Mahoney v Beddows
2018 NY Slip Op 34182(U)
March 26, 2018
Supreme Court, Dutchess County
Docket Number: Index No. 2016--52428
Judge: Peter M. Forman

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS
----------X
MICHAEL P. MAHONEY,

Plaintiff,

-against-

MICHAEL BEDDOWS,

Defendant.

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DECISION AND ORDER

Index No. 2016-52428

FORMAN, J., Acting Supreme Court Justice

The Court read and considered the following documents upon this application:

	PAPERS NUMBERED
NOTICE OF MOTION	1
AFFIRMATION	2
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This is a personal injury action arising out of a December 20, 2013 slip-and-fall accident that occurred on the landing of an exterior staircase of the two-family house located at 28 Ralph Street in the City of Beacon (the "Premises"). The landing and stairs provide ingress and egress to Plaintiff's first floor apartment. Plaintiff rents that apartment from Defendant, who owns the Premises and lives in the upstairs apartment.

Plaintiff alleges that he slipped and fell on a six-inch circular patch of ice that had formed on the landing. Plaintiff also alleges that this ice was a recurrent dangerous condition that was caused by water that dripped from the deck located directly above the landing. This overhanging deck is accessed from Defendant's second floor apartment.

Plaintiff alleges that, prior to the date of the accident, Defendant was aware that water would drip from the deck and form icy patches on Plaintiff's landing. Plaintiff also alleges that Defendant stored salt on the Premises for purposes of, *inter alia*, treating this recurrent condition.

Plaintiff alleges that it snowed several days before the accident. Plaintiff also alleges that water had been dripping from the upper deck onto the landing each day between the snowfall and the accident. Plaintiff also alleges that this caused water to accumulate on the landing and stairs, and to form the patch of ice that caused him to slip and fall. Finally, Plaintiff alleges that Defendant subsequently apologized for not having enough time to put down salt in the days leading up to the accident.

Defendant alleges that he does not recall water ever dripping from the upper deck onto the landing in front of Plaintiff's door prior to the accident. Defendant also alleges that Plaintiff never mentioned that there was a problem with ice accumulating in that area prior to the accident.

Defendant alleges that it snowed three days before the accident, and that he personally cleared the snow from the deck, the landing, and the stairs leading to the street. Defendant also alleges that the deck, landing and stairs were all free of snow and ice the day before the accident, and that he did not see any evidence of water dripping from the upper deck onto the landing.

Defendant now moves for summary judgment dismissing the complaint on the grounds that he lacked actual or constructive notice of the icy condition that caused Plaintiff to slip and fall. Defendant also moves for summary judgment on the grounds that he did not create a dangerous condition that caused Plaintiff to fall.

DISCUSSION

Because summary judgment "deprives the litigant of its day in court it is considered a drastic remedy which should only be employed when there is no doubt as to the absence of triable issues." [Andres v. Pomeroy, 35 NY2d 361, 364 (1974). *See also* Vega v. Restani Construction Corp., 18 NY3d 499, 503 (2012)]. It is therefore "axiomatic that issue finding rather than issue determination is central to deciding a motion for summary judgment" [Downing v. Schreiber, 176 AD2d 781 (2d. Dept. 1991)], and that such a motion should be denied "if a court entertains any doubt as to the existence of a triable issue of fact." [Yelin v. American Dental Center, 184 AD2d 693(2d Dept. 1992)].

In determining whether Defendant should be awarded summary judgment, the Court is required to draw all reasonable inferences in favor of Plaintiff. [F.Garofalo Electric Co. v. New York University, 300 AD2d 186, 188 (1st Dept. 2002); Torres v. Jeremia, 283 AD2d 484, 485 (2d Dept. 2001)]. The Court is also precluded from resolving any genuine factual disputes or issues of credibility in its review and consideration of this motion. [Benetatos v. Comerford, 78 AD3d 750, 751-52 (2d Dept. 2010); Ruiz v. Griffin, 71 AD3d 1112, 1115 (2d Dept. 2010)].

"A defendant who moves for summary judgment in a slip-and-fall case has the initial burden of making a prima facie showing that it neither created the hazardous condition nor had actual or constructive notice of its existence for a sufficient length of time to discover and remedy it." [DeFalco v. B.J.'s Wholesale Club, Inc., 38 AD3d 824, 825 (2d Dept. 2007), *quoting* Ulu V. ITT Sheraton Corp., 27 AD3d 554 (2d Dept. 2006). *See also* Stroppel v. Wal-Mart Stores, Inc., 53 AD2d 651, 652-53 (2d Dept. 2008)]. "In addition, a defendant who has actual knowledge of a particular ongoing and recurring hazardous condition may be charged with constructive notice of each specific reoccurrence of that condition." [Willis v. Galileo Cortland, LLC, 106 AD3d 730, 731 (2d Dept. 2013). *See also* Schubert-Fanning v. Stop & Shop Supermarket Co., LLC, 118 AD3d 862, 863 (2d Dept. 2014); Agosto v. City of New Rochelle, 114 AD3d 625, 626 (2d Dept. 2014)].

Here, assuming that Defendant met his initial burden of showing that he did not have notice of the icy condition that caused the accident, Plaintiff has raised "a triable issue of fact as to whether the defendant can be charged with constructive notice on the theory that he was aware of a particular recurring condition in the area where the accident occurred which he failed to adequately address." [Halpern v. Costco Warehouse/Costco Wholesale, 95 AD3d 828 (2d Dept. 2012)]. Therefore, Defendant's motion for summary judgment is denied. [id. *See also* Kohout v. Molloy College, 61 AD3d 640, 642 (2d Dept. 2009); Zelaya v. Burger, 43 AD3d 437, 439 (2d Dept. 2007)]. Based on the foregoing, it is hereby

ORDERED, that Defendant's motion for summary judgment dismissing the Complaint pursuant to CPLR §3212 is denied; and it is further

ORDERED, that counsel shall appear before this Court for a pretrial conference at 10:30 AM on April 18, 2018.

The foregoing constitutes the Decision and Order of this court.

Dated: March 26, 2018
Poughkeepsie, New York

Hon. Peter M. Forman
Acting Supreme Court Justice

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