

Patterson v New York City Hous. Auth.

2016 NY Slip Op 31348(U)

June 24, 2016

Supreme Court, Bronx County

Docket Number: 21748/06

Judge: Elizabeth A. Taylor

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 BRONX, I.A.S. PART 2

JUSTIN PATTERSON, an infant by his m/n/g
JACQUELINE PATTERSON and JACQUELINE
PATTERSON, individually,

Plaintiffs,

Index No. 21748/06

DECISION/ORDER

Present:
HON. ELIZABETH A. TAYLOR

-against-

THE NEW YORK CITY HOUSING AUTHORITY,
Defendant.

The following papers numbered 1 to ___ read on this motion, _____

No	On Calendar of	PAPERS NUMBERED
	Notice of Motion-Order to Show Cause - Exhibits and Affidavits Annexed-----	1-2
	Answering Affidavit and Exhibits-----	3-4
	Replying Affidavit and Exhibits-----	5
	Affidavit-----	
	Pleadings -- Exhibit-----	
	Stipulation -- Referee's Report --Minutes-----	
	Filed papers-----	

Upon the foregoing papers and due deliberation thereof, the Decision/Order on this motion is as follows:

(This motion was referred to this court, as Justice Mark Friedlander has retired)

Motion pursuant to CPLR 3212, for an order dismissing the complaint, on the ground that defendant did not create or actual knowledge of the alleged "grime" condition, is denied.

The branch of the motion for an order striking the allegations with respect to banisters and illumination not within the Notice of Claim, is granted.

Although plaintiffs will bear the burden at trial of proving the defendant's negligence, on this motion, movant bears the initial burden of establishing that lack of negligence on its part.

To establish entitlement to summary judgment, defendant must demonstrate that

it did not have actual or constructive notice of the dangerous condition (*Raghu v New York City Hous. Auth.*, 72 AD3d 480, 481-82 [1st Dept 2010] [citations omitted]) "A defendant demonstrates lack of constructive notice by producing evidence of its maintenance activities on the day of the accident, and specifically that the dangerous condition did not exist when the area was last inspected or cleaned before plaintiff fell" (*Ross v Betty G. Reader Revocable Trust*, 86 AD3d 419, 421 [1st Dept 2011] [citations omitted]; see *Dylan P. v Webster Place Assoc., L.P.*, 132 AD3d 537 [1st Dept 2015]; *Gautier v 941 Intervale Realty LLC*, 108 AD3d 481, 481-82 [1st Dept 2013]).

Plaintiffs commenced this action to recover monetary damages for injuries allegedly sustained as a result of plaintiff Justin Patterson's slip and fall on "grime" while descending a stairway in a building owned by defendant NYCHA.

As a preliminary matter, plaintiffs' claims of "inadequate lighting," and "lack of handrails on both sides," and "failure to warn," contained in paragraphs "6b" and "6f" of plaintiffs' Bill of Particulars, constitute new theories of liability, not contained in plaintiffs' Notice of Claim. Inasmuch as plaintiffs' time to seek leave to file a late Notice of Claim has expired (see General Municipal Law §50-e[5]), these new theories of liability are stricken and may not be considered by the court. *Cambio v. City of New York*, 118 A.D.3d 577 (1st Dept. 2014).

In support of the motion, defendant submitted, *inter alia*, the deposition transcript and affidavit of Edwin Ramos. Mr. Ramos testified that in 2005, he was NYCHA's Supervisor of caretakers at the Mitchel Houses, which include the subject building

("building #6") where plaintiffs resided on the day of Justin's accident. Mr. Ramos trained and supervised all caretakers, including Bernice Mack, the caretaker assigned to building #6, to follow the janitorial schedule for keeping the buildings clean. The janitorial schedule for building #6 (attached as Exhibit "N" to NYCHA's moving papers) calls for all assigned caretakers to conduct twice daily walk-down inspections of Staircase "A" every morning, entailing inspection and removal of any trash or debris. During the later morning walk down, the janitorial schedule required the caretaker to sweep and spot-mop Staircase "A" to remove any liquids, if necessary. The janitorial schedule also directed the caretaker to mop Staircase "A" completely every Monday, from 12:40 P.M. to 3:00 P.M.

Ms. Mack is no longer employed by NYCHA. An attendance sheet (Exhibit "O") is attached, showing that Ms. Mack was present at building #6 on August 11, 2005. Mr. Ramos alleges that he made certain that the caretakers in his charge followed the janitorial schedule and cleaning tasks diligently. In August, 2005, he walked the buildings under his charge each weekday, from top to bottom, checking on the progress of the work assigned each caretaker and making sure they followed the janitorial schedule. Mr. Ramos avers that had he observed any liquid, debris, grime or other condition deemed unsafe during his daily walk down, he would have immediately called the caretaker assigned to the building via walkie-talkie and directed that she clean the condition. He testified that his inspections of building #6 in August, 2005, consisted of: walking the entire length of the staircases, commencing on the top (20th) floor, walk

down the staircase, through the corridors and to the other staircase, on down to the first floor. The hallways were also inspected. The inspection tour of the staircases and hallways in building #6 took, on average, approximately 45 minutes. Mr. Ramos claims that he has no recollection of any complaints about a "grime" condition on the subject staircase before Justin's accident on August 11, 2005. According to Mr. Ramos, had he received any complaints, he would have directed the assigned caretaker to address and clean the condition.

Movant submitted inspection reports for building #6 dated May 27, 2005, June 21, 2005 and July 20, 2005. Mr. Ramos only averred and testified as to a general cleaning routine, which does not indicate when the subject stairs had last been cleaned prior to the accident. It is noted that the record is devoid of a deposition transcript or affidavit of Ms. Mack (see *Hawthorne v New York City Housing Authority*, 128 AD3d 529 [1st Dept 2015]).

Accordingly, movants have failed to meet their initial burden of demonstrating that it is entitled to summary judgment. There remain issues of fact, including but not limited to whether defendant had notice of the alleged condition.

Therefore, this court does not have to address the sufficiency of plaintiffs' opposition.

The foregoing shall constitute the decision and order of this court.

Dated: JUN 24 2016



Elizabeth A. Taylor

A.J.S.C.