

Roberts v Half Hollow Hills CSD

2011 NY Slip Op 34224(U)

July 7, 2011

Supreme Court, Suffolk County

Docket Number: 08-37089

Judge: Jr., John J.J. Jones

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SHORT FORM ORDER

INDEX No. 08-37089

CAL No. 10-02552OT

FILED

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 10 - SUFFOLK COUNTY

PRESENT:

Hon. JOHN J.J. JONES, JR.
Justice of the Supreme Court

MOTION DATE 2-8-11
ADJ. DATE 3-2-11
Mot. Seq. # 001 - MD

-----X
DEBORAH A. ROBERTS, :
 :
 : Plaintiff, :
 :
 - against - :
 :
 HALF HOLLOW HILLS CSD, :
 :
 : Defendant. :
-----X

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Upon the following papers numbered 1 to 30 read on this motion for summary judgment; Notice of Motion/ Order to Show Cause and supporting papers 1 - 23; Notice of Cross Motion and supporting papers ; Answering Affidavits and supporting papers 24 - 25; Replying Affidavits and supporting papers 26 - 30; Other plaintiff's sur reply; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that the motion by defendant Half Hollow Hills Central School District for summary judgment dismissing plaintiff's complaint is denied.

This action was commenced by plaintiff Deborah Roberts to recover damages for personal injuries she allegedly sustained on October 24, 2007, when she slipped and fell in a puddle of water near the entrance of the Half Hollow Hills East High School. The high school is owned by defendant Half Hollow Hills Central School District (hereinafter "the School District"). By her bill of particulars, plaintiff alleges the School District was negligent in permitting a hazardous and trap-like condition to exist, in failing to remove a slippery and/or wet substance from the floor of its premises, and in failing to warn of the dangerous condition.

The School District now moves for summary judgment dismissing plaintiff's complaint on the grounds that they did not create the alleged hazardous condition and did not have actual or constructive knowledge of its existence at the time of plaintiff's accident. Additionally, the School District asserts the alleged accident occurred during an ongoing rain storm, and there is no evidence any water was on the floor other than the water brought in on the bottom of plaintiff's shoes. In opposition, plaintiff argues the motion should be denied as a triable issues exist as to whether the School District had

constructive notice of the puddle of water which caused plaintiff to fall, and as to whether it failed to comply with its own policy of placing maintenance staff with mops and buckets by the entrance of the school during inclement rainfall.

During her 50-h hearing, plaintiff testified she went to the school to pick up her son after receiving a call from the school's nurse that he was feeling ill and had a fever. She testified she arrived at the school at approximately 9:15 a.m., and that it was raining when she entered its premises. She testified she slipped and fell shortly after she stepped off a rubber mat located by the door at the school's entrance. She testified that she did not look on the surface of the floor prior to falling, and that she did not recall wiping her feet on the mat prior to stepping on the surface of the floor. She testified her knee, buttocks and ankle came in contact with the floor as a result of her accident, and that she remained on the floor for approximately ten minutes before members of the school staff helped her to her feet and escorted her to the office of the school's nurse. She testified that while on the floor, she noticed that her pants were wet and that there were puddles of water on the floor and further that she overheard a nearby observer ask the school's janitor why the caution signs were not posted. She asserted that she also observed skid marks made by her shoe where she had fallen. She testified that the water on the floor was clear, and that she did not observe any other skid marks or mud on the floor.

At his examination before trial, the school's chief custodian, Santa Maria, testified he did not have personal knowledge of plaintiff's accident. He testified that whenever it rains, it is the practice of the custodial staff to maintain mops and buckets by the entrances of the school and to mop the floors as needed. He explained the custodians walk around and conduct ongoing inspections of the entrances, and that they automatically take out the mops and buckets whenever it rains heavily. Maria testified there are slip and fall warning signs on the buckets utilized by the custodial staff. He testified the custodial staff do not keep the records of their cleaning duties, and he did not know who was responsible for maintaining the area of the school where plaintiff fell on the day of her accident. He also testified that he would be notified by radio whenever anyone complained of a build up of water on the school floor.

