

Gil v Margis Realty LLC
2019 NY Slip Op 31147(U)
April 23, 2019
Supreme Court, New York County
Docket Number: 162588/2015
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2EFM

Justice

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INDEX NO. 162588/2015

ANGENI GIL and EDWIN GIL,

MOTION SEQ. NO. 001

Plaintiffs,

- v -

MARGIS REALTY LLC and MILBROOK PROPERTIES LTD,

DECISION AND ORDER

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36

were read on this motion for

SUMMARY JUDGMENT

Upon the foregoing documents, it is ordered that the motion is **granted**.

In this personal injury action, defendants Margis Realty LLC (“Margis Realty”) and Milbrook Properties Ltd. (“Milbrook Properties”) move, pursuant to CPLR 3212, for summary judgment dismissing the complaint of plaintiffs Angeni Gil and Edwin Gil (collectively “plaintiffs”). Plaintiffs oppose the motion. After oral argument, and after a review of the relevant statutes and caselaw, it is ordered that the motion is **granted**.

Plaintiffs commenced this action on December 1, 2015 by filing a summons and complaint. (Doc. 21.) Angeni Gil resides in an apartment building located at 598 West 177th Street in Manhattan. (*Id.* at 3.) On July 12, 2013, Angeni Gil left the building to take out her trash. (Docs. 21; 30 at 2.) The stairs leading out of the building only had handrails on the right side. (Doc. 30 at 2.) However, because the trash cans were located near the left side of the stairs, plaintiff decided to go down that side. (*Id.*) At her deposition, she testified that she slipped and lost her balance because she did not have anything to hold. (Doc. 24 at 17–22.) In the complaint, plaintiff set forth

three causes of action: (1) negligence as against defendant Margis Realty; (2) negligence as against defendant Milbrook Properties; and (3) a claim on behalf of plaintiff Edwin Gil for loss of consortium. (Doc. 21.)

Defendants move for summary judgment dismissing the complaint on the basis that plaintiff has not been able to identify a defect on the premises that caused her to fall. (Doc. 19.) In opposition, plaintiffs maintain that defendants were negligent because they failed to furnish a handrail on the left side of the staircase. (Doc. 30 at 3–5.) Moreover, plaintiffs assert that there are issues of fact as to whether the defect was foreseeable. (*Id.* at 5–8.) In support of this contention, they rely on the depositions of both defendants, at which they admitted that the building installed handrails on the left side of the stairs after the accident. (*Id.*)

The motion is granted. A party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law on the undisputed facts. (*See Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985].) The movant must produce sufficient evidence to eliminate any issues of material fact. (*Id.*) If the moving party makes a prima facie showing of entitlement to judgment as a matter of law, the burden then shifts to the party opposing the motion to present evidentiary facts in admissible form which raise a genuine, triable issue of fact. (*See Mazurek v Metro. Museum of Art*, 27 AD3d 227, 228 [1st Dept 2006].) If, after viewing the facts in the light most favorable to the non-moving party, the court concludes that a genuine issue of material fact exists, then summary judgment will be denied. (*See Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]; *Rotuba Extruders, Inc. v Ceppos*, 46 NY2d 223, 231 [1978].)

Defendants established their prima facie entitlement to summary judgment by demonstrating that plaintiff did not identify any defect that caused her to fall. Instead, at her deposition, she testified: “When I was coming down, I lost my balance because I didn’t have

anything to hold on to. The stick to hold on to, it wasn't there." (Doc. 24 at 18.) However, a "claim of inadequacy of the handrail cannot avail plaintiff, inasmuch as her testimony was that she was not using the handrail at the time of the accident." (*Raghu v New York City Hous. Auth.*, 72 AD3d 480, 482 [1st Dept 2010].) Moreover, where the plaintiff chooses not to use the handrail provided, the alleged defect¹ in the existing handrail cannot be the proximate cause of the plaintiff's fall. (See *Ridolfi v Williams*, 49 AD3d 295, 295 [2d Dept 2008].)

For the foregoing reasons, it is hereby:

ORDERED that the motion by defendants Margis Realty LLC and Milbrook Properties Ltd. for summary judgment dismissing the complaint of plaintiffs Angeni Gil and Edwin Gil is granted; and it is further

ORDERED that, within 30 days of the uploading of this order to NYSCEF, defendants' counsel is directed to serve a copy of this order, with notice of entry, on plaintiffs' counsel and on the Clerk of the Court, who is directed to enter judgment accordingly; and it is further

¹ While a violation of a statute may lead to an inference of an alleged defect, neither party has cited a regulation requiring that the building at issue have railings on both sides of the stairs.

ORDERED that such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that the Clerk of the Court is to mark this action as disposed; and it is further

ORDERED that this constitutes the decision and order of this Court.

4/23/2019

DATE



KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE