

Carrion v Faulkner

2013 NY Slip Op 34041(U)

March 15, 2013

Supreme Court, Bronx County

Docket Number: 18070/06

Judge: Jr., Kenneth L. Thompson

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This opinion is uncorrected and not selected for official publication.

*Case Drop
Complaint Dismissed*

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX IA 20

LUIS CARRION

Index No. 18070/06

Plaintiff,

DECISION/ORDER

-against-

Present:

HON. KENNETH L. THOMPSON, Jr.

JOHN FAULKNER, individually and doing business as
FALCON MEWS ASSOCIATES and FALCON MEW
ASSOCIATES,

Defendants.

The following papers numbered 1 to 4 read on this motion,

for summary judgment

No On Calendar of 01/18/13

PAPERS NUMBERED

Notice of Motion-Order to Show Cause - Exhibits and Affidavits Annexed-----	1
Answering Affidavit and Exhibits-----	3
Replying Affidavit and Exhibits-----	4
Affidavit-----	
Memorandum Of Law-----	2
Stipulation -- Referee's Report --Minutes-----	
Filed papers-----	

Upon the foregoing papers and due deliberation thereof, the Decision/Order on this motion is as follows:

Defendants move pursuant to CPLR 3212 for summary judgment dismissing the complaint. Plaintiff was descending the stairway in a building owned by defendants when he slipped and fell from the top step of a stairwell in defendants' building. Plaintiff claimed that the worn down and shaved condition of the top step caused him to fall.

Plaintiff testified that he placed half of his foot over the nose of the top step just before he fell. Defendants' expert, Benjamin Leonardi, (Leonardi), a licensed architect, avers that when plaintiff chose to place half of his foot overhanging the top step, it encouraged plaintiff "to slip, lose balance and fall through no fault of the stair." Leonardi further avers that the components of the staircase are in conformance with the Tenement House Law. Since the building was built prior to 1929 it is subject to the Tenement House Law not the Multiple Dwelling Law.

It has been repeatedly held that "one opposing a motion for summary judgment must produce evidentiary proof in admissible form sufficient to require a trial of material questions of

fact on which he rests his claim or must demonstrate acceptable excuse for his failure to meet the requirement of tender in admissible form; mere conclusions, expressions of hope or unsubstantiated allegation or assertions are insufficient.” *Zuckerman v. City of New York*, 49 NY2d 557, 562 (1980).


In opposition plaintiff submits the affidavit of Stanley Fein, (Fein), a professional engineer. Fein opines that over “years of neglect, the front bullnose portion of the steps and in particular that of the top step, became worn and rounded so that they created a slipping hazard in that the ball of one’s foot coming into contact with the worn bullnose section would lack proper traction as well as be placed in an angled position causing one to easily slip from the front edge of the step while descending the stairway.” Fein’s opinion is based on facts not in evidence. The ball of plaintiff’s foot never came in contact with the allegedly defective top step, as plaintiff testified the front half of his foot overhung the nose of the top step. Therefore, Mr. Fein’s analysis is fundamentally flawed as the ball of plaintiff’s foot never contacted the “worn” part of the stair.

“Plaintiffs have not established that factual issues preclude summary judgment. Plaintiff offers no evidence of the reason for [his] fall other than the tiles being smooth. There was no evidence, for example, that the tiles were wet, or that there was dirt or debris from inclement weather, or that the tiles had recently been polished or waxed.” (*Murphy v Conner*, 84 N.Y.2d 969, 971-972 [1994]). Plaintiff’s testimony herein that the stair must have been wet since he slipped is not evidence. Such testimony is mere conjecture.

Accordingly, defendants' motion for summary judgment is granted and plaintiff's complaint is hereby, dismissed.

The foregoing shall constitute the decision and order of this Court.

Dated: MAR 15 2013



J.S.C.

KENNETH L. THOMPSON, JR.