

<b>Robinson v City of New York</b>
2017 NY Slip Op 30757(U)
March 24, 2017
Supreme Court, Bronx County
Docket Number: 302710/2011
Judge: Doris M. Gonzalez
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

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ERIC ROBINSON,

Plaintiff,

Index No. 302710/2011

v.

**DECISION AND ORDER**

THE CITY OF NEW YORK, THE NEW YORK CITY  
DEPARTMENT OF CORRECTIONS,

Defendants.

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GONZALEZ, D.:

Upon: i) the Motion for Summary Judgment, dated February 10, 2016, by Christina N. Langella, Esq., attorney for the defendants; a) for failure to state a cause of action, pursuant to CPLR Rule 3211(a)(7), and b) for summary judgment, pursuant to CPLR Rule 3212; ii) the Affirmation in Opposition, dated March 24, 2016, by Emily K. Lavelle, Esq., attorney for the plaintiff; and iii) the Affirmation in Reply, dated April 20, 2016.

**PROCEDURAL HISTORY**

A Notice of Claim was filed on March 19, 2010 in the form of a personal injury claim form. No 50-h hearing was held. The action was commenced by the filing of a Summons and Verified Complaint on March 21, 2011. Issue was joined by service of an Answer by defendants, on or about April 15, 2011. The Note of Issue and Certificate of Readiness was filed and served on or about January 11, 2016. This Motion for Summary Judgment is timely.

## FACTUAL BACKGROUND

This is an action to recover damages for personal injuries allegedly sustained by the plaintiff arising from a slip and fall accident that occurred on or about February 6, 2010, at the Vernon C. Bain Correctional Center, in the County of Bronx, City and State of New York.

It is alleged that on February 6, 2010, the plaintiff was caused to slip and fall on an accumulation of water in the bathroom designated as bathroom 3AA. The defendants assert that they are entitled to summary judgment because they had no notice of any wet condition in the bathroom in question. Plaintiff contends that the puddle was caused by a recurring condition. The defendants assert they were never notified of any recurring condition in the bathroom in question.

## DISCUSSION OF LAW

It is a well-settled that a landowner is under a duty to maintain its property in a reasonably safe condition under the existing circumstances, which include the likelihood of injury to a third party. (*Basso v Miller*, 40 NY2d 233, 241, 352 NE2d 868, 386 NYS2d 564 [1976]; *Zuk v Great Atl. & Pac. Tea Co., Inc.*, 21 AD3d 275, 799 NYS2d 504 [2005]). To subject a property owner to liability for a hazardous condition on its premises, a plaintiff must demonstrate that the owner created, or had actual or constructive notice of the dangerous condition which precipitated the injury (*Piacquadio v Recine Realty Corp.*, 84 NY2d 967, 969, 646 NE2d 795, 622 NYS2d 493 [1994]; *Alexander v New York City Tr.*, 34 AD3d 312, 313, 824 NYS2d 262 [2006]). In the case of actual or constructive notice, plaintiff must also show that the owner had a sufficient opportunity, with the exercise of reasonable care, to remedy the situation (*Aquino v Kuczinski, Vila*

& Assoc., P.C., 39 AD3d 216, 219, 835 NYS2d 16 [2007]; *Morales v Shelter Express Corp.*, 26 AD3d 420, 808 NYS2d 904 [2006]).

“A defendant who moves for summary judgment in a slip-and-fall action has the initial burden of making a prima facie demonstration that it neither created the hazardous condition, nor had actual or constructive notice of its existence. Once a defendant establishes prima facie entitlement to such relief as a matter of law, the burden shifts to plaintiff to raise a triable issue of fact as to the creation of the defect or notice thereof” (*Smith v Costco Wholesale Corp.*, 50 AD3d 499, 500, 856 NYS2d 573 [2008] citing *Manning v Americold Logistics, LLC*, 33 AD3d 427, 822 NYS2d 279 [2006]; *Mitchell v City of New York*, 29 AD3d 372, 374, 815 NYS2d 55 [2006]; *Kesselman v Lever House Rest.*, 29 AD3d 302, 303-304, 816 NYS2d 13 [2006]; *Bosman v Reckson FS Ltd. Partnership*, 15 AD3d 517, 790 NYS2d 201 [2005]). A defendant may be charged with constructive notice when a dangerous condition is “ongoing ... [and] routinely left unaddressed” (*Uhlich v Canada Dry Bottling Co. of N.Y.*, 305 AD2d 107, 758 NYS2d 650 [2003] [internal quotation marks omitted]).

The plaintiff alleges he slipped and fell in bathroom 3AA due to an accumulation of water on the bathroom floor. On May 5, 2014, at his examination before trial, the plaintiff testified that bathroom 3AA would allegedly continually flood due to the clogging of toilets. The plaintiff also testified that he had used bathroom 3AA earlier in the evening and there was no overflow of water in the bathroom in question.

The personal injury claim form filled out by the plaintiff on February 8, 2010 alleges he slipped and fell on water on the bathroom floor at 3:30 AM on February 6, 2010. The Verified Complaint, dated March 21, 2011, alleges that the plaintiff fell on a wet dirty slippery floor. At his

examination before trial, the plaintiff alleged he fell on a puddle of water about an inch high. The plaintiff alleges that the bathroom flooded before and that the inmates complained to Correction Officers about the alleged condition. Based on the record before the Court, it is unclear what condition the plaintiff is claiming occurred which caused the accident or the notice that he alleges the defendants had of the alleged recurring condition.

The supervisor of mechanics James Sorrell testified concerning work order records pertaining to bathroom 3AA. The work order records showed that there were two repairs made to a shower a day prior to the incident in question. However, the records do not substantiate that the repairs made to the shower were related to the cause of the flooding which caused the plaintiff to slip and fall.

The plumber Neil Basciano testified at his examination before trial on April 15, 2015 that he was unaware of any complaints concerning any water flooding or leakage on the floor of bathroom 3AA prior to the alleged occurrence, or any recurring condition. The defendants have met their burden of showing that they neither created the hazardous condition, nor had notice of it (*see Edwards v Port Auth. of N.Y. and N.J.*, 48 AD3d 405, 851 NYS2d 646 [2008]; *Resto v 798 Realty, LLC*, 28 AD3d 388, 813 NYS2d 716 [2006]).

This Court further finds that plaintiff has failed to sustain his burden in showing that the defendant was aware of any reoccurring condition of water in the bathroom in question. The Court notes the plaintiff never pled a recurring condition as a cause of the alleged incident until he testified at his examination before trial. This Court finds the plaintiff's allegations unavailing, incredible and premised on conjecture and speculation. The record is unclear as to what occurred

on the date in question which resulted in water on the floor. Therefore, the plaintiff has not sustained a prima facie showing of negligence as against the defendants.

Although the defendants also moved to dismiss the complaint for failure to state a cause of action, pursuant to CPLR 3211(a)(7), no argument has been presented in support of same. Therefore, the Court has not considered any issues as to the CPLR 3211(a)(7) motion.

Accordingly, based on the record before the Court, the applicable law, and due deliberation; it is hereby

**ORDERED**, that the motion for summary judgment on liability is GRANTED in favor of the defendants as against the plaintiff; and it is further

**ORDERED**, that the complaint is dismissed.

This constitutes the Decision and Order of the Court.

Dated: March 24, 2017  
Bronx, New York

ENTER:



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HON. DORIS M. GONZALEZ, J.S.C.