

Parris v Jewish Bd. of Family & Childrens Servs. Inc.
2020 NY Slip Op 31068(U)
April 27, 2020
Supreme Court, New York County
Docket Number: 156520/2017
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. 156520/2017

MARJARIE PARRIS,

Plaintiff,

MOTION SEQ. NO. 001

- v -

JEWISH BOARD OF FAMILY AND CHILDRENS SERVICES
INC.,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42

were read on this motion to/for

JUDGMENT - SUMMARY

In this personal injury action commenced by Marjarie Parris, defendant Jewish Board of Family and Childrens Services moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint. After consideration of the parties' contentions, as well as a review of the relevant statutes and case law, the motion is decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND:

This case arises from an incident on December 22, 2016 in which plaintiff tripped and fell on a door saddle located at the entrance to the bathroom in her apartment at 336 East 96th Street ("the building"), unit 4B ("the apartment"), in

Manhattan. Doc. 1; Doc. 24 at 37. The building was owned by defendant, a social services organization, and the units were rented to individuals it assisted. Doc. 25 at 13. Plaintiff claims that the accident occurred due to the negligence of defendant in maintaining the apartment and that defendant created and/or had actual or constructive notice of the condition of the door saddle, which was allegedly “broken, unlevelled, and defective.” Doc. 1; Docs. 21, 23. Plaintiff further alleges that defendant violated section 28-301.1 of the New York City Building Code (“the Code”) as well as Multiple Dwelling Law (“MDL”) sections 78 and 80. Doc. 23.

At her deposition, plaintiff testified that she was injured on December 22, 2016 when she tripped and fell over the door saddle at the entrance to her bathroom because it was “raised”. Doc. 24 at 61, 64. As of the date of the accident, she had lived in the apartment for 1½ years. Doc. 24 at 37. The door saddle was not altered in any way between the time she moved in and the date of the accident. Doc. 24 at 37-38, 55.

Plaintiff represented that, on 2 or 3 occasions during the 3 – 6 months preceding the accident, she made oral complaints to “Mr. Jeffrey” (presumably Jeffrey Clarke, whose deposition testimony is discussed below), an employee of defendant, regarding the door saddle. Doc. 24 at 48. Specifically, she told him that the saddle was raised, “wasn’t leveled right”, and was supposed to be flat.

Doc. 24 at 41-45. She never fell on the door saddle previously and did not know of anyone who did. Doc. 24 at 47.

At her deposition, plaintiff was shown several photographs taken after the accident and testified that they accurately represented what the door saddle looked like on the day she fell. Doc. 24 at 83-95.

Jeffrey Clarke, defendant's program director, testified at his deposition that the building was owned by defendant, a social services organization which assisted mentally ill and homeless individuals. Doc. 25 at 7-8, 11, 13. He searched defendant's repair records for the 2-year period preceding the accident and found no records regarding the door saddle. Doc. 25 at 36. A representative of defendant routinely walked through all of the apartments in the building once per month and generated a "walk through sheet." However, no walk through sheet generated in connection with plaintiff's apartment reflected any issue with the door saddle. Doc. 25 at 38-39. The sole complaint in any walk sheet through pertaining to the apartment was generated in November 2016 and related to plaintiff's refrigerator. Doc. 25 at 72-76. Clarke denied that plaintiff ever complained to him about the door saddle. Doc. 25 at 77. Additionally, he represented that, when he spoke to plaintiff following the accident, she never mentioned the door saddle as the cause of her fall. Doc. 25 at 80. Clarke estimated that the door saddle in plaintiff's apartment was less than 1" high. Doc. 25 at 33-34.

Defendant now moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint, submitting, inter alia, the pleadings; bill of particulars; an attorney affirmation; the deposition transcripts; and maintenance records in its possession.

Defendant also submits the affidavit of its expert, Stan Pitera, P.E., a licensed engineer, who states that he inspected the door saddle on June 18, 2019 and observed that it appeared the same as it was portrayed in the photographs identified by plaintiff at her deposition, and that the highest point of the door saddle was 3/8" above the bathroom floor, which was an acceptable height that did not present a tripping hazard. Doc. 29. Thus, contends defendant, the door saddle was not in a dangerous condition.

Additionally, Pitera represents that the 1968 Code, which is applicable to the building, contains no sections that mandate a specific height or bevel-slope of a door saddle except with respect to apartments designated for disabled persons. Although Pitera states that Reference Standard 4-6, Section 4.5.2 of the Code provides that apartments designated for physically disabled individuals require a beveling ratio of no greater than 1:2, the beveling ratio of the door saddle was approximately 1:3, and was thus in compliance with an even more stringent standard than that required in apartments for disabled individuals. Doc. 29.

Pitera further represents that defendant did not violate Code section 28-301.1 or sections 78 and 80 of the MDL. He concludes that it is his opinion, within a reasonable degree of engineering certainty, that the door saddle was not defective and was maintained in a safe manner. Doc. 29.

Defendant further contends that, even if the door saddle had been in a dangerous condition, it had no notice of the same.

