McLeod v Board of Mgrs. of Hampton Ct. Condominium
2020 NY Slip Op 30465(U)
February 20, 2020
Supreme Court, New York County
Docket Number: 153600/2017
Judge: Kathryn E. Freed

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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DESIREE SEQUOIA MCLEOD,

Plaintiff,

- v -

BOARD OF MANAGERS OF HAMPTON COURT CONDOMINIUM and GLENWOOD MANAGEMENT CORP.,

Defendants.

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INDEX NO. 153600/2017

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38

were read on this motion to/for JUDGMENT - SUMMARY.

In this personal injury action commenced by plaintiff Desiree Sequoia McLeod, defendants Board of Managers of the Hampton Court Condominium ("the Board") and Glenwood Management Corp. ("Glenwood") move, pursuant to CPLR 3212, for summary judgment dismissing the complaint. Plaintiff opposes the motion. After a review of the motion papers and the relevant statutes and case law, the motion is decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND:

Plaintiff was allegedly injured on January 12, 2016 when she tripped and fell due to a "loose, damaged, raised, overlapping, dirty, and defective" mat on the floor of the lobby at 345 East 102nd Street, New York, New York. Doc. 1 at par. 21; Doc. 29, at pars. 3-5. The premises were allegedly owned by the Board and managed by Glenwood. Docs. 1, 10, 13, 28. Plaintiff

claims that the allegedly dangerous condition was created by defendants or, alternatively, that defendants had actual and/or constructive notice of the same.

At her deposition, plaintiff testified that, on January 12, 2016 at approximately 3:30-4:00 p.m., she tripped and fell after she entered the lobby of 345 East 102nd Street in Manhattan, in which building she planned to visit a Social Security office on the 4th floor. Doc. 31 at 20, 34-35, 42. The office, which she had visited "numerous" times, closed at 4:00 or 4:30 p.m. Doc. 31 at 37. After entering the building, plaintiff, who was wearing rubber soled Ugg boots, walked at a "medium" speed towards the elevator and tripped when her "foot got caught underneath the rug". Doc. 31 at 31-32; 42-43.[1] She claimed that she fell because there was an "opening" between the two mats in the lobby which, she testified, were "supposed to be overlapped . . . [so] [y]ou can't fall." Doc. 31 at 44-45.[2] She noticed the space between the mats when she entered the building. Doc. 31 at 45. Although she had seen the mats during prior visits to the building, she did not know whether the rugs were separated on those prior occasions because she "didn't pay attention to that." Doc. 31 at 45-46. She neither had any trouble traversing the lobby on those prior occasions, nor knew of anyone who did. Doc. 31 at 45-46. Additionally, after her fall, she did not notice anything wrong with the mats other than the fact that they were separated. Doc. 31 at 46.

Christopher Romano, superintendent for East 102nd Street Realty, appeared for deposition on behalf of that entity. Doc. 32 at 7. He explained that 345 East 102nd Street and 333 East 102nd Street were part of the same complex, known as "Hampton Court," and that the 345 address and the 333 address were the commercial and residential portions of the premises, respectively. Doc.

[1] When plaintiff was shown a surveillance videotape of her accident and was asked whether she was moving "faster than walking", she responded "maybe a little". Doc. 30; Doc. 31 at 57.
[2] Although plaintiff referred to "mats" and "rugs" interchangeably, this Court will use the term "mats" for the sake of simplicity.

32 at 8. He believed that the Board owned the complex and that Glenwood managed it. Doc. 32 at 8-9.

As of the date of the incident, there was a carpet immediately after one entered the first door to the building and there were two "runners" at the second door. Doc. 32 at 11.[3] The first carpet was permanent and the runners were removeable. Doc. 32 at 14-15. The mats were usually put down in September and remained throughout the winter. Doc. 32 at 16. The first mat was approximately 3 feet by 10 feet and the second approximately 3 feet by 8 feet. Each had rubber edges approximately 1-2 inches. Doc. 32 at 20.

As of January 2016, Romano walked through the lobby of 345 East 102nd at least four, and sometimes as much as twenty, times per day. Doc. 32 at 24-25. His job duties included making sure that the mats were flat on the floor of the lobby. Doc. 32 at 27. Prior to the date of the incident, he was not aware of any problems with the mats, nobody ever tripped and fell on the mats, and he never saw the edges of the same curled up. Doc. 32 at 27-28, 36.

Classico Cleaning Company cleaned the lobby every day between 5 and 7 p.m. Doc. 32 at 15. Additionally, there was a security camera mounted in the lobby of 345 East 102nd Street. Doc. 32 at 13. Romano maintained that footage taken by the surveillance camera did not reveal "any issues" with the carpeting at the time of the incident. Doc. 32 at 36.

Defendants now move, pursuant to CPLR 3212, for summary judgment dismissing the complaint. In support of the motion, they argue that the surveillance video clearly shows that the mat on which plaintiff fell was in excellent condition; that plaintiff fell because she was running for the elevator; and that other individuals traversed the same area as plaintiff without incident minutes before her fall.

[3] Although Romano used the term "runners", he acknowledged that they were the same as mats. Doc. 32 at 26.

