

Lisath v Dematteis Org.
2014 NY Slip Op 32645(U)
September 5, 2014
Supreme Court, Bronx County
Docket Number: 306703/2011
Judge: Lucindo Suarez
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF BRONX: I.A.S. PART 19

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NANCY LISATH,

Plaintiff,

- against -

DECISION AND ORDER

Index No. 306703/2011

THE DEMATTEIS ORGANIZATIONS, LEON D. DEMATTEIS CONSTRUCTION CORPORATION, DEMATTEIS REALTY SERVICES, INC., DEMATTEIS REALTY SERVICES ASSOCIATES, L.P., "JOHN DOE," a fictitious name for a General Partner in DEMATTEIS REALTY SERVICES ASSOCIATES, L.P., whose true name is currently unknown, THE RUPPERT YORKVILLE TOWERS CONDOMINIUM, THE FREDERICK DEMATTEIS FAMILY LIMITED PARTNERSHIP, "JOHN DOE," a fictitious name for a General Partner in THE FREDERICK DEMATTEIS FAMILY LIMITED PARTNERSHIP, whose true name is currently unknown, YORKVILLE TOWERS ASSOCIATES LIMITED PARTNERSHIP, "JANE DOE," a fictitious name for a General Partner in the YORKVILLE TOWERS ASSOCIATES LIMITED PARTNERSHIP, whose true name is currently unknown, and FDF ASSOCIATES, LLC,

Defendants.

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PRESENT: Hon. Lucindo Suarez

Upon the notice of motion dated June 27, 2014 of defendants The Ruppert Yorkville Towers Condominium, The Frederick DeMatteis Family Limited Partnership, Yorkville Towers Associates Limited Partnership, and FDF Associates, LLC and the affirmation, affidavit, and exhibits submitted in support thereof; plaintiff's affirmation in opposition dated August 18, 2014 and the exhibits annexed thereto; and due deliberation; the court finds:

Plaintiff commenced this action to recover damages for injuries suffered when she fell on an expansion joint in the lobby of Ruppert Towers located 1619 Third Avenue in New York County.

Defendants The Ruppert Yorkville Towers Condominium (“Condominium”), The Frederick DeMatteis Family Limited Partnership (“Family Partnership”), Yorkville Towers Associates Limited Partnership (“Yorkville LP”), and FDF Associates, LLC (“FDF”) now move pursuant to CPLR 3212 for summary judgment dismissing plaintiff’s complaint and the cross-claims asserted against them on the grounds that (1) the expansion joint over which plaintiff tripped is not a trap or a snare and (2) the alleged defect is trivial in nature. The court notes that the caption as amended on February 14, 2014 deleted both Yorkville Towers Associates, LLC (“Yorkville LLC”) and The Board of Managers of The Ruppert Yorkville Towers Condominium (“Board”) as defendants. The notice of motion does not identify Board or Yorkville LLC as movants, but it is evident that the motion also seeks dismissal of the action against them. Movants rely on the pleadings, various deposition transcripts, and an expert affidavit from licensed professional engineer Stanley H. Fein (“Fein”).

Plaintiff testified that non-party RY Management (“RY”), her employer since 2004, maintained offices in 1619 Third Avenue, a building RY also managed. The accident occurred where the lobby and a hallway on the first floor met. As she walked toward an elevator at the end of hallway, the heel of her left shoe caught in a two inch wide groove next to a four or five inch wide metal plate embedded in the floor. She stumbled, slipped and fell to the ground. The groove was approximately one inch below the surrounding floor. The lobby and hallway were “bright,” and she saw no liquid, grease, or other substance on the ground. Although she was not looking at the ground when she fell, nothing would have obstructed her view of the floor. Plaintiff had traversed the area numerous times prior to the accident without incident, and the metal plate had been in place since she began working there. She was unaware of any prior complaints or accidents involving the metal plate.

Superintendent Joseph Portelli testified that he has worked at the building since 1987. He was employed by the Condominium, and his duties included supervising others in cleaning and repair work. The Condominium was responsible for cleaning and maintaining the building’s common areas. The

expansion joint had been in place the entire time Portelli worked at the building, and the plate extended the width of the hallway. There was a groove no more than 1/8 inch deep next to the metal plate. There were no changes made to the expansion joint after the accident. He has never received a complaint about the expansion joint and was not told of an accident in that area during his time at the building. Portelli had passed over the expansion joint numerous of times prior to the accident without incident.

At his 2013 deposition, Jacob Siller ("Siller") testified that he had lived at the building for thirty-eight years and served as the Board's Vice President for seven or eight years. The Board was never informed of complaints regarding lobby conditions, and it was not told of plaintiff's accident.

