Morgan v One NY Plaza Co. LLC
2020 NY Slip Op 33017(U)
September 14, 2020
Supreme Court, New York County
Docket Number: 157512/2016
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH**, *Justice* — **PART** **IAS MOTION 14**

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SIOBHAN MORGAN,

Plaintiff,

- v -

ONE NY PLAZA CO. LLC,BROOKFIELD OFFICE PROPERTIES U.S., ABM ONSITE SERVICES, INC.

Defendants.

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INDEX NO. 157512/2016

MOTION DATE ____________

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 45, 46, 47, 48, 49, 50, 51

were read on this motion to/for SUMMARY JUDGMENT.

Defendants' motion for summary judgment is granted.

Background

On October 2, 2015, at approximately 8:45 A.M., plaintiff was entering her office building at One New York Plaza. (NYSCEF Doc. No. 29). The building is owned by One New York Plaza Co. LLC and managed by Brookfield Office Properties U.S. ("Brookfield") (NYSCEF Doc. No. 33 at 8). The lobby and select portions of the rest of the building are cleaned and maintained by ABM Onsite Services Inc. ("ABM"). (NYSCEF Doc. No. 95). It was raining as plaintiff entered the lobby at the Whitehall Street entrance, and she and slipped and fell on water. (NYSCEF Doc. No. 30 at 15, 19-22). A security guard helped her up and she continued on her way to work (*id*. at 29 and 31). Within the hour, plaintiff left the office and took the train to see her chiropractor (*id.* at 33-34).

Defendants argue that they did not have notice of the wet condition, did not create the condition, and were not negligent (NYSCEF Doc. No 37). Defendants further argue that they had no duty to plaintiff and that they followed reasonable cleaning procedures on the day of the incident including providing "permanent" mats and "temporary" rain mats throughout the lobby, and that they inspected the lobby on a continuous basis during the rush hour period from 8:00AM to 9:30AM (*id*.).

In opposition, plaintiff argues that defendants cannot prove that the area where she fell was cleaned or maintained prior to the occurrence (NYSCEF Doc No. 41). Plaintiff argues that there is an issue of fact as to the "stationary" or "permanent" mats, because the mats are not affixed to the floor (*id*.) Plaintiff lastly argues that defendants owed a duty to plaintiff because they displaced the responsibilities of the owner of the building (*id*).

In reply, defendants argue that plaintiff raises factual disputes over immaterial issues and maintains that it did not have the requisite notice of the wet condition (NYSCEF Doc No. 47). They further maintain that a claim of negligence cannot be established as a matter of law, they followed a reasonable cleaning routine, and that they owed no duty to plaintiff (*id*).

Discussion

"The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material

issues of fact which require a trial of the action" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

Notice Requirement

For defendants to succeed on summary judgment, they must demonstrate that they took "reasonable precautions to prevent the tracked-in water from accumulating by placing mats on the lobby floor and mopping the floor throughout the day and had neither actual nor constructive notice of the particular wet condition that allegedly caused the accident." (*Amsel v New York Convention Ctr. Operating Corp.*. 60 AD3d 534, 535 [1st Dept 2009]). "The fact that it was raining and water was being tracked in does not constitute notice of a dangerous situation…" (*Garcia v Delgado Travel Agency Inc.*, 4 AD3d 204, 204 [1st Dept 2004]). Defendants are also "not required to provide a constant, ongoing remedy for an alleged slippery condition caused by moisture tracked indoors during a storm." (*O'Sullivan v 7-Eleven, Inc.*, 151 AD3d 658, 658 [1st Dept 2017]).

