Block v Coinmach Corp.
2016 NY Slip Op 31292(U)
July 11, 2016
Supreme Court, New York County
Docket Number: 160116/2014
Judge: Carol R. Edmead

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

HON. CAROL R. EDMEAD
J.S.C.

Index Number : 160116/2014
BLOCK, NOMI
vs
COINMACH CORPORATION
Sequence Number : 001
SUMMARY JUDGMENT

PART 35

INDEX NO. _____
MOTION DATE 6/13/16
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____ , were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

In this personal injury action, defendant Coinmach Corporation ("defendant") moves for summary judgment dismissing the complaint of the plaintiff, Nomi Block ("plaintiff") (motion seq. 001).

Factual Background

Plaintiff alleges that on May 11, 2014, as she was doing her laundry in her apartment building, the lint compartment panel door on the bottom of clothes dryer machine fell on her feet causing injuries.

Plaintiff testified at her deposition that she first put two or three loads of clothes in the washing machines and returned to her apartment for approximately 30 minutes (EBT, pp. 34-35). When she returned to the laundry room, she placed her washed clothes in the dryer (p. 35). Then, plaintiff put her card in the slot to start the dryer cycle (p. 37). When the display read "Door," she "pushed the door in very slightly" and then the display read "error." (p. 37). She pulled her card out and wiped it on her clothes "because it's a chip, to make sure . . . it was working. . . ." and "All of a sudden the [bottom lint compartment] door just fell on my feet" (pp. 37, 39).

Plaintiff stated that there is a lock on the lint compartment panel door to keep it closed (p. 44). She has "seen the service people from Coinmach fixing. . .the washers" before, and has seen others from the building clean the dryer lint compartment (pp. 44-45).

Prior to the date of the incident, "the metal [lint compartment] cover of the [other] dryers" fell on her feet, "about four times" (Plaintiff EBT, pp. 24, 39). Upon the first one or two times this occurred, she complained to the superintendent "Linton" in person to "Please make sure the covers are locked" (pp. 25-26); on the other occasions, plaintiff complained to the new superintendent /resident manager, "Jerry Grady" either in person or by email (pp. 25-26). Grady told plaintiff to email "Lilliana" from Coinmach, which she did "a lot of times" (p. 29).

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: _____ _____, J.S.C.

1. CHECK ONE: ..... ☐ CASE DISPOSED ☐ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

Defendant's employee, Jose Marin, testified as to the dryer that there is "wind screen door. There is a panel on the bottom that is actually a door" (EBT, p. 11). Upon a service request, a service call is recorded in the service record (EBT, pp. 11-12). Marin stated that "There is no such schedule" to routinely check the machines (EBT, p. 15). However, when asked if a service technician will check all the machines, Marin testified that if there is a service call, the service technician will "look at them. They might run them. They won't open them up necessarily unless they find a reason to. If there is physical damage or sign on a machine, then they will repair it." (EBT, p. 17). When asked how a service technician would record an entry if a lint compartment panel door were to fall, Marin replies, "It would be the tech notes, if he noted it. . . He could put a note in under activity or add a note on the second screen" (EBT, p. 18).

A service record for April 17, 2014 prior to the accident stated "lint door switch," Marin stated was a "safety switch built into the dryer so that it won't run while the door is open" (pp. 15-16). However, the records for two years prior to the incident did not reveal any repair orders or calls on any of the equipment that would require a repair of the lint compartment panel door (pp. 9, 11).

Marin also confirmed that "Lilliana" works in the Administrative department (EBT, pp. 13-14), but did not know whether Lilliana had any email exchanges with plaintiff (EBT, p. 14).

In support of dismissal, defendant argues that it did not create or have any notice of the alleged dangerous condition. The record shows that upon receipt of a service call, defendant would check all machines and perform necessary repairs and that plaintiff did not see anyone from defendant cleaning the lint compartment. The service records indicate that no prior complaints relating to the dryer or lint compartment panel door were made. Plaintiff's testimony concerning prior complaints about the alleged defective dryer door was inconsistent. Further, plaintiff testified that she never made any complaints to the defendant or defendant's agent prior to the accident. And, plaintiff never saw anyone from defendant cleaning the lint compartment panel door. Therefore, in the absence of any actual or constructive notice of the "latent" condition that allegedly caused plaintiff's injuries, the complaint must be dismissed.

In opposition, plaintiff argues that defendant failed to demonstrate it lacked notice of the dangerous and recurring condition of the lint compartment panel door and failed to show how often the dryers were regularly maintained and inspected. Evidence of inspection and repair alone is insufficient in the absence of proof that the procedures were followed. Further, defendant's April 19, 2014 service report shows that defendant was aware of the need to replace the lint door switches on the dryers. Defendant was previously sued when a dryer door became dislodged and struck an individual in the leg. And, defendant admits that it received reports from various tenants about recurrent defects with the dryers in the laundry room and lint compartment panel door, and plaintiff testified that she complained multiple times as well. Thus, an issue of fact exists as to whether the dangerous condition was recurring.

