

Rodriguez v New York City Hous. Auth.

2012 NY Slip Op 33428(U)

May 22, 2012

Sup Ct, Bronx County

Docket Number: 300689/09

Judge: Mitchell J. Danziger

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NEW YORK SUPREME COURT - COUNTY OF BRONX

PART

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX:

Case Disposed	<input checked="" type="checkbox"/>
Settle Order	<input type="checkbox"/>
Schedule Appearance	<input type="checkbox"/>

_____X
LUZ RODRIGUEZ,

Index No. 300687/09

-against-

Hon. MITCHELL DANZIGER

THE NEW YORK CITY HOUSING AUTHORITY,
_____X

Justice.

The following papers numbered 1 to _____ Read on this motion.
Noticed on _____ and duly submitted as No. _____ on the Motion Calendar of _____

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed		
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this

*Motion denied, in accordance with the assigned
memorandum decision*

Motion is Respectfully Referred to:
Justice: _____
Dated: _____

Dated: 5/23/12

Hon. *[Signature]*
J.S.C.

MITCHELL J. DANZIGER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART PP1

-----X
LUZ RODRIGUEZ,

Plaintiff,

DECISION and ORDER
Index No. 300689/09

-against-

Present: Hon. Mitchell Danziger
AJSC

THE NEW YORK CITY HOUSING AUTHORITY,

Defendant.

-----X

Recitation, as required by CPLR §2219(a), of the papers considered in reviewing the underling motion for summary judgment:

Notice of Motion and annexed Exhibits.....	1
Affirmation in Opposition and annexed Exhibits.....	2
Reply Affirmation.....	3
Corr. dated 8/24/2011.....	4

This action involves an alleged slip and fall due to a wet substance on a stairwell on March 5, 2008.

Defendant, New York City Housing Authority (hereinafter "NYCHA") seeks summary judgment pursuant to CPLR 3212 dismissing the plaintiff's complaint on the grounds that the defendant neither created nor had actual or constructive notice of the wet substance that was on the stairwell.

The complaint alleges that on March 5, 2008 the plaintiff, Luz Rodriguez slipped and fell at a NYCHA property known as Castle Hill Houses which is located at 2125 Randall Ave, Bronx, New York. Plaintiff claims that her injuries occurred due to the negligence of the defendant.

Plaintiff asserts in her verified bill of particulars that she resides at the subject building in apartment No. 11M. The accident took place on March 5, 2008 at approximately 5:15 am. The

occurrence took place on stairwell B between the 4th and 5th floors. Plaintiff described the cause of her accident as follows:

Plaintiff was descending the subject stairs and slipped on a liquid substance believed to be urine. The lack of non-skid surface on the stairs caused the plaintiff to fall and become injured. The length of time these defective conditions existed is unknown.

Plaintiff testified at a 50-H hearing about the happening of the accident. She fell down the steps of stairwell B, between the fifth and fourth floors and broke her ankle. Plaintiff described the accident as follows:

Q. What happened?

A. I was on my way to work, I was going down the stairs between the fifth and the fourth floor, the second to last step I slipped.

Q. What did you slip on?

A. It was wet, I am not sure if it was urine or it was water, but it was wet.

Q. ..was it clear, was it colored?

A. No, it was clear.

Q. Did it have an odor to it?

A. Yes, it stunk.

Q. Like what?

A. More like urine.

The aforesaid wet condition covered the steps from the first step at the bottom to the fifth

step. The plaintiff was descending the stairs from the fifth floor. He described the wet condition as follows:

Q. Did the wetness cover the entire step?

A. Just about half from my left foot on - -

Q. From where?

A. From the left foot to the handrail that is where it covered.

As he was walking down the stairwell, he was walking closer to the handrail on his left-hand side. Further, he was holding onto the handrail. Plaintiff testified that no one witnessed her fall. Her left foot slipped going down the steps and she landed on her buttocks on the first step. The steps were made of concrete. Rodriguez lived at the building in question with her mother, Iris Lorenzo who was the tenant of record. She testified as follows about the condition of the stairwell:

