

Beras v New York City Hous. Auth.

2013 NY Slip Op 30989(U)

May 3, 2013

Supreme Court, New York County

Docket Number: 113374/2009

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. EILEEN A. RAKOWER
Justice

PART 15

Index Number : 113374/2009
BERAS, SANDRA
vs.
NEW YORK CITY HOUSING
SEQUENCE NUMBER : 001
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____	No(s). <u>1, 2, 3</u>
Answering Affidavits — Exhibits _____	No(s). <u>4</u>
Replying Affidavits _____	No(s). <u>5</u>

Upon the foregoing papers, it is ordered that this motion is

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

DECIDED IN ACCORDANCE WITH
ARTICLE 63, SECTION 13(1)(b)

FILED
MAY 08 2013
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 5/3/13

J.S.C.
HON. EILEEN A. RAKOWER

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

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

PRESENT: Hon. EILEEN A. RAKOWER
Justice

PART 15

SANDRA BERAS,
Petitioner,

INDEX NO. 113374/2009

MOTION DATE _____

- v -

MOTION SEQ. NO. 1

NEW YORK CITY HOUSING AUTHORITY.
Respondents.

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion for/to

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

PAPERS NUMBERED
<u>1, 2</u>
<u>3</u>
<u>4</u>

Answer — Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes X No

Plaintiff brings this action to recover for personal injuries allegedly sustained when she tripped and fell on an "oily substance" while descending the staircase in a NYCHA building located at 217 127th Street, New York, NY ("the premises"). Plaintiff alleges that NYCHA was negligent in failing to clean the staircase and seeks to impose liability claiming that the light in the staircase was inadequate and that the staircase lacked "appropriate" handrails. NYCHA now moves for summary judgment. Plaintiff opposes.

Plaintiff was a 64-year old home care attendant, assisting a patient who lived at the premises. NYCHA owns the premises. On April 26, 2009, at around 7 p.m. Plaintiff was descending stairway "B" between the second and first floors, when she was "caused to slip and fall violently to the floor due to a wet, slippery and greasy substance located on the first and second steps immediately below the second floor landing, thereby sustaining serious personal injuries."

In support of its motion for summary judgment, NYCHA annexes: the summons and complaint, NYCHA's answer, the verified bill of particulars, the 50-h testimony of Plaintiff, the deposition of Plaintiff, a photograph of the staircase, the Note of Issue filed on June 21, 2012, NYCHA's standard procedures, the Affidavit of Wallace Duprey, the supervisor of caretakers, the janitorial work schedule, the weekend and holiday work schedule, and the log book page for April 26, 2009.

In opposition, Plaintiff attaches: Plaintiff's hospital reports, a letter to Plaintiff's attorney from Recover Services International, Inc., and the deposition of witness Frankie Corchado.

The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law. That party must produce sufficient evidence in admissible form to eliminate any material issue of fact from the case. Where the proponent makes such a showing, the burden shifts to the party opposing the motion to demonstrate by admissible evidence that a factual issue remains requiring the trier of fact to determine the issue. The affirmation of counsel alone is not sufficient to satisfy this requirement. (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]). In addition, bald, conclusory allegations, even if believable, are not enough. (*Ehrlich v. American Moninger Greenhouse Mfg. Corp.*, 26 N.Y.2d 255 [1970]). (*Edison Stone Corp. v. 42nd Street Development Corp.*, 145 A.D.2d 249, 251-252 [1st Dept. 1989]).

Defendant has the initial burden of showing that it neither created the allegedly hazardous condition nor had actual or constructive notice of its existence. To meet that burden, defendant must offer some evidence as to when the area was last inspected relative to the accident. "Constructive notice requires a showing that the condition was visible and apparent and existed for a sufficient period of time prior to the accident to permit a defendant to discover it and take corrective action." (*Boyko v. Limowski*, 223 AD2d 962, 636 NYS2d 901 [1996]). Proof of regular inspections and maintenance of the area in question including an inspection and any remedial action just prior to the incident is ordinarily sufficient to satisfy a defendant's burden of showing no notice of a dangerous condition. (*Tucci v. Stewart's Ice Cream Co.*, 296 AD3d 650, 746 NYS2d 60 [2002]).

Plaintiff describes in her deposition that she arrived at the building between 7

* 4]

and 8 o'clock that morning on April 26, 2009, and proceeded up the "B" stairway to the second floor. She did not notice anything on the stairs at that time. Later, sometime around 7 o'clock in the evening, she was leaving her work on the second floor, and proceeded to the "B" stairway to descend to the first floor. She started down the steps with her right foot, and on the first step down, she noted something slippery, causing her to slip, fall to her buttocks, and hurt her ankle. Getting up, she noted that the substance was "nasty, oily." It was on more than one step going down. While noting that the lighting was dull, she did not indicate that the lighting was a factor in her slipping. Indeed, she stated that there was enough light to see the handrail and to see the step in front of her as she stepped down or up. Additionally, she was able to grab the handrail with her right hand when she slipped.