Robert A. Vaccarello ("Vaccarello") served as RY's president and as the sole manager for Yorkville LLC, the building's sponsor. FDF, Family Partnership, and non-party Fredrick DeMatteis Family Trust were the three members of Yorkville LLC. Vaccarello represented Yorkville LLC as a member of the Board. The Board was responsible for overseeing the directing building operations and was responsible for maintaining and cleaning the building's common areas, such as the lobby. The Condominium employed its own maintenance department, and RY managed the Condominium's daily operations. He was not aware if the expansion joint in the lobby/hallway had been replaced or repaired. Yorkville LP had no role in building maintenance.

Fein averred that he conducted an on-site inspection on August 3, 2012, nearly two years after the accident. The expansion joint was 5 3/4 inches wide. A channel to the east of the metal plate measured 1 1/4 inches wide and 1/4 inch deep. The light reading exceeded the minimum 2.0 foot candles required by the New York City Building Code. The co-efficient of friction of the floor also exceeded the minimum slip-proof standard set by the American Society of Testing Materials. He opined with a reasonable degree of engineering certainty that the subject area was built and maintained in accordance with good and accepted engineering safety practices.

Height differentials of one-half inch or less have been deemed non-actionable. *See Hutchinson v. Sheridan Hill House Corp.*, 110 A.D.3d 552, 973 N.Y.S.2d 178 (1st Dep't 2013); *Mangar v. Parkash 180 LLC*, 99 A.D.3d 607, 952 N.Y.S.2d 446 (1st Dep't 2012). A "mechanistic disposition" of a case based exclusively on the dimension of the defect, though, is unacceptable. *Trincere v. County of Suffolk*, 90 N.Y.2d 976, 977-78, 688 N.E.2d 489, 490, 665 N.Y.S.2d 615, 616 (1997). The court must consider the "width, depth, elevation, irregularity and appearance of the defect along with the time, place and circumstance of the injury." *Id.* Whether the purported defect constitutes a trap or snare depends on its location, adverse weather or lighting conditions or other circumstances. *See Thomas v. Dever Props. LLC*, 115 A.D.3d 459, 981 N.Y.S.2d 529 (1st Dep't 2014).

Defendants have demonstrated that the expansion joint did not possess the characteristics of a trap or snare and was trivial. *See Fayolle v. East W. Manhattan Portfolio L.P.*, 108 A.D.3d 476, 970 N.Y.S.2d 186 (1st Dep't 2013); *Schwartz v. Bleu Evolution Bar & Rest. Corp.*, 90 A.D.3d 488, 935 N.Y.S.2d 10 (1st Dep't 2011). The burden having shifted, plaintiff failed to raise an issue of fact in opposition. She offered no expert testimony and her testimony with regard to the depth of the purported defect was speculative. *See Vazquez v. JRG Realty Corp.*, 81 A.D.3d 555, 917 N.Y.S.2d 562 (1st Dep't 2011). The color photographs annexed to her moving papers failed to show that the expansion joint constituted a significant hazard. *See Boynton v. Haru Sake Bar*, 107 A.D.3d 445, 968 N.Y.S.2d 430 (1st Dep't 2013). The expansion joint was neither broken or cracked, and it was a different color than the surrounding floor. *See Martin v. Lafayette Morrison Hous. Corp.*, 31 A.D.3d 300, 819 N.Y.S.2d 249 (1st Dep't 2006).

Accordingly, it is

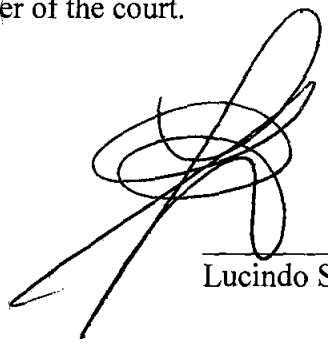
ORDERED, that the motion of defendants The Ruppert Yorkville Towers Condominium, The Frederick DeMatteis Family Limited Partnership, Yorkville Towers Associates Limited Partnership, FDF Associates, LLC, Yorkville Towers Associates, LLC, and The Board of Managers of The Ruppert

Yorkville Towers Condominium for summary judgment dismissing plaintiff's complaint and the cross-claims asserted against them is granted; and it is further

ORDERED, that the clerk of the court is directed to enter judgment in favor of defendants The Ruppert Yorkville Towers Condominium, The Frederick DeMatteis Family Limited Partnership, Yorkville Towers Associates Limited Partnership, FDF Associates, LLC, Yorkville Towers Associates, LLC, and The Board of Managers of The Ruppert Yorkville Towers Condominium dismissing plaintiff's complaint and the cross-claims asserted against them.

This constitutes the decision and order of the court.

Dated: September 5, 2014



Lucindo Suarez, J.S.C.