

Wilson v Riverwalk Bar & Grill
2020 NY Slip Op 34109(U)
December 10, 2020
Supreme Court, New York County
Docket Number: 156316/2012
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

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LEASE WILSON,

Index No. 156316/2012

Plaintiff

- against -

DECISION AND ORDER

RIVERWALK BAR & GRILL and EAST 14TH
STREET OF BROOKLYN,

Defendants

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LUCY BILLINGS, J.S.C.:

I. BACKGROUND

Plaintiff sues to recover damages for personal injuries sustained September 25, 2009, when she slipped on mayonnaise and fell near interior steps in premises where defendant East 14th Street of Brooklyn operated a restaurant doing business as Riverwalk Bar & Grill. Defendants move for summary judgment dismissing the complaint. C.P.L.R. § 3212(b). For the reasons explained below, the court denies defendants' motion.

II. DEFENDANTS' MOTION

Defendants contend that they are not liable for plaintiff's injury because they did not create or receive actual or constructive notice of the condition that caused her to fall.

that they received no complaints about conditions in the area where plaintiff was injured and that no prior similar incidents occurred there. Velocci v. Stop and Shop, ___ A.D.3d ___, 2020 WL 6493963, at *3; Frederick v. New York City Hous. Auth., 172 A.D.3d 545, 545 (1st Dep't 2019); Perez v. River Park Bronx Apts., Inc., 168 A.D.3d 465, 465 (1st Dep't 2019); Graham v. YMCA of Greater N.Y., 137 A.D.3d at 547. Although Jonathan Hoo attests that he received no complaints about any defective or dangerous condition or tripping or slipping hazard on the floor or stairs, because he was not at the restaurant on the day plaintiff was injured, his affidavit fails to demonstrate that defendants lacked actual notice. Savio v. St. Raymond Cemetery, 160 A.D.3d 602, 603 (1st Dep't 2018); Clarkin v. In Line Rest. Corp., 148 A.D.3d 559, 560 (1st Dep't 2017).

Defendants may demonstrate a lack of constructive notice by evidence of their maintenance activities showing that the dangerous condition was absent when the area was last inspected. Velocci v. Stop and Shop, ___ A.D.3d ___, 2020 WL 6493963, at *3; Frederick v. New York City Hous. Auth., 172 A.D.3d at 545. As defendants present no evidence of when the area where plaintiff fell last was inspected, they fail to establish lack of constructive notice. White v. MP 40 Realty Mgt. LLC, 187 A.D.3d

561, 562 (1st Dep't 2020); Reyes v. Latin Am. Pentecostal Church of God Inc., 181 A.D.3d 459, 459 (1st Dep't 2020); Schiavone v. Seaman Arms, LLC, 178 A.D.3d 529, 529 (1st Dep't 2019); Perez v. River Park Bronx Apts., Inc., 168 A.D.3d at 466. Jonathan Hoo's testimony regarding Riverside Bar & Grill's procedure for employees to remedy any hazardous or dirty condition immediately does not establish when the area last was inspected. Savio v. St. Raymond Cemetery, 160 A.D.3d at 603; Clarkin v. In Line Rest. Corp., 148 A.D.3d at 560.

Since defendants fail to show that they lacked actual or constructive notice, the burden does not shift to plaintiff to show how long the mayonnaise was on the floor. White v. MP 40 Realty Mgt. LLC, 187 A.D.3d at 562; Carela v. New York City Tr. Auth., 175 A.D.3d 419, 419 (1st Dep't 2019); Savio v. St. Raymond Cemetery, 160 A.D.3d at 603; Clarkin v. In Line Rest. Corp., 148 A.D.3d at 560. In the face of plaintiff's testimony that plaintiff slipped on mayonnaise, Marcano's testimony that Marcano did not observe any dirt or liquid spills on the steps or floor after plaintiff fell only raises credibility issues. Alvarado v. Grocery, 183 A.D.3d 447, 447 (1st Dep't 2020); Evans v. Acosta, 169 A.D.3d 438, 439 (1st Dep't 2019); Capers v. New York City Hous. Auth., 161 A.D.3d 629, 630 (1st Dep't 2018); Haibi v. 790

Riverside Dr. Owners, Inc., 156 A.D.3d 144, 149 (1st Dep't 2017).

III. CONCLUSION

Because defendants fail to meet their initial burden to demonstrate entitlement to summary judgment, the court denies defendants' motion for summary judgment dismissing the complaint. C.P.L.R. § 3212(b); Blanco v. 866 Morris Park Realty Mgt., LLC, 167 A.D.3d 475, 475 (1st Dep't 2018); Savio v. St. Raymond Cemetery, 160 A.D.3d at 603; Graham v. YMCA of Greater N.Y., 137 A.D.3d at 547. This decision constitutes the court's order.

DATED: December 10, 2020

Lucy Billings

LUCY BILLINGS, J.S.C.

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