During her examination before trial, the school's nurse, Karen Giordano, testified she learned that plaintiff fell and injured herself when someone came to her office and requested she come to the scene of the accident to provide assistance. She stated she accompanied plaintiff back to her office, gave her an ice pack for her bruises and filled out an accident report. She testified she did not notice whether the floor was wet or whether caution signs were posted when she arrived at the scene of the accident. She also testified she did not recall informing anyone they needed to post wet floor signs on the day of the accident, and that she did not overhear anyone making such a statement.

During his examination before trial, a teacher, Michael Zaiff, testified that although he was on hall duty sitting at a desk approximately 12 feet away from the entrance of the school at the time of plaintiff's accident, he did not see plaintiff enter the school or fall to the ground. He testified he first saw plaintiff on the floor after her accident, and that he did not recall observing any water on the floor or whether her clothing was wet after she was helped up from the floor. Mr. Zaiff testified he did not recall any caution signs, mops or buckets in the area where plaintiff fell, or anyone asking for the janitor to clean water off the floor. He further testified he did not recall anyone making any complaints that the floor was wet or slippery prior to plaintiff's accident.

The affidavit of the school's principal, Jeffrey Woodberry, states that the accident allegedly occurred just outside of his office, and that during his time as principal he never received any complaints about water accumulation or accidents occurring in that area of the building. The affidavit further states it was the custom of the custodial staff to place buckets with warning signs in areas where water accumulated, and that he was not aware of any time, including the day of the accident, when the custodial staff failed to properly respond to an accumulation of water on the school floor during inclement weather by mopping or posting warning signs.

It is well settled that on a motion for summary judgment the function of the court is to determine whether issues of fact exist and not to resolve issues of fact or determine matters of credibility (*see Doize v Holiday Inn Ronkonkoma*, 6 AD3d 573, 574, 774 NYS2d 792 [2d Dept 2004]). Furthermore, facts that are alleged by the nonmoving party and all inferences which may be drawn from them must be accepted as true (*see O'Neill v Town of Fishkill*, 134 AD2d 487, 488, 521 NYS2d 272 [2d Dept 1987]). The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]; *Andre v Pomeroy*, 35 NY2d 361, 362 NYS2d 131 [1974]). The failure to make such a prima facie showing requires the denial of the motion regardless of the sufficiency of the opposing papers (*see Winegrad v New York Uni. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]).

A school, like any other private landowner, has a duty to maintain its property in a reasonably safe manner (*see Basso v Miller*, 40 NY2d 233, 386 NYS2d 564 [1976]; *Stevens v Central School District*, 25 AD2d 871, 270 NYS2d 23 [2d Dept 1966]). Moreover, a party moving for summary judgment in a slip and fall action bears the initial burden of establishing a prima facie entitlement to judgment as a matter of law (*Altieri v Golub Corp.*, 292 AD2d 734, 734, 741 NYS2d 126 [2002]), and the burden will shift to the opposing party only after the movant has demonstrated that it neither created the defective condition nor had actual or constructive notice of the defective condition (*see Gordon v American Museum of Natural History*, 67 NY2d 836, 501 NYS2d 646 [1986]; *Moss v JNK Capital*, 85 NY2d 1005, 631 NYS2d 280 [1995]).

Here, defendant failed to establish its prima facie entitlement to summary judgment by eliminating all triable issues from the case (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]). Although the School District asserts it is not obligated to constantly remedy the problem of water being tracked into its building during a rain storm (*see Naulo v New York City Bd. of Edu.*, 71 AD3d 651, 896 NYS2d 155 [2d Dept 2010]), it failed to proffer any evidence of the last time the floor near the entrance of the school was inspected prior to plaintiff's accident (*see McPhaul v Mutual of Am. Life Ins. Co.*, 81 AD3d 609, 915 NYS2d 870 [2d Dept 2011]; *Bob v Marshalls of MA, Inc.*, 78 AD3d 976, 911 NYS2d 640 [2d Dept 2010]; *Elbert v Dover Leasing, LP*, 24 AD3d 497, 808 NYS2d 256 [2d Dept 2005]). It also failed to demonstrate whether the custodial staff followed school policy for inclement weather on the day of the accident by monitoring the floor for accumulation of water and placing buckets labeled with caution signs in that area (*see Johnson v Panera, LLC*, 59 AD3d 1118, 873 NYS2d 828 [4th Dept 2009]; *Gerbi v Tri-Mac Enters. of Stony Brook, Inc.*, 34 AD3d 732, 826 NYS2d 101 [2d Dept 2006];

