

Falu v New York City Hous. Auth.

2014 NY Slip Op 32320(U)

April 4, 2014

Sup Ct, New York County

Docket Number: 118489/06

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: DEBRA A. JAMES
Justice

PART 59

MONIQUE FALU,
Plaintiff,

Index No.: 118489/06

Motion Date: 03/22/13

- v -

Motion Seq. No.: 03

THE NEW YORK CITY HOUSING AUTHORITY,
Defendant.

Motion Cal. No.: _____

The following papers, numbered 1 to 5 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

5

FILED

APR 09 2014

Cross-Motion: Yes No

Upon the foregoing papers,

COUNTY CLERK'S OFFICE
NEW YORK

The court shall deny defendant's motion for summary judgment dismissing the complaint.

In this action where plaintiff seeks recovery for personal injuries suffered when she fell on a stairwell at one of defendant's buildings, defendant contends that plaintiff has failed to establish that the subject staircase was "too steep" or that the staircase violated the applicable building codes. However, the court agrees with plaintiff's argument in opposition to the motion that defendant has failed to meet its prima facie

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):

burden on a CPLR 3212 motion so as to trigger plaintiff's obligation to rebut such a showing. 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 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." Alvarez v Prospect Hosp., 68 NY2d 320, 324 (1986) (citations omitted).

As stated by the Court considering a fact pattern similar to that presented on this motion

The plaintiff commenced this action to recover damages for personal injuries she allegedly sustained when she fell while descending an interior staircase at the defendants' home.

The defendants acknowledged that the segment of the staircase where the plaintiff fell did not have a handrail, and they did not establish, as a matter of law, that the premises was exempt from the applicable building code ordinance. However, they contend that the plaintiff's alleged failure or inability to establish the cause of her fall was fatal to her case.

Contrary to the conclusion of the Supreme Court, the defendants failed to establish a prima facie entitlement to judgment as a matter of law. Even if the fall was precipitated by a misstep, given the plaintiff's testimony that she reached out to try to stop her fall, there is an issue of fact as to whether the absence of handrails was a proximate cause of her injury.

Asaro v Montalvo, 26 AD3d 306 (2d Dept 2006).

There is no distinction between the facts presented on this motion and those considered by the Court in Asaro. Here, defendant does not deny there was no handrail on the right side of the stairwell and the plaintiff's deposition testimony is that

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she reached out to try arrest her fall and no handrail was present. As in Asaro, because movant-defendant has failed to "establish, as a matter of law, that the premises was exempt from the applicable building code ordinances . . . [t]herefore, the absence of the rail, if required by law, would seem to be a proximate cause of the accident." Viscusi v Fenner, 10 AD3d 361, 362 (2d Dept 2004) (citations omitted); see also Spallina v St. Camillus Church, 53 AD3d 650, 651 (2d Dept 2008) ("defendants failed to make a prima facie showing of their entitlement to summary judgment because they failed to demonstrate, as a matter of law, that the subject ramp need not have been equipped with handrails").

Defendant's reliance upon the Court's decision in Jenkins v New York City Hous. Auth. (11 AD3d 358, 359 [1st Dept 2004]) is misplaced because in that case the plaintiff, unlike here, did not testify that she reached out to grab an absent handrail and therefore "failed to offer any evidence indicating that the omission of a left-side handrail (alongside the wall) was a proximate cause of her fall." Similarly in Ridolfi v Williams (49 AD3d 295, 296 [1st Dept 2008]), also relied upon by the defendant, "plaintiff testified that despite the wet conditions, she did not hold onto the handrail as she descended the stairs" and thus there was an absence of proximate cause.

Accordingly, it is

ORDERED that the motion is DENIED; and it is further
ORDERED that the parties shall attend the previously
scheduled settlement conference in Part MEDIATION-1 on May 29,
2014, and if the action is not settled thereat the parties shall
attend a pre-trial conference in IAS Part 59, Room 103, 71 Thomas
Street, New York, NY 10013 on June 24, 2014 at 2:30 PM to set a
date for trial.

This is the decision and order of the court.

Dated: APR 04 2014

ENTER:

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

FILED

APR 09 2014

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NEW YORK