 2009]; Groboski v. Godfroy, 74 AD3d 1524 [3d Dept. 2010]; Zuckerman v. City of New York, supra). Similarly inadmissible are Tonya Washington's September 24, 2010 unsigned deposition transcript, William

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[1] As per Plaintiffs' Bill of Particulars, dated February 14, 2011.

Washington's September 24, 2010 unsigned deposition transcript and Ivin Callwood's September 12, 2011 unsigned deposition transcript.[2] (Martinez v. 123-16 Liberty Ave. Realty Corp., 47 AD3d 901 [2 Dept. 2008]; In re Delgatto, 82 AD3d 1230 [2d Dept. 2011]).

Defendant has properly offered both of Plaintiffs' April 12, 2011 signed deposition transcripts. Neither, however, can establish that Defendant "maintained the premises in a reasonably safe condition and neither created nor had actual or constructive notice of the allegedly dangerous condition." (Connolly v United Health Servs., Inc., supra; Kropp v. Corning, Inc., supra; Managault v Rensselaer Polytechnic Inst., supra). As such, Defendant's reliance on these transcripts is misplaced.

While Defendant also properly offered the deposition testimony of Aaron Tannatta (property manager), Steven Iarossi (assistant property manager) and Salvatore Carringi (senior maintenance mechanic), such testimony still fails to establish Defendant's entitlement to judgment. The depositions establish that on January 18, 2010 (two days prior to Ms. Washington's fall) a two inch snowstorm covered Ida Yarborough. The Defendant issued a snow emergency, and its employees removed the snow. Tannatta testified, however, that he had no recollection of inspecting the property "after the January 18, 2010 snow removal." Tannatta instead stated that Caringi was the "crew leader for Ida Yarborough," who was charged with completing such inspection. Tannatta did not know if Caringi actually inspected all of Ida Yarborough's walkways following the January 18, 2010 snowstorm. Caringi's testimony is similarly inconclusive. He could neither remember when the area was inspected prior to January

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[2] Even if Callwood's deposition were considered, because he had no recollection of the time period at issue it fails to establish Defendant's entitlement to judgment as a matter of law.

[* 4]

20, 2010 nor recall the ice conditions affecting Ida Yarborough's walkways on January 19 or 20, 2010. Iarossi too stated that he had no recollection of how Ida Yarborough's walkways looked on January 18, 19 or 20, 2010. Nor did he specify when, prior to Ms. Washington's fall, the area where she fell was last inspected. While Defendant's compliance with its policies could establish its entitlement to judgment, these depositions simply do not categorically demonstrate that the Defendant's employees conformed to its policies prior to January 20, 2010. As such, Defendant did not establish, as a matter of law, that it "maintained the premises in a reasonably safe condition" (Connolly v United Health Servs., Inc., supra) or that it had no constructive notice due to its "regularly recurring maintenance or inspection of the premises." (Kropp v. Corning, Inc., supra at 1212).

Accordingly, "the sufficiency of plaintiffs' proof" need not be addressed (Kropp v. Corning, Inc., supra at 1213; Winegrad v New York Univ. Med. Ctr., 64 NY2d 851 [1985]) and Defendant's motion for summary judgment is denied.

This Decision and Order is being returned to the attorneys for the Plaintiffs. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to the Albany County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: December 15, 2011
Albany, New York

JOSEPH C. TERESI, J.S.C.

PAPERS CONSIDERED:

1. Notice of Motion, dated October 21, 2011, Affidavit of John Liguori, dated October 21, 2011, with attached Exhibits "A" - "Q"
2. Affirmation of Thomas Buchanan, dated November 23, 2011.