The First Department has recently ruled on similar matter where a plaintiff slipped and fell on water by an elevator bank in *DeCongelio v Metro Fund LLC.* (183 AD3d 449, 449 [1st Dept 2020]). In that matter, defendants submitted evidence that rain mats were in the lobby, the on-site manager inspected the lobby an hour before plaintiff fell and did not observe a wet condition, the plaintiff did not observe the wet condition, and there were porters assigned to inspect the lobby and mop up water from the floor (*id.*) The First Department found that plaintiff failed to raise an issue of fact as to whether the defendants had constructive notice since she "submitted no evidence of how long the condition had existed before she slipped" (*id.*) The First Department ultimately found that "…. Defendants made a prima facie showing that they took

reasonable measures to prevent a slippery condition from developing due to moisture tracked into their building on the snowy and rainy day of plaintiff's slip and fall in the lobby" (*id.*)

Here, this Court finds that defendants had neither actual nor constructive notice of the moisture on the part of the floor of the lobby where plaintiff allegedly fell. There is nothing to indicate that defendants had actual notice, in the form of complaints received, about any wetness on the lobby floor. There is also nothing to indicate that defendants had constructive notice of the wet condition in that area. As indicated above, the fact that it was raining is not enough to constitute notice of a dangerous condition. Plaintiff has not submitted any evidence of how long the condition had existed before she slipped and so has failed to raise an issue of fact on the notice issue.

This Court also finds that defendants' maintenance routine was reasonable. Mr. Nazim Lihari, a foreman employed by ABM, testified that there are stationary mats in front of the lobby entrances all year long and rain mats are laid out the night before any inclement weather. (NYSCEF Doc. No. 31 at 22). If inclement weather strikes in the middle of the day, most of the rain mats are then placed around the lobby. (*Id.* at 26). He also testified that the lobby is inspected every 15 to 20 minutes during rush hour – 8:00am to 9:30am – and any wetness found is immediately removed. (NYSCEF Doc. No. 32 ¶ 4). Plaintiff argues that there are no records of the maintenance sweeps through the lobby and therefore defendant has not met its burden. (NYSCEF Doc No. 41). This Court is unconvinced by plaintiff's argument and finds defendants took reasonable precautions to keep the floor of the lobby dry.

Location of the Mats

Plaintiff contends that "that the precise location that she circled and identified as her incident location was not covered by a mat at the time she fell" (NYSCEF Doc. No. 41) also fails

to raise an issue of fact because, as held by the First Department, "defendants [are] under no obligation to cover [an] entire floor with mats." (*Garcia*, 4 AD3d at 204).

"Stationary" Mats

Plaintiff further argues that there is an issue of fact as to the "stationary mats" in the lobby because those mats are not affixed to the floor and therefore are not "stationary." (NYSCEF Doc. No. 41.) However, plaintiff's argument is a matter of semantics. Mr. Lihari testified that the mats were "stationary" because they were there all year long, not because they were affixed to the floor (NYSCEF Doc. No. 31 at 94-97). When compared to the rain mats – which are brought out during inclement weather and then put away – this Court understands why rubber bottom mats that are 30-feet-long, weigh "over 100 pounds," require "at least three people" to drag away, and are only moved twice a year so the floor beneath them can be cleaned, would be called "stationary" (*id.* at 66, 94-95).

Summary

Underlying this entire situation is the fact that after plaintiff allegedly slipped and fell, she got right up and went to work. There is no evidence that an ambulance was called or plaintiff stayed down on the ground for an extended period of time. This point is crucial because plaintiff emphasizes that defendants did not have records of mopping the floor on the morning in question and defendants were only able to articulate their typical cleaning procedures.

But that is not a bar to summary judgment here because plaintiff has not raised an issue of fact. She did not produce sufficient evidence claiming that the procedures were substandard or were not followed. And the Court declines to impose a rule that a building must record every time they mop the lobby when it rains in case someone slips and falls (and later sues) but doesn't

make a scene so that building employees have a specific recollection of the incident or don't make an incident report so the employees will have a record and make an immediate inspection of the area. The Court is satisfied that the building had a reasonable plan in place to reduce the risk that a person would slip and fall in the lobby during a rainstorm.

Accordingly, it is hereby

ORDERED that the motion for summary judgment by defendants is granted, the case is dismissed and the Clerk is directed to enter judgment when practicable along with costs and disbursements after presentation of proper papers therefor.

9/14/2020			
DATE			ARLENE P. BLUTH, 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