Q. Did you see any sort of urine as you waked from the 11th floor down to the fifth floor?

A. Oh, yes, just about on every landing had urine or some type of water.

Q. Including the floors above where you fell?

A. That is correct....

Q. What was the weather like at the time of the accident?

A. It was raining...

A. I think it was drizzling.

Plaintiff testified at her examination before trial that she was wearing Nike sneakers at the time of the accident. She was carrying a blue Coach hand bag and a small umbrella in her right

hand. Plaintiff entered stairwell B on the morning of the accident on the 11th floor. She described the lighting in stairwell B between the fifth and fourth floor as good. Rodriguez described the stairs between the fifth and fourth floor as one continuous set of steps, followed by a landing. She described the steps as having the same color as concrete with a red handrail on the left as you descend the stairs from the fifth to the fourth floor. She described the condition of the steps between the fifth and fourth floors as follows: "Wet and urine." Her testimony was as follows:

Q. ... where on the steps was that urine?

A. All over. It was closer to the fourth floor.

Q. When you say "all over," was there urine on each step between the fifth and fourth floors?

A. Like, a little drop of each, yes...

Q. There's a puddle of urine on the second-to-last step going down to the fourth floor, and there are little droplets of urine on every other step?

A. Yes...

Q. How much of the step did this wetness take up? Half the step, a quarter of the step, something else?

A. Maybe half.

Plaintiff's accident occurred on the second to the last step when her left foot slipped first.

Plaintiff stated that the reason for her fall was "urine."

Plaintiff testified as follows about use of the stairs in question prior to the accident:

Q. On those occasions when you used Stairwell B before the date of

the accident, how often would you notice that there was any sort of wetness on the stairs, specifically between the fourth and fifth floors?

A. Most of the time.

Q. Also 90 percent of the time?

A. Yes.

Q. Do you recall - - when was the last time you used Stairwell B before March 5, 2008?

A. That, I don't recall.

Q. Do you recall if it was maybe the day before, a week before?

A. Maybe a week before.

Q. But you're not sure?

A. No.

Further, when she last used Stairwell B before the date of the accident she didn't notice wetness or urine on the steps in the area in question. Further, she did not make any complaints to the Housing Authority prior to the date of the accident about the condition of the steps in Stairwell B nor is she aware of anyone who made such complaints. The plaintiff did not report her accident to the Housing Authority.

Movant also submits the examination before trial transcript of Rosa Perez, defendant's employee who works as a caretaker. Perez worked at the Castle Hill Houses on the date in question. She described her duties for the period in question as follows: "Make sure we all go upstairs, check the buildings, sweep up the building, make sure there's no pee on the steps or juice, make sure the elevators are clean, the lobbies are done." She identified the building where she worked as "Building

No. 3,” which was part of Castle Hill Houses. Defendant’s employee, Luther Gillespie identified Building No. 3 as the building in question. Gillespie supervised the caretaking in March, 2008. In March, 2008 their job duties included “a walk-down of the building to see ifif there’s any emergencies that they need to address, as far as urine, feces...Then if they notice anything wet in the stairwell or the hallways, they would have to go back and spot mop.” The caretakers shift for Building 3 started at 8:00 a.m. The caretakers shift lasted eight hours. Gillespie testified as follows:

Q. Back in 2008, would wet urine or feces be a common occurrence in Building 3?

A. Yes.

Gillespie testified as follows about urine at the building:

Q. During the period of March of 2007 through March of 2008, did any of your caretakers ever advise you or report to you as to how often they would find wet urine or feces during their shifts?

A. Yes.

Q. Generally, what would they say to you?

A. Well, they find it all the time.

Q. All the time meaning what?

A. Is it every day, on several occasions each day or something else?

A. Well, every day.

The aforesaid condition was cleaned by mopping. Gillespie also testified when asked whether urine or feces was commonly found at the building in question from March, 2007 to March, 2008 he stated that he was not sure. He also testified that when he earlier stated that urine and feces

were found “all the time every day” for the aforesaid period he meant to say at the project in general which included Building 3.

The building where the plaintiff’s accident occurred has 14 floors which included three staircases known as A,B and C. She was responsible for cleaning the entire building. Perez testified as follows:

Q. After 4:30 pm, were there any caretakers at the building?

A. After 4:30, no. . .

Q. Now, back in 2008 from the beginning of the year through March 6th of 2008 on the days that you worked, would you leave work promptly at 4:30?

