

Luna v GVS Props., LLC
2018 NY Slip Op 32502(U)
October 2, 2018
Supreme Court, New York County
Docket Number: 150413/2013
Judge: Gerald Lebovits
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NYSCEF DOC. NO. 73

RECEIVED NYSCEF: 10/05/2018

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. GERALD LEOVITS **PART** **IAS MOTION 7EFM**

Justice

X

INDEX NO. 150413/2013

MARITZA LUNA,

MOTION DATE 08/01/2018

Plaintiff,

MOTION SEQ. NO. 002

- v -

GVS PROPERTIES, LLC, ALMA REALTY CORP.

Defendant.

DECISION AND ORDER

X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71

were read on this motion to/for

DISMISS

Raphaelson & Levine Law Firm, P.C. (Dario A. Martinez of counsel), for plaintiff.

Wilson, Elser, Moskowitz, Edelman & Dicker, LLP (Jeremy M. Buchalski of counsel), for defendants.

Defendant moves for summary judgment. Plaintiff opposes the motion.

Plaintiff filed this lawsuit to recover damages for serious personal injuries caused by an accident that happened on June 24, 2012. The accident happened while plaintiff was descending a staircase at a building located at 600 West 163rd Street, New York, New York, 100032. The building was managed by defendants. Plaintiff has lived in apartment 20B at this building for 29 years. The accident allegedly happened because either the fourth or the fifth step moved and shifted when she stepped on it, causing her to fall and roll all the way down the stairs. She explicitly testified that her foot did not slip. Plaintiff also claims that the stairway lacked a required handrail, so she had no opportunity to save herself from falling.

On March 6, 2014, plaintiff's expert, Jacques P. Wolfner, who is a licensed professional engineer in the State of New York, inspected the place and testified that the stairway violated the requirements of the 1916 and 2008 NYC Building Codes. Specifically, he said, the depth of the treads are not uniform, the depth varies from 10 inches to 11 inches, and the riser heights are between 5 ½ and 9 inches. In addition, he testified that the stairway had only one handrail on the right side (descending), and there were no anti-skid panels or strips on the stair treads. He concluded that "the variation in riser heights is likely to cause a loss of footing." However, he did not identify any loose steps to corroborate plaintiff's allegations.

Claren A. Covacruz, who has worked for defendant Alma Realty Corp. (Alma) as a superintendent and property manager for seven years, testified that when he had assumed the property management duties for the building in 2011, he walked through the property and did not find any maintenance or repairs that were necessary. He also testified that the marble steps on the staircase had not been altered since defendant began managing the building. He has never observed a loose step between the first and the second floors and has never received any complaints regarding the staircase.

Andreas Santana was employed by Alma after the accident and testified that the fourth step down from the second floor is one inch higher than every other step on that stairway. During his employment, he has never performed any structural work on the staircase where the accident happened. Also, he has never received any complaints about the staircase and has never observed an unstable step there.

On March 23, 2016, James Parr, a professional engineer, inspected the stairs and concluded that the stairway treads had no significant movement of any concern at the time of the inspection and that the proximate cause of plaintiff's alleged accident was her lack of attention to her intended walking surface and her failure to use the right-side handrail of the stairs during her descent. He also testified that the stairs could not have been slippery at the time of the inspection because they were slip resistant.

Defendants move for summary judgment under CPLR 3212, seeking an order dismissing plaintiff's complaint in its entirety and such other and further relief as the court deems just and proper.

Plaintiff opposes the motion. Plaintiff argues that the accident was caused by defective conditions that existed on the property.

Defendants' motion for summary judgment is granted.

Plaintiff claims that the accident happened because the step was unstable and shook when she stepped on it. She also argues that defendants had actual notice of the defective step and took action to fix it after the accident. But no evidence supports these allegations. Plaintiff testified that the step was still in the same condition at the time of her deposition. In addition, none of the witnesses confirmed that the step was unstable. Parr identified no evidence of any tread movement that could have caused plaintiff to fall. Even plaintiff's own expert, Wolfner, did not find any loose steps when he inspected the staircase. He stated in his report that she "lost her footing," but he does not say that it was caused by an unstable step.

Wolfner testified that the stairway's riser heights and depths were not uniform, and there was no handrail on the left side of the stairs that plaintiff could use. But there was a handrail on the right side of the staircase, and she could keep to that side while going down and use the right-side handrail to prevent herself from falling. The claim that the uneven steps and the absence of a handrail on the left side of the stairs violate the 1916 and 2008 New York building codes is not on point. Although plaintiff alleges violations of New York City Administrative Code § 27-109, 27-127, 27-128, 27-375, and 27-381, these provisions apply only to buildings built under the

1968 New York City Building Code and are inapplicable to the defendants' building because it was built in 1909. In addition, plaintiff explicitly claims that her fall from the stairs happened because the step shook and not because it was a little shorter than some other steps. Therefore, even if there were violations on the applicable law, they are not the proximate cause of the accident.

"In premises liability cases alleging an injury caused by a defective condition, the plaintiff must show that the landowner either created the defective condition, or had actual or constructive notice of the defective condition for such a period of time that, in the exercise of reasonable care, it should have corrected it." (*McKeon v Town of Oyster Bay*, 292 AD2d 574, 575 [2d Dept 2002], citing *Abrams v Powerhouse Gym Merrick, Inc.*, 284 AD2d 487 [2d Dept 2001].) Plaintiff showed neither of that. Defendants neither built anything in violation of the applicable law nor had constructive notice of any defects. "To constitute constructive notice, a defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit defendant's employees to discover and remedy it." (*Gordon v Am. Museum of Nat. History*, 67 NY2d 836, 837 [1986], citing *Negri v Stop & Shop, Inc.*, 65 NY2d 625, 626 [1985].) No evidence exists that there were any visible and apparent constructive defects either before or at time of the accident that defendants could have found and that could have caused plaintiff's fall. Plaintiff has lived in the building for 29 years and must have known the configuration of the stairs very well.

On summary-judgment, "the inferences to be drawn from the underlying facts . . . must be viewed in the light most favorable to the party opposing the motion." (*Stukas v Streiter*, 83 AD3d 18, 22 [2d Dept 2011], citing *Pearson v Dix McBride*, 63 AD3d 895, 895 [2d Dept 2009].) Even if this court draws inferences from the facts in the light most favorable to plaintiff and concludes that all the alleged violations mentioned in Wolfner's report existed, there are still no grounds to grant the damages plaintiff seeks. The conclusion of Wolfner that "the variation in riser heights is likely to cause a loss of footing" does not mean that that was the proximate cause of the accident. Plaintiff herself argues that the cause of her accident was not the lack of uniformity of the stairway's riser heights and depths, but the unstable step. But with no evidence that the step was actually unstable at the time of the accident, there are no grounds to hold defendants liable for plaintiff's injuries.

ACCORDINGLY, it is

ORDERED that defendants' summary-judgment motion is granted and plaintiff's claims are dismissed; and it is further

ORDERED that defendants serve a copy of this order on plaintiff and on the County

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Clerk's Office, which is directed to enter judgment accordingly.

10/2/2018

DATE

CHECK ONE:

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CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

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DENIED

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NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☐

OTHER

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REFERENCE

GERALD LEBOVITS, J.S.C.