Whalen v Sammi
2020 NY Slip Op 35068(U)
January 21, 2020
Supreme Court, Westchester County
Docket Number: Index No. 58852/2018
Judge: Linda S. Jamieson
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To commence the statutory time period for appeals as of right (CPLR § 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

Disp ____ Dec __x___ Seq. No.__6_____ Type __SJ___

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

PRESENT: HON. LINDA S. JAMIESON

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LINDSEY WHALEN,

Plaintiff, Index No. 58852/2018

-against-

DECISION AND ORDER

PARAMJEET SAMMI and ROSENA SAMMI,

Defendants.

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The following papers numbered 1 to 3 were read on this motion:

Paper	Number
Notice of Motion, Affidavit, Affirmation, Exhibits and Memorandum of Law	1
Affirmation and Exhibit in Opposition	2
Reply Affirmation	3

Defendants bring this motion for summary judgment in this case arising from a trip-and-fall on a four-step staircase in their home. Plaintiff was defendants' babysitter at the time of the accident. She had babysat for defendants' children five to ten times prior to the accident.

At the time of the accident, defendants had resided in the home for many years. Plaintiff contends, without contradiction, that defendants renovated many areas of the house, but never touched the stairs on which plaintiff injured herself. These

stairs led to the mudroom. At the time of the accident, defendants had returned from an evening out, and knocked on the door. Plaintiff, not realizing who was at the door, hurried towards the door to see who was there. She tripped on the mudroom steps and injured herself. Plaintiff testified at her deposition that she reached for a handrail to stop her fall, but that there was none. There is no dispute that there appears never to have been a handrail in this area.

"A defendant who moves for summary judgment in a slip-and-fall case has the initial burden of making a prima facie case that it neither created the hazardous condition nor had actual or constructive notice of its existence for a sufficient length of time to discover and remedy it. To constitute constructive notice, a defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit defendant's employees to discover and remedy it." *Wachovsky v. City of New York*, 122 A.D.3d 724, 725, 997 N.Y.S.2d 145, 146 (2d Dept. 2014).

Defendants dispute that there is anything wrong with the steps. Moreover, they state that even if there were something wrong with the steps, they had no idea that that was the case.[1] The Court disagrees with defendants, for two reasons. First,

[1] The parties argue over whether or not defendants' home inspector told them about the steps when he inspected the home prior to their purchase thereof. The Court finds that this is an irrelevant "side show."

defendants had lived in the home for many years at the time of plaintiff's accident. They could not have been unaware of any defects in the steps, if any defects existed. *See Williams v. Long Island Rail Rd.*, 29 A.D.3d 900, 901, 816 N.Y.S.2d 153 (2d Dept. 2006) ("based upon, inter alia, the worn condition of the staircase, as depicted in the photographs submitted, the plaintiff raised a triable issue of fact as to whether the LIRR had constructive notice of the alleged dangerous condition.").

Second, defendants' own expert details the flaws with the steps. He observed in his report that each of the treads sloped downwards, all at different levels. He also measured each of the risers, finding that they ranged in size, with the bottom one being only 5.5 inches high, the middle two being 6.875 inches high, and the top one being the highest, at 7.375 inches high. The expert also explained that the top tread had areas of carpet compression. The expert concluded that none of these flaws mattered, however, because there was no building code that applied to the premises, based on the age of the home; a handrail was not required, because the stairs did not have more than four risers; and the stairs were not "unsafe" as defined by the Property Maintenance Code of New York because the stairs were structurally sound and properly anchored.

Defendants' expert does not analyze the significance of the downward slope of the treads or the unevenness of the risers.

Defendants essentially instead assert that any defect that may have existed was trivial. *See Zelichenko v. 301 Oriental Blvd., LLC*, 117 A.D.3d 1038, 986 N.Y.S.2d 615, 616 (2d Dept. 2014) (summary judgment dismissing action appropriate in case involving a "trivial defect[], not constituting a trap or nuisance, over which a pedestrian might merely stumble, stub his or her toes, or trip.").

Naturally, plaintiff's expert disagrees entirely with defendants' expert's conclusions. Although he also measures the unevenness of the risers, the downward slope of the treads, and the depression in the top step,[2] he asserts that these defects are quite significant. This expert states that it is his "professional opinion with a reasonable degree of certainty as a certified safety professional that the first (1st) riser and second (2nd) riser are non-uniform, which provides for a tripping/slipping hazard; [and] makes step recovery more difficult . . . ." This expert also argues that the sloping of the treads is dangerous, not being "level and true," and "will cause slippage, loss of balance, and instability on the stairs . . . and is dangerous *regardless of any Building Code violation*."

Plaintiff's expert's report raises sufficient issues of fact about the condition of the stairs and the implications of the

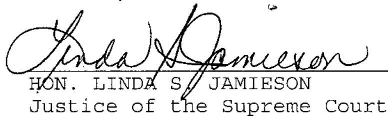
[2]Plaintiff's expert also contends, contrary to defendants' expert, that the carpet on the steps was **not** tightly attached, "moving approximately one quarter of an inch (1/4")" from the edge.

defects that the Court must deny defendants' motion for summary judgment. *See Del Marte v. Leka Realty LLC*, 156 A.D.3d 453, 454, 67 N.Y.S.3d 16, 17 (1st Dept. 2017).

The parties are directed to appear for a Settlement Conference in the Settlement Conference Part on March 17, 2020 at 9:15 a.m.

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York
January 21, 2020



HON. LINDA S. JAMIESON
Justice of the Supreme Court

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