Plaintiff also argues that a question of fact remains as to whether any inspection and maintenance procedure was sufficient under the circumstances. Plaintiff was unable to identify the length of time the defect might have been present such that defendants could have had sufficient time to cure the condition, and plaintiff's prior complaints were inconsistent and not directed at defendant. Defendant did not have a duty to maintain the laundry room. Defendant did not produce any contract with the premises owner showing any routine maintenance

procedure, given that defendant is responsible for any and all repairs of the dryers.

In reply, defendant argues that the caselaw cited by plaintiff is distinguishable. The April 19, 2014 involved a repair to a different dryer than that the one involved herein. Further, the laundry room was last inspected on April 28, 2014 prior to plaintiff's accident, and no repairs were made to any dryer doors while several other machines were checked. Plaintiff did not demand the service contract until after the note of issue was filed.

Discussion

In a premises liability case, plaintiff must demonstrate that the defendant created the dangerous condition which caused plaintiff's injury or had actual or constructive notice of the condition, which it failed to remedy within a reasonable amount of time *(Rosado v Home Depot*, 4 AD3d 204, 772 NYS2d 268 [1st Dept 2004], *citing Gordon v American Museum of Natural History*, 67 NY2d 836, 501 NYS2d 646 [1986]; *Piacquadio v Recine Realty Corp.*, 84 NY2d 967, 969 [1994]).

Therefore, as the movant for summary judgment, the defendant must establish that the "cause of action . . . has no merit" (CPLR 3212[b]) by advancing sufficient "evidentiary proof in admissible form" to demonstrate that it neither created the hazardous condition, nor had actual or constructive notice thereof (*Manning v Americold Logistics, LLC*, 33 AD3d 427, 822 NYS2d 279 [1st Dept 2006]; *Mitchell v City of New York*, 29 AD3d 372, 815 NYS2d 55 [1st Dept 2006]; *Madeline D'Anthony Enterprises, Inc. v Sokolowsky,* 101 AD3d 606, 957 NYS2d 88 [1st Dept 2012] *citing Alvarez v Prospect Hosp.*, 68 NY2d 320, 501 NE2d 572 [1986] *and Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *see also Powers ex rel. Powers v 31 E 31 LLC*, 24 NY3d 84 [2014]; *see also Friedman v BHL Realty Corp.,* 83 AD3d 510, 922 NYS2d 293 [1st Dept 2011]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985])

Once a defendant establishes *prima facie* entitlement to such relief as a matter of law, the burden then shifts to plaintiff to raise a triable issue of fact as to the creation of the dangerous condition or defect, or notice thereof (*Kesselman v Lever House Rest.*, 29 AD3d 302, 816 NYS2d 13 [1st Dept 2006]; *Bosman v Reckson FS Ltd. Partnership*, 15 AD3d 517, 790 NYS2d 201 [2d Dept 2005]). A defendant may be charged with constructive notice when a dangerous condition is "ongoing . . . [and] routinely left unaddressed" (*Pfeuffer v New York City Hous. Auth.*, 93 A.D.3d 470, 940 N.Y.S.2d 566 [1st Dept 2012] *citing Uhlich v Canada Dry Bottling Co. of N.Y.*, 305 AD2d 107, 107 [2003]). "[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" for this purpose" (*Kosovsky v. Park South Tenants Corp.*, 45 Misc.3d 1216(A), 2014 WL 5859387 [Sup Ct New York Cty 2014] *citing Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 [1980]).

It is not disputed that defendant had a duty to maintain and repair the dryer at issue. According to the record, the lint compartment panel door on the bottom of the dryer being used by plaintiff fell onto her feet. The record demonstrates the the dryer machine consists of two doors, the dryer circular door, and a separate panel door directly underneath. While defendant claims that there were no prior complaints involving the subject lint compartment panel door involved in plaintiff's incident, the evidence they rely on is inconclusive (*see Maholland v. Schindler Elevator Corp.*, 22 Misc.3d 1115(A), 880 N.Y.S.2d 225 [Sup Ct New York Cty 2009]).

Defendant failed to demonstrate that it lacked actual or constructive notice of the alleged

dangerous recurring falling condition of the lint compartment panel door that fell upon plaintiff. "The burden of establishing lack of notice cannot be satisfied merely by pointing out gaps in the plaintiff's case" (*Maholland, supra*). Plaintiff was removing clothing from a dryer in the laundry room of her apartment building when the lower panel door of the dryer fell open and struck her leg. The lower panel covers the area where the lint accumulates. Each dryer has a safety chain which keeps the lower door from opening more than 12 to 18 inches. This chain had been removed from the dryer, resulting in plaintiff's injuries.

In *Golden v. Coinmach Industries, Inc.* (273 A.D.2d 4, 708 N.Y.S.2d 393 [1st Dept 2000]), plaintiff was removing clothing from a dryer in the laundry room of her apartment building when the lower panel door of the dryer fell open and struck her leg.

