Kyung Kim v Trump Corp.
2016 NY Slip Op 31710(U)
August 15, 2016
Supreme Court, New York County
Docket Number: 156427/2014
Judge: David B. Cohen

[* 1]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 58

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KYUNG KIM,

Plaintiff,

-against-

THE TRUMP CORPORATION, THE TRUMP WORLD TOWER CONDOMINIUM

Defendants.

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DECISION/ORDER
Index No. 156427/2014

HON. DAVID B. COHEN, J.:

Defendants move for summary judgment, pursuant to CPLR § 3212, to dismiss plaintiff's Verified Complaint in its entirety. Plaintiff opposes the motion and claims that her injuries are a direct and proximate result of defendants' negligence.

Plaintiff, a resident of Trump World Tower for the past 11 years, alleges that on March 18, 2014 on the 7th floor, stairwell B of the building, her right pinky finger became wedged in the hinge side of a fire door, severing the tip of her finger. Plaintiff claims defendants' negligence caused, created and permitted the fire door to self-close at an excessive speed and force.

Summary judgment is a drastic remedy that should not be granted where there exists a triable issue of fact (*Integrated Logistics Consultants v Fidelia Corp.* 131 AD2d 338 [1st Dept 1937]; *Rainer v Elovitz*, 198 AD2d 184 [1st Dept 1993]). On a summary judgment motion, the court must view all evidence in a light most favorable to the non-moving party (*Rodriguez v Parkchester South Condominium Inc.*, 178 AD2d 231 [1st Dept 1991]). The moving party must show that as a matter of law it is entitled to judgment [*Alvarez v Prospect Hosp.*, 68 NY2d 320 324 [1986]). The proponent of a summary judgment motion 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. Cir.*, 64 NY2d 851 [1985]). After the moving party has demonstrated its *prima facie* entitlement to summary judgment, the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue

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requiring a trial (*Zuckerman v City of New York*, 49 NY2d 557 [1980]). Defendants have not met this burden and the motion is denied.

For a property owner to be liable to an injured plaintiff as a result of an incident on their premises, the plaintiff must establish that a dangerous or defective condition existed at the time of the injury and that the property owner either created the condition or had actual or constructive notice of the alleged dangerous or defective condition and had time to remedy it (*Piacquadio v Recine Realty Corp.*, 84 NY2d 967, 969 [1994]; *Gordon v American Museum of Natural History*, 67 NY2d 836, 837-38 [1986]; *Zuk v Great Atlantic & Pacific Tea Co., Inc.*, 21 AD3d 275 [1st Dept 2005]; *Mejia v New York City Transit Auth.*, 291 AD2d 225, 226 [1st Dept 2002]; *Leo v Mt. St. Michael Academy*, 272 AD2d 145, 146 [1st Dept 2000]).

A defendant seeking summary judgment has the initial burden of making a prima facie showing that it did not create the dangerous condition, nor had actual or constructive notice of its existence (*Sabalza v Salgado*, 85 AD3d 436 [1st Dept 2011]; *Garcia v Good Home Realty, Inc.*, 67 AD3d 424 [1st Dept 2009]). "What constitutes a dangerous or defective condition depends on the particular circumstances of each case, and is thus generally a factual question for the jury" (*Freienstein v Mandarin Oriental New York Hotel, LLC*, 44 Misc 3d 1220(A) [Sup Ct, NY County 2014] *citing Trincere v County of Suffolk*, 90 NY2d 976, 977 [1997]).

Plaintiff claims that the door was defective or dangerous at the time of the incident because of the speed at which the door closed. She relies on a safety expert who tested and evaluated the door after the incident (Affirmation in Opposition, Exhibit A). The expert relied on industry standards from the International Code Council ("ICC"), American National Standards Institute ("ANSI"), and the ADA Accessibility Guidelines ("ADAAG"). He claims that the subject door closed faster than allowed under ICC/ANSI 117.1-404.2.7.2, which state that a spring hinge door should close in no less than 1.5 seconds from a 70 percent opening. The expert's tests found the door closed between 1.22 and 1.4 seconds from approximately a 70 percent opening (Affirmation in Opposition, Exhibit A ¶ 10). Defendants claim that the standards relied on by plaintiff's expert are not applicable to the subject door as the ICC and ANSI standards are not in the New York City Building Code ("the Code"). Defendants claim that the door was

working properly on the day of plaintiff's accident and had not been adjusted since it was installed in 2000. It is also undisputed that prior to plaintiff's injury, the door had not been inspected since its installation.

Plaintiff has created a triable issue of fact as to the speed of the subject door and whether it constituted a dangerous or defective condition. Defendants have not offered their own expert rebuttal of plaintiff's expert's opinion that the door closing speed constitutes a dangerous or defective condition.

