

Segura v Scattered Sites, LP
2015 NY Slip Op 30862(U)
May 18, 2015
Supreme Court, New York County
Docket Number: 154714/2013
Judge: Cynthia S. Kern
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

-----X
ANGELA SEGURA,

Plaintiff,

Index No.154714/2013

-against-

DECISION/ORDER

SCATTERED SITES, LP,

Defendant.

-----X
HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Answering Affidavits.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Plaintiff commenced the instant action to recover damages for personal injuries she allegedly sustained when she slipped and fell on an interior staircase in an apartment building where she lived. Defendant, the owner of the building, now moves for summary judgment dismissing the complaint. For the reasons set forth below, defendant’s motion for summary judgment is granted.

The relevant facts are as follows. On September 21, 2012, plaintiff allegedly slipped and fell while she was descending an interior staircase in the apartment building in which she resided. She had been living in the building for about six months prior to her accident and used the staircase every day to reach her apartment. She alleges that her accident occurred when she was descending on the staircase at 8:45 a.m. The fall occurred between the second and third floor.

She testified that when she stepped, she lost her balance and “went because the flooring was cracked.” Dep. at 27. She stated that when she stepped onto the stair, “it just came out,” that the flooring “was loose, coming out” and that when she stepped on it, a piece of it came out. Dep. at 29. She testified that she had last used the steps the evening before on the way home and that she did not notice any problem with that step the night before the accident. Dep. at 37. She further testified that she had not seen a problem with the step she fell on at any time prior to the accident, that she did not see any liquid or debris or foreign substance on the stairs where she had her accident but that the stairs were wet. Dep. at 37-38. Plaintiff had never made any complaints about the building prior to her accident. Dep. at 47.

The superintendent of the building submitted an affidavit in support of the present motion. In his affidavit, he alleges that he had been the superintendent of the building for four years and that one of his duties as superintendent is to maintain and inspect the common areas of the building. He stated that on the morning of the accident, at 8:30 a.m., he and his brother were mopping the first floor and lobby of the building and he had not yet mopped any other portion of the building that morning at the time the accident occurred. He stated that he routinely walks up and down the entire stairwell every day to make sure that it is not chipped or cracked and that it is clear of debris and that on the morning of the accident, prior to mopping the first floor and prior to the plaintiff’s fall, he inspected the entire stairwell to see that it was clear. He stated that at the time of his inspection that morning, there were no cracks, divots or depressions in any of the steps, that the steps were not damp and that there were no broken tiles. He states that this inspection took place only about fifteen to thirty minutes before the plaintiff’s accident happened and before he started mopping the first floor and that he did not see anything wrong with the

stairwell. He also stated that after the plaintiff fell, he noticed that a step near where plaintiff fell was damaged and that a piece of the tile had been dislodged or broken and that the broken tile had not been there when he inspected the stairs a few minutes earlier. Finally, he stated that prior to the time of plaintiff's fall, he never noticed any problems with the stairwell at the building and that the step was repaired shortly after the accident. The property manager for the building was deposed and testified that he inspected the building three times a week and that he never observed any broken step between the second and third floor of the building.

For the first time, in opposition to the present motion for summary judgment, plaintiff has submitted the report of an expert, engineer Stanley Fein, who inspected the stairs on December 8, 2014, over two years after the accident occurred. He stated in his report that the stairs were dangerous and caused plaintiff's fall because (1) there was a crack on the steps which created a tripping hazard and ceramic tile is not suitable for use on steep surfaces because the tile will easily crack; and (2) the tiles were slippery and should have had nonskid strips.

A defendant who moves for summary judgment in a slip and fall case has the initial burden of making a *prima facie* showing that it did not cause the condition and that it did not have actual or constructive notice of the condition. *See Branham v. Loews Orpheum Cinemas*, 31 A.D.3d 319 (1st Dept 2006). "To constitute constructive notice, a defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit defendant's employees to discover and remedy it." *Gordon v. American Museum of Natural History*, 67 N.Y.2d 836, 837-838 (1986). Moreover, "a *prima facie* case of negligence must be based on something more than conjecture; mere speculation regarding causation is inadequate to sustain the cause of action. Conclusory allegations unsupported by evidence are insufficient to

establish the requisite notice for imposition of liability.” See *Mandel v. 370 Lexington Ave., LLC*, 32 A.D.3d 302, 303 (1st Dept 2006).

In a case remarkably similar to the present one, *Lance v. Den-lyn Realty Corp.*, 84 A.D.3d 470 (1st Dept 2011), the plaintiff had alleged that she was injured when she stepped on the stair of an apartment building staircase and a piece of the stair broke off, causing her to fall. The First Department held that the trial court properly granted the owner of the building summary judgment dismissing the action. According to the court, the trial court properly found that the defendant made a prima facie showing that it did not have notice of the alleged defect based on the testimony of plaintiff that she never noticed any defect in the particular stair although she used it every day and the testimony and affidavit of the building manager who stated that he had never received any complaints or been notified of such a defect. *Id.* The court stated that because “the alleged defect was not visible and apparent, it could not give rise to constructive notice.” *Id.* Finally, the court noted that the opinion letter submitted by plaintiff’s expert, an engineer, did not raise a triable issue of fact where it was based on photographs of the stairs taken after it was repaired. *Id.*

In the instant action, as in *Lance*, defendant has established its prima facie right to summary judgment based on the testimony of plaintiff and the testimony of the superintendent. Plaintiff testified that she did not notice anything wrong with the stairs prior to her accident even though she used them every day to access her apartment and that the stair broke at the time of her accident. The superintendent of the building testified that he inspected the stairs on a daily basis; that he inspected the stairs on the morning of the accident about fifteen to thirty minutes before the accident occurred and that he did not notice anything wrong with the stairway; and that he

had not received any complaints about the stairs.

In response, plaintiff has failed to raise an issue of fact as to whether defendant had actual or constructive notice of the condition. Plaintiff testified that she did not complain to anyone prior to her accident about the condition of the stairway on which she fell and that she never noticed any problem with the stair before she fell nor has she presented any evidence that defendant was aware of the condition on the stairs which allegedly caused her to fall. Moreover, in order to establish constructive notice of an alleged defect, the alleged defect must (1) be visible and apparent and, (2) exist for a sufficient length of time prior to the accident to permit (a) discovery of the defect and (b) time to remedy the defect. *See Gordon*, 67 N.Y.2d at 837-38. As an initial matter, plaintiff has failed to raise an issue of fact as to whether the condition was visible and apparent. Plaintiff herself testified that she did not see anything wrong with the stairs before she fell on them. Further, plaintiff has failed to raise an issue of fact as to whether the condition on the stairway existed for a sufficient length of time prior to her accident to allow defendant to discover the condition and allow for time to remedy the condition.

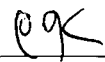
Moreover, the affidavit of plaintiff's expert submitted in opposition to the motion for summary judgment is insufficient to create an issue of fact. The statement by the expert that the plaintiff's fall was created by the crack in the stairs is of no probative value because the expert did not inspect the stairs until over two years after the accident occurred, the crack in the stair which occurred when plaintiff fell had already been repaired and both plaintiff and the defendant specifically testified that they did not notice anything wrong with the stairs immediately before the accident occurred. The allegation by the expert that the accident was caused because the stairs were slippery and did not have tread is also insufficient as a matter of law as plaintiff had

never alleged in her deposition that her fall on the stairs was caused by the stairs being slippery. She consistently testified that the reason for her fall was that a piece of the stair cracked and became loose. Thus, there is no evidence that the accident was caused because the stairs were slippery. *See Reed v. Piran Realty Corp.*, 30 A.D.3d 319 (1st Dept 2006) (“No reasonable inferences as to causation can be drawn from plaintiff’s expert opinion that the staircase violated several provisions of the New York City Administrative Code, creating an unsafe condition, in the absence of any evidence connecting the alleged violations to plaintiff’s fall”); *Castore v. Tutto Bene Rest. Inc.*, 77 A.D.3d 599 (1st Dept 2010) (expert affidavit that absence of handrail and single step at bottom of landing caused accident was insufficient to create issue of fact when plaintiff previously testified that she fell because she slipped on something slippery); *Raghu v. New York City Housing Authority*, 72 A.D.3d 480 (1st Dept 2010) (expert affidavit that the accident was caused by defects in the risers or handrails was insufficient to create an issue of fact where plaintiff simply stated that she slipped and did not attribute her fall to unevenness of risers or inadequate handrail). Finally, the expert’s statement that the stair broke because ceramic tile easily cracks and is therefore not suitable for steps is insufficient to establish an issue of fact as it is based on conjecture and speculation and is not supported by any authority.

Accordingly, defendant’s motion for summary judgment dismissing plaintiff’s complaint is granted. The Clerk is directed to enter judgment in favor of defendant and against plaintiff. This constitutes the decision and order of the court.

Dated: 5/18/15

Enter: _____


 J.S.C.
CYNTHIA S. KERN
 J.S.C.