

Marino v Marino

2019 NY Slip Op 34643(U)

August 9, 2019

Supreme Court, Westchester County

Docket Number: Index No. 69534/2016

Judge: Linda S. Jamieson

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This opinion is uncorrected and not selected for official publication.

NYSCEF DOC. NO. 43

To commence the statutory time period for appeals as of right (RECEIVED NYSCEF) 08/14/2019
copy of this order, with notice of entry, upon all parties.

Disp ____ Dec x Seq. No. 1 Type SJ

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

PRESENT: HON. LINDA S. JAMIESON

-----X

AMY MARINO,
Plaintiff,

-against-

Index No. 69534/2016

DECISION AND ORDER

CHARLES MARINO and ANNA MARINO,

Defendants.
-----X

The following papers numbered 1 to 3 were read on this motion:

<u>Paper</u>	<u>Number</u>
Notice of Motion, Affirmation, Exhibits and Memorandum of Law	1
Affirmation and Exhibits in Opposition	2
Reply Affirmation	3

Plaintiff brings her motion seeking summary judgment on liability, and an inquest on damages in this slip-and-fall action.

None of the facts are in dispute. Plaintiff was visiting defendants, her parents, in their newly-purchased Florida home at the time of the accident. At his deposition, Mr. Marino testified that the tiles on the floor of the shower of the master bath were very slippery. They had purchased new non-slip tiles for the shower floor, but had not yet installed them at the time of plaintiff's visit. Defendants also contemplated installing

grab bars, but had not yet done so. They also purchased a bath mat for the shower floor. Defendants conceded in their testimony that the mat did not cover the entire floor. Defendants also conceded that the suction cups on the bath mat, which were intended to attach the bath mat to the floor, were not fully engaged. Defendants further conceded that the shower floor was hazardous.

Nonetheless, defendants allowed plaintiff to shower in their bathroom on the day of the accident, despite there being a second bathroom in the premises. Plaintiff stepped into the shower onto the bath mat. The bath mat slid, and plaintiff was injured. This action followed.

It is well-settled that to prevail on this motion, plaintiff must show that "the defendant created the condition which caused the accident, or that the defendant had actual or constructive notice of the condition." *Hernandez v. Conway Stores, Inc.*, 143 A.D.3d 943, 944, 40 N.Y.S.3d 464, 465 (2d Dept. 2016). This is because "[t]he owner of property has a duty to maintain his or her property in a reasonably safe condition in view of all the circumstances, including the likelihood of injury to others, the seriousness of the injury, and the burden of avoiding the risk." *Barron v. E. Athletic, Inc.*, 150 A.D.3d 654, 655, 53 N.Y.S.3d 689, 690 (2d Dept. 2017).

In this case, plaintiff has proven that defendants were well aware of the hazards of showering in their bathroom. They knew that the floor was slippery; they had made plans to improve the safety of the floor, but had not yet done so. Instead, they put down a bath mat which actually contributed to plaintiff's accident. Plaintiff has thus demonstrated both that there was a hazardous condition in the shower, and that defendants knew it.

In response to this prima facie showing, all that defendants state is that the question of whether or not they made reasonable efforts to mitigate the slippery condition in the shower is a question of fact for the jury to decide. The Court disagrees. Defendants conceded that the shower was slippery and that the efforts that they undertook were inadequate. Mr. Marino testified at his deposition that the suction cups on the bath mat were not fully engaged, and that this was a potential safety hazard. There are no questions of fact, and defendants have failed to rebut plaintiff's prima facie showing as a matter of law.

The motion is granted. The parties are directed to appear for a Settlement Conference in the Settlement Conference Part,

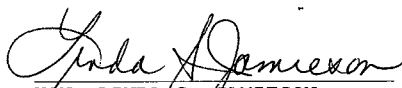
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Courtroom 1600, on September 24, 2019 at 9:15 a.m.

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York
August 9, 2019



HON. LINDA S. JAMIESON
Justice of the Supreme Court

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