Wallace Duprey, Supervisor of Caretakers at the premises at the time of the accident, described in his affidavit the staircase, the lighting, and his responsibilities overseeing janitorial services in the building. He states that on the date of the accident, Caretaker Villanueva was assigned to that building. "On weekend mornings, between 9:30 and 10:00 a.m., the lobby and stairs from the first to the second floor are mopped [here Mr. Duprey refers to a NYCHA record supporting the work schedule]. Between 11:35 a.m. and 12:40 p.m. on weekends the caretaker sweeps the "A" and "B" staircases, starting at the top floor down to the lobby (first floor) level." He provides a log book kept in the regular course of NYCHA's business. Referring to the date of the accident, "I did not note any unusual conditions in my log book other than to record that I supplied 2 lights to one of the caretakers for replacement in one of the two buildings she was responsible for that weekend. . . . I can state that the tasks set forth in the weekend schedule were performed by caretaker Villanueva." He goes on to confirm that "[b]etween 9:30 and 10:00 a.m., caretaker Villanueva would have mopped the stairs of the "B" staircase from the first to the second floors. Later, between 11:35 a.m. and 12:40 p.m., caretaker Villanueva would have swept the "B" stairs and if he had seen any substances on the steps, he would have spot mopped the affected areas." Finally, he states that "Caretaker Villanueva would have last been in the "B" stairs between the first and second floors in the late morning or early afternoon of April 26, 2009. . . . After 1:00 p.m. no NYCHA staff would have been present in the building; staff would not return (absent an emergency) until 8:00 a.m. on April 27, 2009."

NYCHA asserts that it has shown proof of regular inspections and maintenance of the area in which the accident occurred, including earlier in the day on the date of

[* 5] ,
the accident. Absent some showing of how long the oily substance was on the steps before plaintiff fell, plaintiff cannot rely on constructive notice.

Plaintiff's opposition argues that Frankie Corchado, also a supervisor of caretakers for NYCHA, testified that there exists a daily caretaker checklist. Plaintiff argues that since no such record was produced regarding the subject staircase on the date of the accident, a fact finder would be entitled to draw an adverse inference from its absence. Further, plaintiff argues that the adequacy of the lighting and hand rails should be subject to jury consideration.

Here, plaintiff has made a prima facie showing of its maintenance activities on the day of the accident, that the dangerous condition did not exist when plaintiff arrived that morning or when the stairs were cleaned and inspected on two occasions earlier that day, and that it had no notice of the condition. In opposition, plaintiff fails to submit evidence to demonstrate a recurring dangerous condition routinely left unremedied by defendant. (*Rodriguez v. New York City Housing Authority*, 102 AD3d 407 [1st Dept. 2013]).

Further, Plaintiff's theory that inadequate lighting in the staircase was a cause of her accident fails because her testimony "eliminates any possibility that the lighting played any causal role in the accident." (*Sarmiento v. C&E Assocs.*, 40 AD3d 524, 837 NYS2d 57 [1st Dept 2007]). Plaintiff indicated the lights were on, and she could see the steps as she walked.

Finally, plaintiff stated she was able to grasp the handrail as she slipped. The argument that the handrails were somehow deficient has no causal connection to plaintiff's fall. (See, *Robinson v. 156 Broadway Assocs., LLC*, 99 AD3d 604, 952 NYS2d 445 [1st Dept 2012][even where it was undisputed that the handrails on the stairway were too short in violation of the Building Code, where plaintiff did not attempt to use the handrail before she fell, summary judgment was warranted because the defective condition was not a proximate cause of the fall]; *Jenkins v. NYCHA*, 11 AD3d 358, 784 NYS2d 32 [1st Dept 2004][holding that plaintiff could not prevail on her claim that the staircase required two handrails since she failed to offer any evidence that the omission of a left-side handrail was a proximate cause of her fall]). Plaintiff testified that she grabbed the handrail with her right hand. She did not claim she was unable to grasp the handrail nor did she testify that due to some problem with the handrail she was unable to maintain her grasp.

Plaintiff has failed to raise a factual issue by presenting proof in admissible form that lighting or the placement of the handrails had a causal connection to plaintiff's fall or that defendant had constructive notice of the oily substance on the stair.

Wherefore, it is hereby,

ORDERED that Defendant's motion for summary judgment is granted, and the action is dismissed; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: May 3, 2013



HON. EILEEN A. RAKOWER

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

FILED
MAY 08 2013
NEW YORK
COUNTY CLERK'S OFFICE