In *Golden,* Coinmach, the owner of the dryers, was required to maintain and repair them. Coinmach's field service manager testified that building employees cleaned the lint out of the dryers and that building porters often removed the safety chain connecting the lower door to the dryer to clean out the lint more efficiently. Coinmach's employees did not regularly check the dryers to see if chains were missing, but receive calls to repair dryers with chains missing, though not in the subject building. The general manager of the managing company testified that her employees would not open the washers or dryers to clean out lint. The Court held that viewing "the evidence in a light most favorable to plaintiff," Coinmach's field service testimony raised a factual issue as to whether Coinmach had notice of the recurrent, dangerous condition of unsecured lint doors on its dryers.

Here, contrary to defendant's contention, plaintiff's testimony supports the inference that on prior occasions when the lint compartment panel doors fell on her, she complained to building staff *and defendant*, namely Lilliana, who defendant confirms is employed by defendant. Any inconsistencies in plaintiff's testimony in this regard is to be resolved by the trier of fact (*see, Ortner v. City of New York*, 25 Misc.3d 1221(A), 901 N.Y.S.2d 908 [1st Dept 2007]). And, defendant's contention that she did not complain about the specific machine at issue is insufficient to establish its lack of notice as a matter of law (*see Mazerbo v. Murphy*, 52 A.D.3d 1064, 860 N.Y.S.2d 289 [3d Dept 2008] (defendant's receipt of complaints concerning unevenness of the concrete flooring *in the approximate area* where plaintiff's accident occurred evidence would establish that defendant had knowledge of a recurring tripping hazard in the same area, albeit not the precise place, where plaintiff later fell (*see Gutz v. County of Monroe*, 221 A.D.2d 838, 839, 634 N.Y.S.2d 776 [1995] [constructive notice of dangerous condition of tiles on stairs due to knowledge of "recurring problems with the tiles *in other areas* of the library"]; *Armstrong v. Ogden Allied Facility Mgt. Corp.*, 281 A.D.2d 317, 318, 722 N.Y.S.2d 503 [2001] [constructive notice could be found based upon knowledge of a "similar hazardous condition that was known to have existed for at least two years elsewhere in the building"]). Viewing the testimony in a light most favorable to plaintiff as the nonmovant, it cannot be said that defendant never received notice of the falling condition of the lint compartment panel door.

Also contrary to defendant's contention, whether it followed any maintenance schedule is not established by the record. Marin stated that there was no routine maintenance schedule, and that defendant repaired and/or inspected the machines when a service call was made, apparently on an as needed basis.

Based on *Golden v. Coinmach Industries, Inc.* (*supra*), that plaintiff does not know the

length of time the defect might have been present in the laundry room is not fatal to her claim.

And, that plaintiff did not demand the service contract, if any, that governed defendant's duty to maintain and repair the dryers does not obviate defendant's duty to establish that a routine maintenance scheduled existed and was followed through the period prior to plaintiff's alleged incident.

Further, defendant's contention that the washer cycle on one machine and dryer's one through six were inspected on the date of the incident does not demonstrate that the lint compartment panel door was checked. For example, the service record for the date of the incident indicates that the "washer cycle checked ok" and that "Dryers 1-6 and 9 temperature check 190 degrees" (*see* page 8 of 45). No mention is made of the lint compartment panel door on any of the dryers. Indeed, defendant fails to submit any evidence, deposition or documentary, establishing whether the lint compartment panel doors, as opposed to the dryer cycle or temperature, were checked or maintained. Defendant's submission insufficient to show lack of constructive notice where defendant stated that he and his staff performed walk throughs, in the absence of any statement that as to state how often he inspected the floor or that he or defendant's employees inspected the accident location prior to the accident)).

While it cannot be said that defendant created the alleged dangerous condition, it cannot be said that it lacked notice of the recurring falling condition of the lint compartment panel door. The testimony of defendant's representative Marin does not establish, as a matter of law, that

Given that defendant's submissions fail to eliminate any material issues of fact from the case, the Court need not address the sufficiency of plaintiff's opposition papers (*Williams v New York City Hous. Auth.*, 99 A.D.3d 613, 952 N.Y.S.2d 554 [1st Dept 2012]).

The remaining arguments by defendant are insufficient to support summary judgment in its favor.

Therefore, in light of the above, defendant is not entitled to summary dismissal of the complaint.

Conclusion

Based on the foregoing, it is hereby

ORDERED that the motion by defendant Coinmach Corporation for summary judgment dismissing the complaint of the plaintiff is denied; and it is further

ORDERED that defendant shall serve a copy of this order with notice of entry upon all parties within 20 days of entry.

This constitutes the decision and order of the Court.

Dated 7/21/2016 **ENTER:** J.S.C.

HON. CAROL R. EDMEAD

Check one: ☐ **FINAL DISPOSITION** ☑ **NON-FINAL DISPOSITION**

Check if appropriate: ☐ **DO NOT POST** ☐ **REFERENCE**