

**Adames v New York City Hous. Auth.**

2015 NY Slip Op 30889(U)

May 21, 2015

Supreme Court, New York County

Docket Number: 152623/2012

Judge: Joan A. Madden

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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:

-----X  
MARIA ADAMES,

Index No.: 152623/2012

Plaintiff,

-against-

NEW YORK CITY HOUSING AUTHORITY,

Defendant,

-----X  
JOAN A. MADDEN, J.

In this personal injury action, defendant New York City Housing Authority ("the Housing Authority") moves for summary judgment dismissing the complaint. Plaintiff opposes the motion.

Background

This action arises out of a slip and fall incident that occurred on on September 4, 2011, at approximately 10:10 a.m., when plaintiff slipped on a sidewalk/walkway at the Housing Authority's East River Houses located at 425 and 429 East 102<sup>nd</sup> Street in Manhattan.

At her 50-H hearing, plaintiff testified that she was injured when she slipped on a wet area of concrete. The photographs referred to during the hearing and marked by plaintiff show a concrete walkway near a play area with a sprinkler system. Plaintiff testified that the water on which she fell came from a "valve" that the Housing Authority opens during the summer, but denied the kids played in the area where she fell. According to plaintiff, the subject valve is in the ground where " water squirts up to about the height of a man." (Plaintiff 50-H hearing at 14).

Plaintiff also testified that every time she walked in the area during July and August

of that year the area had been wet, but that she had not previously fallen in area or complained about the wetness. She did not observe any condition other than the wetness before she fell, and she was not aware of any complaints about wetness in the area.

Plaintiff testified that before she fell, she was looking at the walkway and observed the ground was wet. She also testified that the walkway was two feet wide and eight feet long and that "all of it was wet" (Id at 26). When asked if there was any depth to where she fell or whether there was a puddle, she responded "there was just a lot of water." (Id, at 36).

Christopher D. Brice ("Brice"), who is the Housing Authority's supervisor of housing groundskeepers for *inter alia*, the East River Houses development, and held the same position at the time of the accident, was deposed. Brice testified that the photographs shown to plaintiff at her 50-H hearing depict the playground adjacent to 425 East 102<sup>nd</sup> Street, and the area where plaintiff indicated she fell is a "sprinkler area," which Brice described as "the area where they have water...it comes out of the sides on the concrete, and it's the area where the children play in the sprinklers" (Brice Dep., at 22-23). Brice testified that there are "three sprinklers located towards the rear [of the sprinkler area]." (Id., at 28). According to Brice, sprinklers were operated on a so-called "locked timer," located in a secure location in the basement of the building adjacent to the playground (Id. at 23). The "standard procedure for the sprinklers" is part of Housing Authority's manual that governs usage (Id. 26-27). Periods of operation for the child area sprinklers is from July 1<sup>st</sup> to Labor Day during the hours between 10:15 a.m. until 6:00 (Id. at 27). Daily cleaning of the playground consisted of "sweeping the entire concrete area, removing an glass, and tripping hazards from the playground" (Id. at 46).

Brice testified that while not shown in the photographs “there’s drainage for the sprinklers” in the form of a “catch basin.” (30-31). He also testified that “the drains are cleaned daily [and he] never had a problem with the drain.” (Id. at 32, 35).

The Housing Authority moves for summary judgment, arguing that the wet walkway near the sprinkler area does not constitute a dangerous or defective condition such as would give rise to a cause of action against it for negligence, citing, inter alia, McGuire v. 3901 Independence Owners, Inc., 74 AD3d 434, 435 (1<sup>st</sup> Dept. 2010)(holding that “mere wetness on walking surfaces due to rain does not constitute a dangerous condition” ); Boatwright v. New York City Transit Authority, 304 AD2d 421 (1<sup>st</sup> Dept 2003)(finding that “the fact that the surface of the hatch was slippery when wet is insufficient to raise a triable issue as to negligence”).

Plaintiff opposes motion, asserting that the Housing Authority has not met its burden of showing that it lacked constructive notice of the condition causing plaintiff’s injuries as the Housing Authority failed to provide evidence of specific inspections of the area where plaintiff fell. In addition, plaintiff argues that case law relied on by the Housing Authority is inapplicable here as it involves circumstances where a plaintiff fell on rainwater. Plaintiff also argues that the issue of whether the area where plaintiff fell constituted a dangerous conditions raises a jury question. Moreover, plaintiff argues that there is no dispute that the Housing Authority created the condition which caused plaintiff to fall.

In support of her opposition, plaintiff submits the affidavit of Robert Arthur King (“King”), a Fellow of the American Institute of Architects, and a licensed professional

architect who maintains a practice in Manhattan. King opines with a reasonable degree of architectural certainty that “[t]he area where this slip and fall accident occurred was dangerous and defective due to the location of the drain which was on the west side of the walkway, while the sprinklers were located on the east side. Therefor the water was expected to traverse the cement walkway, creating a wet, slippery condition for pedestrians in the area... in violation of various accepted architectural/safety standards.” (King Aff, ¶ 6). King also opines that “[t]here are an insufficient number of drains to prevent water from puddling in the subject location [which] create(s) a dangerous condition where water would pool in the walkway where [plaintiff] slipped and fell.” (Id, ¶ 7.) King states that his opinion is based on “a reading of [plaintiff’s] testimony, a physical inspection of the accident location, the reading of the testimony of [Brice], a review of premise photographs which were marked and referred to in such testimony and the standards of architectural practice in New York.” (Id, ¶ 5).