A. No. Before I leave, I go upstairs and check my building, and whatever I see dirty or messy, I clean it up.

Perez cleaned the stairwells at 8:00 a.m., 10:00 a.m. and testified as follows: “At 10; I go and check. That’s break time, but I’ll still check the building and try to clean the pee that I saw. Then I go back again after break time to check.”

From 2007 through March 6, 2008 Perez observed urine on the staircases on a regular basis. The reason for the aforesaid she attributes as follows: “The animals that they have in the buildings and people.” She also stated as follows for the same period: “Everybody knows that the people pee, urinate in the steps.”

Perez testified as follows about the existence of urine on the steps during her time as a caretaker at the building in question:

Q. With respect to Stairwell B, approximately how many times

would you see urine on the stairs of Stairwell B?

A. Of B. Two or three times. Two or three a day...

Q. Now, when you saw this urine condition on Stairwells A, B and C, were they on any particular set of stairs, between any particular floors, or would it just be random?

A. It's random, all, all. Its different. It could be sometimes A. It could be C, D or B, whatever.

Perez testified as follows about spot mopping: "I do my spot mops every day." Further, "they know I mop before I leave the building when I check it at 3...3,4."

In support of the motion the defendant submits an Affidavit from defendant's superintendent Rodney Davis which concluded as follows: "I conducted a search for computer generated work tickets that encompasses Stairwell B inside 2125 Randall Ave, Bronx, New York for the period 3/4/07 to 3/5/08, and no work tickets or complaints were found."

In opposition, plaintiff asserts that an issue of fact exists whether the presence of urine on the steps of the building in question as to an ongoing and recurrent condition which was left unaddressed by the defendant. Further, Nicholas Bellizzi, a Professional Engineer submits an Affidavit which concludes as follows: "the plaintiff, Luz Rodriguez was not afforded a safe tread walking surface...The above-described stairway defect, combined with the presence of urine on the subject stairway, was a known and recognized pedestrian safety hazard which I found to be a significant contributing cause and/or substantial cause of Luz Rodriguez's accident and/or her resulting injuries."

In addition, the sworn Affidavit of Rachel Rivera states as follows: "I have been a tenant in

this building since late April, 2000... Specifically, she fell on Stairwell B when she was walking down from the 8th floor to the 7th floor. This happened in February, 2008. My daughter fell on slippery stairs... After she fell I complained to the maintenance person. The stairs are frequently moist and have the smell of urine.”

In opposition, plaintiff also submits an Affidavit from Maria Melendez which states as follows: “I reside at 2125 Randall Ave, Apt # 3F, Bronx, New York 10473. I have been a resident in this building for the past 21 years...For example, some people defecate and urinate on hallways, and the stains stay. When people urinate, the areas around hallways become moist and slippery and this creates unsafe conditions....About six months ago I fell on the stairwell when I was going down from the third floor to the second floor. The floor was very slippery, ...I have made complaints approximately on three occasions in the past.”

DISCUSSION

The proponent of a motion for summary judgment “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers.” (*JMD Holding Corp v Congress Financial Corporation*, 4 NY 3d 373 [2005], quoting *Alvarez v Prospect Hospital*, 68 NY 2d 320 [1986]; *Lesane v Tejada*, 15 AD 3d 358 [2nd Dept 2005].)

To obtain summary judgment in a slip-and-fall action the defendant has the initial burden of making a prima facie demonstration that it neither created the hazardous condition, nor had actual or constructive notice of its existence. (*See, Rodriguez v. 705-7E 179th St. Hous. Dev. Fund Corp.*, 79 AD 3d 518, 519, 913 N.Y.S. 2d 189 [2010]. In this case the defendant demonstrated that it did

not create nor have actual notice or constructive notice of the wet substance on the stairs. Further, plaintiff does not recall when she used the stairs in question prior to her accident. In addition, Housing Authority employees presented testimony that the stairs in question were cleaned daily. (See, *Pfeuffer v. New York City Housing Authority*, 93 AD 3d 470 (1st Dept., 2012).

For the foregoing reasons, the defendant's motion for summary judgment is granted. Accordingly, upon movant's service of a copy of this order with notice of entry upon plaintiff's counsel and the Clerk, the within action will be dismissed.

This constitutes the Decision and Order of this Court.

Dated: May 22, 2012

So Ordered,

A handwritten signature in black ink, appearing to read 'MD', is written over a horizontal line.

Hon. Mitchell Danziger