

Traicoff v New York City Hous. Auth.

2014 NY Slip Op 33606(U)

July 30, 2014

Supreme Court, Richmond County

Docket Number: 101439/10

Judge: Thomas P. Aliotta

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

-----x
STEPHANIE TRACOFF,

Index No. 101439/10

Plaintiff,

DECISION AND ORDER

-against-

NEW YORK CITY HOUSING AUTHORITY,

Defendant.
-----x

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The following papers numbered 1 to 2 were marked fully submitted on the 12th day of March, 2014:

Pages Numbered

Notice of motion for Leave to Reargue by Plaintiff Stephanie Traicoff, with Supporting Papers and Exhibits (dated December 16, 2013).....	1
Affirmation in Opposition by Defendant New York City Housing Authority (dated March 3, 2014).....	2

Upon the foregoing papers, plaintiff's Order to Show Cause for an order pursuant to CPLR 4404(b) setting aside the Decision and Order of this Court dated December 5, 2013, which rendered a verdict after a non-jury trial in favor of defendant New York City Housing Authority (hereinafter "NYCHA"); reinstating plaintiff's action and finding that the defendant, NYCHA, was negligent and that its negligence was the cause of plaintiff's injuries is denied.

This is an action for personal injuries sustained by Plaintiff on December 3, 2009 as a result of slip and fall on food debris on the floor next to the garbage chute in a hallway located at 81 Jersey Street,

Staten Island, New York, a NYCHA property. It is movant's contention that she has met her burden of proof and established that NYCHA had actual or constructive notice of the debris condition. Plaintiff argues that defendant had twelve to thirty hours' notice based on plaintiff's observations of the same condition prior to the accident. Plaintiff's testimony at trial was that her observations concerning the dangerous condition on the floor were confirmed by the fact that she went to the housing office located at 121 Jersey Street the day before to file a complaint and report the food debris. Plaintiff testified that upon arrival she spoke to Tonya Jacobs, an employee of the Housing Authority and filed her complaint in person with her.

Upon review of evidence adduced at trial, the court concluded that plaintiff not only failed to prove notice to defendant of the debris condition on the floor near the garbage disposal, but also failed to prove that this condition was present for a sufficient period of time prior to plaintiff's slip and fall accident for defendant's employees to remedy the problem.

It is well settled that in order to establish a prima facie case of negligence in a slip and fall action, it must be shown that defendant created the condition which caused the accident or had actual or constructive notice of the condition (see Gloria v MGM Emerald Enters., 298 AD2d 355 [2nd Dept 2002]; Nesterenko v Starrett City Assoc., 111 AD3d 806 [2d Dept 2013]).

In the instant matter movant has also argued that NYCHA should be charged with notice since the presence of food debris on the floor near the garbage chute is an ongoing and recurrent dangerous condition. However, "A general awareness of a recurring problem is insufficient, without more, to establish constructive notice of the particular condition causing the fall", (Schubert-Fanning v Stop & Shop, 2014 NY Slip Op 4474 [2d Dept 2014]; citing Solazzo v New York City Tr. Auth., 6 NY3d 734; Piacquadio v Recine Realty Corp., 84 NY2d 967). In the opinion of the court NYCHA established its entitlement to judgment by demonstrating through credible testimony that it did not create the condition or have actual

or constructive notice of this condition. Caretaker Charles Hertzog testified that there was a practice of each building getting a daily visual check and being swept down. Movant notes that there was testimony by William Martinez, Supervisor of Caretakers, that on Monday and Tuesday, prior to the date that plaintiff fell, Mr. Hertzog followed a "weekend schedule". Moreover, he notes that prior to the incident there was a compactor jam that had to be addressed. There is, however, nothing in the log book which indicates that the morning safety check was omitted or that the daily sweeping was not done. Absent evidence to the contrary, it is mere speculation that a mechanical issue caused Mr. Herzog to deviate from his usual practice or that the log which reflects a daily schedule being maintained was in error.

Movant argues that NYCHA should be charged with notice since plaintiff reported the food debris in the hallway the day preceding her accident. Ms. Traicoff stated with certainty that she went in person to complain about the debris and spoke to Tonya Jacobs in the management office. However, the trial testimony differs materially from statements made at the 50h hearing, at which plaintiff could not recall whether she complained in person, but thinks she did. In contrast, Ms. Jacobs testified that as a long term employee she knew Ms. Traicoff; that plaintiff had reported maintenance issues in the past and she was certain that Mrs. Traicoff did not come to the office the day before her accident to file a complaint. In addition, the telephone logs do not reflect a complaint filed about the subject condition. The totality of evidence and testimony fails to establish that defendant had actual or constructive notice of this particular hazardous condition.

A judgment rendered after a bench trial should not be disturbed unless it is obvious that the court's conclusions cannot be supported by any fair interpretation of the evidence, particularly where the credibility of witnesses is central to the case (Saperstein v Lewenberg, 11 AD3d 289, citing Nightingale Rest. Corp. v Shak Food Corp., 155 AD2d 297, *lv denied* 76 NY2d 702).


In addition, evidence before the court establishes that food debris on the floor near the garbage chute is incidental to the use of this disposal mechanism. Absent evidence to the contrary, testimony and maintenance logs serve to establish a practice of exercising reasonable care under the circumstances (see Morris v John Hancock Mut. Life Ins. Co., 262 AD2d 135).

Accordingly, it is

ORDERED, that plaintiff's motion for leave to reargue and to vacate a prior Decision and Order of this court dated December 2, 2013 is denied.

This constitutes the Decision and Order of the Court.

Dated: Staten Island, NY
July 30, 2014



Hon. Thomas P. Allotta,
J.S.C.

GRANTED
AUG 12 2014