In reply, defendants argue that the King affidavit should be disregarded because plaintiff failed to identify the expert in pre-trial disclosure, and that his unsubstantiated opinion is insufficient to raise a triable issue of fact as to the existence of a dangerous condition.

#### Discussion

On a motion for summary judgment, the proponent “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case...” Winegrad v. New York Univ. Med. Center, 64 NY2d 851, 852 (1985). Once the proponent has made this showing, the burden

of proof shifts to the party opposing the motion to produce evidentiary proof in admissible form to establish that material issues of fact exist which require a trial. Alvarez v. Prospect Hospital, 68 NY2d 320, 324, (1986).

“It is a well-established principle that a landowner is under a duty to maintain its property in a reasonably safe condition under the existing circumstances, including the likelihood of injury to third parties, the potential that any such injury would be of a serious nature and the burden of avoiding the risk.” Zuk v. Great Atl. & Pac. Tea Co., Inc., 21 AD3d 275, 275 (1<sup>st</sup> Dept 2005)(internal citations omitted). “To recover damages for breach of this duty, a party must establish that the [landowner] created, or had actual or constructive notice of the hazardous condition which precipitated the injury.” Id. (internal citations omitted).

Here, while it is undisputed that the Housing Authority’s sprinklers created the wetness on the walkway which allegedly caused plaintiff to fall, the Housing Authority has made a prima showing that it maintained its property in reasonably safe condition based on Brice’s testimony that the sprinklers were timed, the drains were regularly inspected, and were draining well.<sup>1</sup> See Verdejo v. New York City Housing Authority, 105 AD3d 450 (1<sup>st</sup> Dept 2013)(in trip and fall on wet fall foliage, defendant made a prima facie showing that it met its duty to maintain its property in a reasonable condition and lacked prior notice of a dangerous condition). In this connection, evidence that the walkway was wet is insufficient to establish a defective or hazardous condition. See e.g. Georgiou v. 32-42 Broadway, LLC, 82 AD3d 606 (1<sup>st</sup> Dept 2011)(holding that “wetness on outdoor walkways

---

<sup>1</sup>While plaintiff argues in opposition that Brice’s testimony shows the drainage system was not working properly, Brice’s testimony is not relevant here as the building with the drainage issue is in a different section of the development from where plaintiff fell.

does not constitute a dangerous condition”); Bluth v. Bias Yaakov Academy for Girls, 123 AD3d 866 (2d Dept 2014)(holding that wet asphalt caused by a sprinkler is not an inherently dangerous condition).<sup>2</sup>

Furthermore, plaintiff has not controverted this showing. While plaintiff testified that the ground was very wet where she fell she did indicate that the water was collecting or creating a puddle such that might raise an issue of fact as to proper drainage in the area where she fell. As for the expert affidavit from King, as the Housing Authority points out, plaintiff first advances his theory of liability based on the failure to properly design the drainage system in opposition to the summary judgment motion.

Furthermore, King’s affidavit is insufficient to raise triable issue of fact. Where it has been found that an expert affidavit contains “speculative, conclusory assertions as to the alleged defects, and cited to various broad or inapt engineering rules, regulations and standards,” the courts have found that the expert’s opinion should be given “no probative force and is insufficient to withstand summary judgment.” Amaya v. Denihan Ownership Co., LLC, 30 AD3d 327 (1<sup>st</sup> Dept 2006). Here, King’s opinions and conclusions are not supported by facts, figures, or evidence or any reference to applicable rules, regulations or standards. Accordingly, his opinion that the drainage system was not properly designed is without probative value and is insufficient to raise an issue of fact as to whether the water from the sprinkler constituted a dangerous condition or whether the Housing Authority had notice of such condition. See eg,

---

<sup>2</sup>Although unlike here, many of the cases holding that a wet sidewalk or walkway does not constitute a dangerous condition, involve instances where the wet condition was caused by rain or snow (see eg McGuire v. 3901 Independence Owners, Inc., supra this distinction does not render the principle inapplicable here.

Verdejo v. New York City Housing Authority, 105 AD3d at 451 (holding that opinion of plaintiff's expert that drainage was inadequate was speculative and did not raise an issue of fact).

Accordingly, the Housing Authority is entitled to summary judgment.

Conclusion

In view of the above, it is

ORDERED that the motion by defendant New York City Housing Authority for summary judgment is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment dismissing the complaint.

DATED: May 21, 2015

  
**HON. JOAN A. MADDEN**  
J.S.C.                      **J.S.C.**