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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: JOAN M. KENNEY J.S.C. Justice

PART 8

Index Number : 111750/2010
TOPCHIEVA, ERENA
vs.
THE LOVETT COMPANY, LLC.,
SEQUENCE NUMBER : 002
SUMMARY JUDGMENT

INDEX NO. 111750/10

MOTION DATE

MOTION SEQ. NO. 002

The following papers, numbered 1 to 22, were read on this motion to/for Summary Judgment

Notice of Motion/Order to Show Cause — Affidavits — Exhibits | No(s). 1-14

Answering Affidavits — Exhibits | No(s). 15-18

Replying Affidavits | No(s). 19-22

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

MOTION IS DECIDED IN ACCORDANCE WITH THE ATTACHED MEMORANDUM DECISION

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

Dated: 8/14/13

JOAN M. KENNEY, J.S.C.

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
COUNTY OF NEW YORK: IAS Part 8

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Erena Topchieva,

Plaintiff,

-against-

The Lovett Co., LLC, Macarthur Properties, LLC, The Lex 54 Condo.,

Defendants.

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DECISION AND ORDER
Index Number: 111750/10
Motion Seq. No.: 002

KENNEY, JOAN M., J.

Recitation, as required by CPLR 2219(a), of the papers considered in review of this motion for summary judgment.

Papers	**Numbered**
Notice of Motion, Affirmation, and Exhibits	1-14
Opposition Affirmation and Exhibits	15-18
Reply Affirmation and Exhibits	19-22

In this personal injury action, defendants, The Lovett Co., LLC (Lovett), and The Lex 54 Condominium (Lex), move for an Order, pursuant to CPLR 3212, dismissing the complaint against them.

Factual Background

On January 17, 2010, between the times of 7:00 pm and 7:30 pm, plaintiff slipped on the floor as she entered her residential building located at 135 E. 54th St., New York, NY (the accident). At the time of the accident it was raining outside, and had been raining for hours prior.

Plaintiff approached the doors of the building from the outside, and was let in by a porter named Juan. This porter opened the door which was on plaintiff's right. The entrance to the building is composed of two glass doors, one of which was locked, and the other open to let people in and out of the building. The locked door was on plaintiff's left as she entered the

building. When the porter opened the door and plaintiff took a step into the building, the sole of her right shoe (which was wet from the rain and the pavement outside) slipped on the floor, causing her to fall and collapse down onto her left leg, causing her injuries.

Ellen Kornfeld, Vice President and Partner of Lovett (the managing agent), testified at an examination before trial (EBT) on behalf of moving defendants, and stated that "in the event of rain or snow, the building staff was required to put rain mats out at the entrance where the front door opens." (Kornfeld EBT at pp. 48-49). It is undisputed that a rain mat was on the lobby floor when the accident occurred.

However, plaintiff claims that the mat was not placed in front of the open door, but instead was placed off to the left, mostly in front of the locked door, so that her first step inside the premises with her right foot was directly onto the floor, and not on the mat. Defendants refute this statement, and insist that the mat slid to the left due to plaintiff's fall. Surveillance video of the accident, provided with plaintiff's opposition, and viewed by the Court, does not definitively show that plaintiff's first step was in fact on the bare floor or if it was onto the mat.

Arguments

Defendants maintain that they cannot be held liable because: there was no pre-existing dangerous condition; the floor is inherently slippery when wet; and there was a mat placed at the entrance of the premises.

Plaintiff claims that the within motion must be denied because there is a dispute between the parties as to whether or not the mat was properly placed in the entrance of the building to sufficiently cover the area in front of the open door.

Discussion

Pursuant to CPLR 3212(b), "a motion for summary judgment shall be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admissions. The affidavit shall be by a person having knowledge of the facts; it shall recite all the material facts; and it shall show that there is no defense to the cause of action or that the cause of action of defense has no merit. The motion shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party. Except as provided in subdivision 'c' of this rule the motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact. If it shall appear that any party other than the moving party is entitled to a summary judgment, the court may grant such judgment without the necessity of a cross-motion."

The rule governing summary judgment is well established: "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 issues of fact from the case." (*Winegrad v New York University Medical Center*, 64 NY2d 851 [1985]; *Tortorello v Carlin*, 260 AD2d 201 [1st Dept 1999]).

Parties who are charged with maintaining a premises are also "charged with the duty of providing the public with a reasonably safe premises, including a safe means of ingress and egress." (*Peralta v Henriquez*, 100 NY2d 139 [2003]; "Owner and management company of building open to the public had a nondelegable duty to provide the public...with reasonably safe means of ingress and egress," *Logiudice v Silverstein Properties, Inc.*, 48 AD3d 286 [1st Dept. 2008]).

Here, defendants cannot eliminate all material issues of fact. Plaintiff contends that the mat did not cover the entire entrance area and that this negligence caused her to trip and fall. Defendants, on the other hand, assert that the entire entrance area was properly covered by the mat. Unfortunately, it is unclear to this Court from viewing the surveillance footage provided that the mat covered the area in front of the open door. Moreover, it is hornbook law that only the trier of fact can determine the proximate cause of the accident (*see Peter McKinnon v Bell Security*, 268 AD2d 220 [1st Dept. 2000], and the very question of whether or not defendant was negligent in its placement of the mat is itself a question for the trier of fact to determine. (*see also Eliseo Carrozzi, et al. v Gotham Meat Corp., et al.*, 181 AD2d 587 [1st Dept. 1992]).

Accordingly, it is hereby

ORDERED, that defendants' motion, is denied, in its entirety; and it is further

ORDERED, that the parties proceed to mediation and/or trial, forthwith.

Dated: 8/14/13

ENTER:

Joan M. Kenney, J.S.C.