In opposition, plaintiff argues that defendant failed to establish its prima facie entitlement to summary judgment. Specifically, she argues that defendant failed to establish that it did not create, or have actual or constructive notice of, the condition of the door frame. In furtherance of this contention, plaintiff points to missing monthly walk through sheets, which, she suggests, could have contained complaints by plaintiff about the door saddle. She further asserts that an issue of fact exists regarding whether the door saddle was defective since her expert engineer, Stanley Fein, P.E., submits an affidavit establishing that it presented a tripping hazard.

In reply, defendant reiterates its argument that it did not have notice of any defective condition related to the door saddle. It further maintains that Fein's opinions are without any basis and must be disregarded by this Court. Specifically, defendant argues that, although Fein claims that the tapering of the saddle on the bathroom (the side plaintiff allegedly tripped on) did not terminate at the ground,

but instead had a raised component above the floor, and that the tapering was required to terminate precisely at and against the floor, he cites no Code or statute setting forth such a requirement. Additionally, argues defendant, Fein does not provide any measurements, calculations, or other objective facts to support his conclusions. Further, asserts defendant, Fein's contention that the door saddle was required to have no vertical component whatsoever is not supported by any recognized standard. Nor does Fein identify any other actionable defect in the door saddle, such as a crack. Additionally, defendant urges that it did not violate section 28-301.1 of the Code or MDL sections 78 and 80.

Pitera also submits an affidavit in reply, in which he substantially reiterates his initial opinion. He also stresses that Fein failed to take any measurements which would support his contention that the door saddle was defective.

LEGAL CONCLUSIONS:

To prevail on a summary judgment motion, the movant must produce evidentiary proof in admissible form sufficient to warrant the direction of summary judgment in its favor. *See Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 (1986). If the moving party fails to make a prima facie showing of its entitlement to summary judgment, the motion must be denied, regardless of the sufficiency of the opposing papers. *See William J. Jenack Estate Appraisers and Auctioneers, Inc. v*

Rabizadeh, 22 NY3d 470, 475 (2013). If the movant establishes its prima facie entitlement to summary judgment, the burden shifts to the opposing party to submit proof in admissible form create a question of fact requiring a trial. *See Kosson v Algaze*, 84 NY2d 1019, 1020 (1995).

Here, defendant established its prima facie entitlement to summary judgment by submitting, inter alia, Pitera's affidavit demonstrating that the door saddle was not defective. He further states that there is no statute or regulation governing door saddles other than those used in apartments used by disabled persons, and that the construction of the door saddle in question surpassed that stringent standard.

Further, Pitera establishes that the alleged Code and statutory violations alleged do not warrant the imposition of liability herein. *Amaya v Denihan Ownership Co.*, 30 AD3d 327 (1st Dept 2006). Specifically, section 28-301.1 of the Code "imposes a general duty on owners to maintain their premises, and does not specifically address the alleged structural defect at issue." *Stubbs v. 350 E. Fordham Rd., LLC*, 117 AD3d 642, 643 (1st Dept 2014); *see also Ortiz v CEMD El. Corp.*, 123 AD3d 463 (1st Dept 2014). Additionally, Pitera establishes that plaintiff's injury was not caused by a violation of MDL section 78, which statute sets forth a general requirement that a landlord maintain his or her premises in safe condition. *See generally Leon v Mendonca*, 7 AD3d 345 (1st Dept 2004). Pitera also contends that MDL 80, which requires a landlord to keep his or her premises clean and

sanitary, is irrelevant herein. *See Amaya v Denihan Ownership Co.*, 30 AD3d 327 (1st Dept 2006).

In opposition, Fein fails to raise an issue of fact. Although he opines that the door saddle was defective, his contention is conclusory. As defendant contends, Fein's affidavit contains no measurements which support his opinion. Further, as Pitera notes, Fein does not cite any statute or Code section specifically applying to door saddles. *Bullock v Anthony Equities, Ltd.*, 12 AD3d 326 (1st Dept 2004). Thus, his opinion is without any basis in fact and lacks probative force. *See Viselli v Riverbay Corp.* 155 AD3d 439 (1st Dept 2017); *Ceron v Yeshiva Univ*, 126 AD3d 630 (1st Dept 2015).

Since defendant has established that no material issue of fact exists, the complaint must be dismissed. *See Castlepoint Ins. Co. v Southside Manhattan View LLC*, 179 AD3d 507 (1st Dept 2020). While this Court notes that an issue of fact does exist given the contradictory testimony by plaintiff and Clarke regarding whether defendant had notice of the alleged condition, this issue is not material since plaintiff has failed to establish the existence of a hazardous condition. *Alvarez v Prospect Hosp.*, 68 NY 320, at 326-327. In any event, defendant is not required to establish the absence of notice where, as here, it establishes another basis for dismissal. *See Hutchinson v Sheridan Hill House Corp.* 26 NY3d 66, 83 (2015) (citations omitted).

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

ORDERED that the motion by defendant Jewish Board of Family and Childrens Services seeking summary judgment dismissing the complaint pursuant to CPLR 3212 is granted, and the complaint is dismissed; and it is further

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

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

4/27/2020

DATE

KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE