Young-Borra v New York & Presbyt. Hosp.
2020 NY Slip Op 30619(U)
February 28, 2020
Supreme Court, New York County
Docket Number: 162626/2015
Judge: Lucy Billings

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

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PAULA YOUNG-BORRA, Index No. 162626/2015

Plaintiff

- against - DECISION AND ORDER

NEW YORK AND PRESBYTERIAN HOSPITAL,

Defendant

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LUCY BILLINGS, J.S.C.:

Plaintiff sues for personal injuries she sustained May 21, 2015, at 1:20 p.m., from slipping and falling on water on the floor of defendant hospital's ambulatory recovery unit (ARU), where short term patients, including her son on that day, recovered from surgical procedures. Six nurses, five patient care assistants, and a housekeeper were assigned to the unit. There was a nurses' station at one end of the room near where plaintiff fell.

I. THE DEPOSITION TESTIMONY

The deposition testimony by nurses and patient care assistants established that they all were responsible for monitoring the unit for spills on the floor as well as other conditions that needed cleaning. No witnesses testified,

however, regarding what they looked for or observed in the area of plaintiff's fall during the hours leading up to her fall May 21, 2015, except the supervising nurse Mitchell-Keane. She testified that she passed that area approximately 20-30 minutes before plaintiff's fall and observed nothing on the floor, but never indicated that she was even looking at the floor. She and patient care assistant Caprietta then remained in the nurses' station in view of the floor where plaintiff fell up until she fell, but neither Mitchell-Keane nor Caprietta looked in that direction until plaintiff fell. Mitchell-Keane stood facing he wall. Caprietta was at his computer taking a class online. Mitchell-Keane admitted that during those 20-30 minutes leading up to plaintiff's fall, as well as previously, other hospital employees were walking through the area of her fall, and one or more of them likely was carrying water or juice to patients or transporting liquids for other purposes.

The housekeeper Fernando testified at his deposition that he did not conduct inspections, but was primarily responsible for circulating throughout the floor where the ARU was located, cleaning up any spill or other condition that needed cleaning, and responding when other staff notified him of such a condition. He interrupted his duties for lunch, however, at 1:00 p.m. each

day, 20 minutes before plaintiff's fall.

Plaintiff at her deposition estimated that the accumulation of water on which she slipped was the size of a letter sized sheet of paper. Mitchell-Keane confirmed that there was water on the floor when and where plaintiff fell, but estimated the size of the accumulation as two inches by two inches. Caprietta at his deposition also confirmed that there were "drops of water" on the floor, which he cleaned up with a towel. Aff. of David Henry Sculnick E. E, at 19. Of course when plaintiff fell on the wet floor, her clothing may have absorbed part of the water accumulation.

II. DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Upon defendant's motion for summary judgment now before the court, C.P.L.R. § 3212(b), defendant bears the burden to establish that defendant neither created the acknowledged wet condition on the floor, nor received actual or constructive notice of the condition sufficiently before plaintiff's fall to have cleaned up the water or to have erected a warning against stepping on the water. Parietti v. Wal-Mart Stores, Inc., 29 N.Y.3d 1136, 1137 (2017); Socorro v. New York Presbyt. Weill Cornell Med. Ctr., 160 A.D.3d 544, 544 (1st Dep't 2018); Graham v. YMCA of Greater N.Y., 137 A.D.3d 546, 547 (1st Dep't 2016);

Navarro v. H. Heiden, LLC, 115 A.D.3d 564, 564 (1st Dep't 2014). Defendant has utterly failed to establish that none of its employees spilled water or a similar wet substance on the floor. Tucker v. New York City Hous. Auth., 127 A.D.3d 619, 620 (1st Dep't 2015); Williams v. Esor Realty Co., 117 A.D.3d 480, 481 (1st Dep't 2014); Velez v. New York City Hous. Auth., 91 A.D.3d 422, 422 (1st Dep't 2012); Frees v. Frank & Walter Eberhart L.P. No. 1, 71 A.D.3d 491, 492 (1st Dep't 2010). See Socorro v. New York Presbyt. Weill Cornell Med. Ctr., 160 A.D.3d at 544. Nor have any employees or other witnesses testified that they inspected or cleaned the area where plaintiff fell at any time May 21, 2015, up until she fell. Pereira v. New Sch., 148 A.D.3d 410, 412-13 (1st Dep't 2017); Graham v. YMCA of Greater N.Y., 137 A.D.3d at 547; Pineda v. 1741 Hone Realty Corp., 135 A.D.3d 567, 567 (1st Dep't 2016); Velez v. City of New York, 134 A.D.3d 447, 447 (1st Dep't 2015). The employees testified regarding their usual monitoring and cleaning procedures, but none of the witnesses indicated that they carried out those procedures May 21, 2015, let alone when on that day. Hill v. Manhattan N. Mgt., 164 A.D.3d 1187, 1187 (1st Dep't 2018); Socorro v. New York Presbyt. Weill Cornell Med. Ctr., 160 A.D.3d at 544; Sada v. August Wilson Theater, 140 A.D.3d 574, 574 (1st Dep't 2016);

Dylan P. v. Webster Place Assoc., L.P., 132 A.D.3d 537, 538 (1st Dep't 2015). Defendant thus fails to establish that the water had not remained on the floor for hours before plaintiff's fall.

Surely had anyone noticed water on the floor, moreover, it could have been cleaned up immediately without the need for any special cleaning equipment. Hill v. Manhattan N. Mgt., 164 A.D.3d at 1188; Sada v. August Wilson Theater, 140 A.D.3d at 574; Jackson v. Whitson's Food Corp., 130 A.D.3d 461, 462 (1st Dep't 2015); Munoz v. Uptown Paradise T.P. LLC, 69 A.D.3d 401, 401-402 (1st Dep't 2010). See Parietti v. Wal-Mart Stores, Inc., 29 N.Y.3d at 1137 (2017); Morabito v. 11 Park Pl. LLC, 107 A.D.3d 472, 472-73 (1st Dep't 2013). Even had one of defendant's witnesses established that a patient or visitor spilled the water, so that its employees were not responsible for creating the condition, this observation would have given defendant notice of the condition.

III. CONCLUSION

At minimum, the evidence summarized above raises factual issues whether defendant's employees created the wet floor on which plaintiff slipped and fell and, even if defendant's employees did not create the condition, whether, given their constant presence in the area, they received constructive or

actual notice of the hazardous wet condition. Either case would demonstrate that defendant's employees were negligent in failing to clean up the condition. Derix v. Port Auth. of N.Y. & N.J., 162 A.D.3d 522, 522 (1st Dep't 2018); Conklin v. 500-512 Seventh Ave., LP, LLC, 159 A.D.3d 451, 451 (1st Dep't 2018); Pineda v. 1741 Hone Realty Corp., 135 A.D.3d at 567; Maggio v. 24 W. 57 APF, LLC, 134 A.D.3d 621, 626 (1st Dep't 2015). Therefore, for all the reasons explained above, the court denies defendant's motion for summary judgment dismissing plaintiff's claims. C.P.L.R. § 3212(b).

DATED: February 28, 2020

LUCY BILLINGS, J.S.C.

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