SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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RANDY LAWRENCE,

Plaintiff,

-against-

HIGHGATE HOTELS, LP, STABILIS CAPITAL MANAGEMENT, LP and MP CONSTRUCTION.D. INC.,

Defendants.

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IAS Part 8
Index No. 616037/2018
Motion Seq. No. 001

DECISION AND ORDER

LEONARD D. STEINMAN, J.

The following submissions, in addition to any memoranda of law, were reviewed in preparing this Decision and Order:

Defendant's Notice of Motion, Affirmation & Exhibits.....1
Plaintiff/Counterclaim Defendant's Notice of Cross-Motion, Affirmation & Exhibits.....2
Defendant/Counterclaim Plaintiff's Affirmation in Opposition.....3
Plaintiff/Counterclaim Defendant's Affirmation in Opposition & Reply Affirmation.....4

This is an action for personal injuries allegedly suffered by plaintiff in July 2018 when the bathroom sink in his hotel room disconnected from the countertop causing him to fall. Defendants Highgate Hotels, LP and SF IV LBH, LLC s/h/a Stablis Capital Management, LP (collectively, Highgate) were, respectively, the manager and owner of the Allegria Hotel in Long Beach, New York, the location of the accident. Highgate now moves for summary judgment, arguing that it did not cause and had no notice of the alleged defective condition leading to plaintiff's injuries. For the reasons set forth below, the motion is denied.

[* 1]

FACTUAL BACKGROUND

There are 156 rooms in the Allegria Hotel. Approximately two months prior to plaintiff's accident, construction work was performed to replace bathroom sink countertops in eleven hotel rooms, including the plaintiff's room. The construction was performed by defendant MP Construction.D. Inc. The construction included disconnecting and re-installing the bathroom sinks.

Plaintiff testified that the sink dislodged when he put his weight upon it with his left hand while brushing his teeth. It was the first time he had used that sink. Plaintiff was caused to fall onto his back but was able to push the sink back onto the counter before it completely detached.

Highgate has submitted with its motion the plaintiff's expert's report which concludes that the sink was improperly installed. This conclusion is contested by Highgate's expert.

LEGAL ANALYSIS

The drastic remedy of summary judgment should be granted only if there are no material issues of fact. *Andre v. Pomeroy,* 35 N.Y.2d 361, 364 (1974). It is the movant who has the burden to establish his/her entitlement to summary judgment as a matter of law. *Ferrante v. American Lung Assn.,* 90 N.Y.2d 623 (1997). "CPLR § 3212(b) requires the proponent of a motion for summary judgment to demonstrate the absence of genuine issues of material facts on every relevant issue raised by the pleadings, including any affirmative defenses." *Stone v. Continental Ins. Co.,* 234 A.D.2d 282, 284 (2d Dept. 1996). Where the movant fails to meet its initial burden as the movant, the motion for summary judgment should be denied. *U.S Bank N.A. v. Weinman,* 123 A.D.3d 1108 (2d Dept. 2014).

Once a movant has shown a *prima facie* right to summary judgment, the burden shifts to the opposing party to show that a factual dispute exists requiring a trial, and such facts presented by the opposing party must be presented by evidentiary proof in admissible form. *Zuckerman v. New York,* 49 N.Y.2d 557 (1980); *Friends of Animals, Inc. v. Associated Fur Mfrs., Inc.*, 46 N.Y.2d 1065 (1979).

Highgate argues that although there may be issues of fact as to whether the sink at issue was negligently installed, it neither performed the construction work nor had actual or constructive notice of any defect.

An owner of property has a nondelegable duty to maintain its premises in a reasonably safe condition. *Richardson v. Brooklake Assoc. L.P.*, 131 A.D.3d 1153 (2d Dept. 2015); *Richardson v. David Schwager Assoc., Inc.*, 249 A.D.2d 531 (2d Dept. 1998). Therefore, "a defendant moving for summary judgment dismissing a premises liability cause of action has the initial burden of making a prima facie showing that it neither created the defective condition nor had actual or constructive notice of its existence." *Richardson v. Brooklake Assoc. L.P.*, 131 A.D.3d at 1154; *Kruger v. Donzelli Realty Corp.*, 111 A.D.3d 897 (2d Dept. 2013).

There is no evidence that Highgate had actual or constructive notice of the condition that caused plaintiff's alleged injury. Highgate's liability is premised on whether it can be held liable for the construction work performed by MP Construction.D. or the contractor who originally installed the sink, cabinet and countertop. Pursuant to New York law, a premises owner is vicariously liable for the negligence of its contractors where the completed work performed created a dangerous condition. *Cox v. 118 East 60th Owners, Inc.*, 189 A.D.3d 1169 (2d Dept. 2020); *Thomassen v. J & K Diner, Inc.*, 152 A.D.2d 421 (2d Dept. 1989). Highgate has failed to establish its *prima facie* entitlement to summary judgment because it has not demonstrated that MP Construction.D. did not cause the alleged dangerous condition. *See Cintron v. State*, 188 A.D.3d 787 (2d Dept. 2020). As a result, its motion for summary judgment is denied.

Any relief requested not specifically addressed herein is denied.

This constitutes the Decision and Order of this court.

Dated: March 22, 2021
Mineola, New York

ENTERED
Mar 25 2021
NASSAU COUNTY
COUNTY CLERK'S OFFICE

ENTER:

LEONARD D. STEINMAN, J.S.C.