Even if the door closing speed was a dangerous condition or defective at the time of the injury, plaintiff must prove that defendants created the condition *or* had actual or constructive knowledge of the condition or defect. If plaintiff can show that defendants created the condition, the issues of notice are irrelevant (*Cook v Rezende,* 32 NY2d 569, 599 [1973]; *Ohanessian v Chase Manhattan Realty Leasing Corp.,* 193 AD2d 567 [1st Dept 1993]). Defendants have not met their burden that they did not create a dangerous condition as they have not provided sufficient facts establishing that at the time the doors were installed that no dangerous condition was created, and that at that time, the door speed was not dangerous.

Alternatively, if the door closing speed was a dangerous condition or defective at the time of the injury, plaintiff must prove that defendants had actual or constructive notice of the alleged condition and had time to remedy it. Plaintiff claims that defendants had actual notice that the door was defective. She claims that the actual notice was several tenants on other floors complaining about the noise the fire doors made when they closed on their floors. Approximately eight (8) years ago, defendants installed door closers on the fire doors of the 5th, 25th, and 32nd floors of the building after tenants complained about the loud noise the doors made. The three floors where the door closers were installed have mechanical rooms on them, which are accessed by building employees frequently. The complaints defendants received were about the noise the doors made upon closing, not the speed at which they closed. According to the defendants' property manager, the door closers were installed to reduce the noise (Notice of Motion Exhibit E pp. 90-92). Complaints about noise from doors on other floors more than 8 years ago are not sufficient to constitute defendants having actual notice of door B on the seventh floor, being defective (*Davila v City of New York,* 95 AD3d 560, 561 [1st Dept 2012] [plaintiff's brother's statement that years before the accident

he mentioned to a teacher at the school that the doors were difficult to open, was not enough to raise an issue of fact as to actual notice]; *Armstrong v Ogden Allied Facility Mgt. Corp.*, 281 AD2d 317 [1st Dept 2001] [no actual notice of defect because no one had complained of a defect where the accident took place]). It is undisputed that defendants never received any complaints about door B on the 7th floor and therefore, did not have actual notice of any defective condition. Accordingly, the Court finds that as a matter of law, defendants cannot be charged with actual knowledge of a dangerous condition.

To prove defendants had constructive notice of a dangerous condition, such a condition must be visible and apparent, and must exist for a sufficient period of time before the accident to allow defendants and their employees to discover and remedy such defect (*Gordon v American Museum of Natural History*, 67 NY2d 836, 837 [1986]; *Singh v United Cerebral Palsy of New York City, Inc.*, 72 AD3d 272 [1st Dept 2010]). Plaintiff claims that defendants had constructive notice of the defective condition of the door because defendants had not inspected the door since its installation. Defendants offer evidence that they did not install the door, a third party did, had no complaints about the subject door before plaintiff's accident, and claim the door was in the same working condition it had been in since its installation in 2000. Further, plaintiff alleges and, defendants acknowledge, that there were noise complaints with other similar doors and the remedy used was to slow the door by installing pins in the hinges. Because defendants remedied the noise complaints by slowing the door speed, there remains a triable issue of fact as to whether defendants had constructive notice that the doors were closing too fast (*McLaughlin v Thyssen Dover El. Co.*, 117 AD3d 511 [1st Dept 2014] [expert's affidavit that defendants could have discovered misleveling condition in elevator with reasonable diligence precluded summary judgment]; *Cerverizzo v City of New York*, 116 AD3d 469 [1st Dept 2014] [triable issue of constructive notice of toxic fumes raised as to whether premises owner fulfilled duty to monitor air quality adequately]; *DePaul v N.Y. Brush*, 114 AD3d 609 [1st Dept 2014] [triable issues of defendant's constructive notice of wet and rotten wooden plank, as they regularly inspected site and defect not transient]; *Armstrong v Ogden Allied Facility Mgt. Corp.*, 281 AD2d 317 [1st Dept 2001] [constructive notice remained an issue of fact for trial based upon the similar hazardous condition of loose clips used to secure floor boxes covering electrical wiring known by the building

maintenance supervisor to have existed throughout the building during the two years leading up to the accident]; *Carter v State of New York,* 119 AD3d 1198 [3rd Dept 2014] [defendant's testimony that handrail that did not extend to the top of the stairs in allegedly defective condition existed for extensive period of time and that premises were regularly inspected raised issue as to whether it was on notice thereof]; *Hanley v Affronti,* 278 AD2d 868 [4th Dept 2000] [triable issue of fact as to the constructive notice where basement door opened towards stairs and plaintiff guest fell down the stairs after leaning against the unlatched even though no one has fallen in the 30 years that the door was positioned that way]).

Defendants have not met their burden of proving they did not create a dangerous or defective condition nor did they have constructive notice that a dangerous or defective condition existed at the time of plaintiff's injury. Plaintiff has raised a genuine issue of material fact as to (1) whether a dangerous or defective condition existed at the time of plaintiff's injury; (2) whether defendants created a dangerous or defective condition; and (3) whether defendants had constructive notice of a dangerous or defective condition.

For the above reasons, defendants' motion for summary judgment is denied except that the defendants have established as a matter of law that they did not have actual knowledge of a dangerous condition.

This constitutes the Decision and Order of the Court.

DATE: 8/15/2016

COHEN, DAVID B., JSC