In opposition, plaintiff argues that the motion must be denied because a question of fact exists regarding whether the mats, which were not overlapping, were improperly placed in the lobby. Plaintiff further alleges that the surveillance video is not in admissible form and should be disregarded by the court. Additionally, plaintiff argues that, since defendants failed to establish when the area was last cleaned or inspected prior to the accident, they failed to establish the lack of actual and constructive notice as a matter of law.

In reply, defendants argue that the video was authenticated by plaintiff herself, who testified that her accident was portrayed by the footage. They further assert that the fact that the mats were not overlapping did not render them defective or dangerous.

LEGAL CONCLUSIONS:

It is well settled that 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 N.Y. Univ. Med. Ctr.*, 64 N.Y.2d 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; *Rotuba Extruders, Inc. v Ceppos*, 46 NY2d 223, 231 (1978).

> To subject a property owner to liability for a dangerous condition on its premises, a plaintiff must demonstrate that the owner created, or had actual or constructive notice of, the dangerous condition that precipitated the injury *(see Mercer v City of New York*, 88 NY2d 955, 956 [1996]; *Kelly v Berberich*, 36 AD3d 475, 476 [1st Dept 2007]). 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 dangerous condition (assuming that the condition existed), nor had actual or constructive notice of its existence (*see Manning v Americold Logistics*, LLC, 33 AD3d 427 [1st Dept 2006]).

Ceron v Yeshiva Univ., 126 AD3d 630, 631-632 (1st Dept 2015).

Plaintiff admits that she had never seen a dangerous condition in the lobby during her numerous prior visits to the building. Nor did she know of any complaints about, or injuries arising from, the condition of the lobby, which testimony was consistent with that of Romano. Romano added that, as superintendent, his job responsibilities included making sure that the mats were flat on the ground and that he walked in the lobby between four and twenty times per day. Indeed, the surveillance video which depicts the incident shows that the mat was flat on the ground. *See Gianotti v Hudson Val. Fed. Credit Union*, 133 AD3d 711, 712 (2d Dept 2015). The video also shows several other individuals traversing the mats and entering the elevator without incident. *See Fernandez v JP Morgan Chase Bank, NA,* 170 AD3d 445 (1st Dept 2019). Thus, defendants have established their prima facie entitlement to summary judgment by demonstrating that they did not create or have actual or constructive notice of any allegedly dangerous condition in that area.

In opposition, plaintiff fails to raise a triable issue of fact. Plaintiff's only testimony concerning an allegedly dangerous condition in the lobby was that she fell because there was an "opening" between the two mats which, she maintained, were "supposed to be overlapped . . . [so] [y]ou can't fall." Doc. 31 at 44-45. However, this utterly conclusory assertion, unsupported

by evidentiary facts, is insufficient to defeat a motion for summary judgment. *See Smith v Johnson Prods. Co.*, 95 AD2d 675, 676 (1st Dept 1983). Since there is no evidence that the mat on which plaintiff fell was defective, defendants need not present any evidence regarding exactly when it was last inspected prior to the accident. *See Vazquez v Genovese Drug Stores, Inc.*, 88 AD3d 467, 468 (1st Dept 2011) (citation omitted).

This Court rejects plaintiff's claim that it should not consider the surveillance video of the incident because it was not authenticated. Even where a videographer is not called as a witness, surveillance footage "can still be authenticated with testimony that the video 'truly and accurately represents what was before the camera.'" *Torres v Hickman*, 162 AD3d 821, 823 (2d Dept 2018) quoting *People v Byrnes*, 33 NY2d 343, 349 (1974). Lay or expert testimony may be used for this purpose. *See Read v Ellenville Nat'l Bank*, 20 AD3d 408, 409 (2d Dept 2005) (citation omitted). Here, since plaintiff admitted at her deposition that the video portrayed her falling (Doc. 31, at 55-58), this Court finds that the video was properly authenticated.[4]

Finally, although not raised by defendants, this Court notes that the complaint and bill of particulars are silent regarding the space between the mats as the reason for plaintiff's fall. Rather, as noted above, plaintiff claims that the mats were "loose, damaged, raised, overlapping, dirty, and defective." Since there is no evidence of any of these defects, the complaint must be dismissed on this ground as well.[5]

Therefore, in light of the foregoing, it is hereby:

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[4] As noted above, the parties differ as to the speed at which plaintiff was moving when she fell. Defendants argue that plaintiff was running, whereas plaintiff testified that she may have been moving a little faster than walking. After viewing the video, this Court determines that, although plaintiff appears to have been walking quickly, she was not running, and the video does not allow this Court to make any determination of liability as a matter of law based on the pace at which she was moving.

[5] Indeed, as noted previously, plaintiff claims that she fell because the mats did *not* overlap.

ORDERED that the motion by defendants Board of Managers of the Hampton Court Condominium and Glenwood Management Corp. for summary judgment dismissing the complaint pursuant to CPLR 3212 is granted; and it is further

ORDERED that the Clerk of the Court is to enter judgment accordingly; and it is further

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

2/20/2020
DATE

KATHRYN E. FREED, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
	X	GRANTED		DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE