

Pimental v Branic Intl. Realty Corp.

2012 NY Slip Op 30110(U)

January 11, 2012

Sup Ct, NY County

Docket Number: 106037/08

Judge: Debra A. James

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

PRESENT: DEBRA A. JAMES
Justice

PART 59

MERCEDES M. PIMENTAL,
Plaintiff,

Index No.: 106037/08

Motion Date: 10/04/11

- v -

Motion Seq. No.: 03

BRANIC INTERNATIONAL REALTY CORP.,
Defendant.

Motion Cal. No.: _____

The following papers, numbered 1 to 4 were read on this motion for summary judgment.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits
Answering Affidavits - Exhibits _____
Replying Affidavits - Exhibits _____

PAPERS NUMBERED	
1, 2	_____
3	_____
4	_____

FILED

JAN 18 2012

Cross-Motion: Yes No

NEW YORK
COUNTY CLERK'S OFFICE

Upon the foregoing papers,

Defendant moves for summary judgment dismissing plaintiff's complaint based upon lack of notice of the purportedly dangerous condition that caused the accident.

Plaintiff alleges that, on August 23, 2006, she tripped and fell on a piece of rope on the sidewalk outside a building (the Building) located at 216 West 103rd Street, New York County (the Accident Site). Defendant owns the Building located at the Accident Site and it rents out the ground floor commercial space to various stores while operating floors 2 through 5 as a hotel

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SETTLE/SUBMIT ORDER/JUDG.

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

[* 2]
known as the Marrakech (Marrakech).

Plaintiff contends that she was walking on the sidewalk outside the Building at the Accident Site, when a rope got caught underneath her feet causing her to fall. She states that she observed two construction workers outside the Building who picked her up after she fell. She also states that she did not see the rope before she fell and that, afterwards, she saw the older construction worker take the rope away. She asserts that these men were employed by defendant "since they went back inside [the Building] after they lifted [her] up."

Plaintiff contends that as a result of her fall she exacerbated a prior knee injury requiring surgery and that she suffered a right hand injury which also required an operation.

Defendant contends that it operated the Marrakech as a tourist-class hotel and that it kept the sidewalk entrance free and clear of debris by sweeping and hosing down the sidewalk at the beginning of the day and regularly checking the area throughout the day an average of 8 to 10 times and cleaning immediately as necessary. It states that the Accident Site is an area that experiences high pedestrian traffic since it is near the 103rd Street subway station.

Defendant asserts that there were no prior similar incidents of slip and falls at the Accident Site in the prior twenty years, except for an alleged accident involving a slip on ice about 5

years before plaintiff's accident. It contends that plaintiff has not shown that it either created the allegedly dangerous condition or that it had actual or constructive notice of any condition and that, consequently, plaintiff's complaint should be dismissed.

A party seeking summary judgment must make a prima facie case showing that it is entitled to judgment as a matter of law by proffering sufficient evidence to demonstrate the absence of any material issue of fact (Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986]). If the movant fails to make this showing, the motion must be denied (id.). Once the movant meets its burden, then the opposing party must produce evidentiary proof in admissible form sufficient to raise a triable issue of material fact (Zuckerman v City of New York, 49 NY2d 557, 562 [1980]). In deciding the motion, the court must draw all reasonable inferences in favor of the nonmoving party and deny summary judgment if there is any doubt as to the existence of a material issue of fact (Dauman Displays v Masturzo, 168 AD2d 204, 205 [1st Dept 1990], lv dismissed 77 NY2d 939 [1991]).

Generally, a landowner must act as a reasonably prudent person in maintaining its property in a reasonably safe condition under all the circumstances, including the likelihood of injury, the potential seriousness of injury and the burden of avoiding the risk (Peralta v Henriquez, 100 NY2d 139, 144 [2003]).

Additionally, a party must be aware of the alleged defective or dangerous condition, either through having created it, actual knowledge of the condition, or constructive notice of it through the defect's visibility for a sufficient amount of time prior to the accident to enable a defendant to discover and remedy it (Gordon v American Museum of Natural History, 67 NY2d 836, 837 [1986]).

Defendant's motion for summary judgment dismissing the complaint must be granted. Defendant has presented evidence of regular cleaning at the Accident Site (Torres v New York City Hous. Auth., 85 AD3d 469 [1st Dept 2011]) and that there were no prior incidents of trash accumulating at the Accident Site which caused a fall (DeJesus v New York City Hous. Auth., 53 AD3d 410 [1st Dept 2008]), both of which are unrefuted by plaintiff. Plaintiff stated that the cause of her fall was the rope and that she had not seen it before her accident. She has, therefore, failed to proffer evidence that defendant either placed the rope there, creating the condition, had actual knowledge of it or that the rope was there for a sufficiently long period of time so that defendant should have become aware of it and corrected this condition (Gordon, 67 NY2d at 837; Rivera v 2160 Realty Co., L.L.C., 4 NY3d 837 [2005]). While plaintiff has asserted that an employee of defendant picked up the rope after she fell, she has not presented evidence that either this or any other employee of

defendant knew that the rope was there before her accident. Plaintiff's claim that defendant caused the rope to be at the Accident Site or knew of its presence there is mere speculation and is insufficient to sustain her claim (Rivera, 4 NY3d at 838-839; Viera v Riverbay Corp., 44 AD3d 577, 579 [1st Dept 2007]).

Accordingly, plaintiff has not raised a triable question of fact as to defendant's creation of, or notice of, the allegedly dangerous condition and defendant's motion for summary judgment dismissing the complaint must be granted.

It is, therefore,

ORDERED that defendant's motion for summary judgment is GRANTED and the complaint is DISMISSED with costs and disbursements as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

This is the decision and order of the court.

Dated: January 11, 2011

ENTER:

FILED

JAN 18 2012

**NEW YORK
COUNTY CLERK'S OFFICE**

Debra A. James
DEBRA A. JAMES J.S.C.