Totten v Hampton Inn Long Is./Islandia
2021 NY Slip Op 33601(U)
October 8, 2021
Supreme Court, Dutchess County
Docket Number: Index No. 2019-53430
Judge: Christi J. Acker
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To commence the 30-day 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.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

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ERIC TOTTEN,

Plaintiffs,

-against-

HAMPTON INN LONG ISLAND/ISLANDIA,

Defendant.

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DECISION AND ORDER

Index No.: 2019-53430

ACKER, J.S.C.

The following papers numbered 1-20 were considered in connection with the motion by Defendant Hampton Inn Islandia s/h/a Hampton Inn Long Island/Islandia (hereinafter "Defendant" or "Hampton Inn") for an Order pursuant to CPLR 3212 granting it summary judgment and dismissing all of Plaintiff Eric Totten's (hereinafter "Plaintiff") claims in their entirety:

Notice of Motion-Affirmation of Angelique Sabia-Candero, Esq.-Exhibits A-M-Memorandum of Law in Support..... 1-16
Affirmation in Opposition of Michael A. Mainetti, Esq.-Counter Statement of Material Facts-Exhibit 1 17-19
Reply Affirmation of Angelique Sabia-Candero, Esq. 20

This action was commenced by Plaintiff on or about August 26, 2019. Plaintiff was a guest at the Hampton Inn in Islandia, New York on April 4, 2019 and it is alleged that he slipped on water located on the floor of his guest room at approximately 7:30 pm.

Defendant now moves for summary judgment, arguing that it is entitled to summary judgment dismissing Plaintiff's Complaint as it did not create the condition on which Plaintiff fell, nor did it have actual or constructive notice thereof. In support of its motion, Defendant

submits the Pleadings, the deposition transcripts of Plaintiff and the following witnesses who testified on Defendant's behalf: Dorothy L. Earle Browning, Gilda Motta, Roger Molina, Josefina Jurado Portillo and Shane Robertson. Plaintiff opposes the motion and submits an attorney affirmation, a counterstatement of material facts and photographs of the condition of Room 128 immediately after Plaintiff's fall.

The movant for summary judgment "bears the initial burden of demonstrating its prima facie entitlement to the requested relief" *Roos v. King Constr.*, 116 NYS3d 344, 346 [2nd Dept. 2020], *citing Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853. Failure to make the initial showing "requires denial of the motion, regardless of the sufficiency of the opposition papers." *Junger v. John V. Dinan Assoc., Inc.*, 164 AD3d 1428, 1429 [2nd Dept. 2018], *citing Winegrad, supra*. Only when the movant has met its *prima facie* entitlement "does the burden then shift to the party opposing summary judgment to tender evidence, in a form admissible at trial, sufficient to raise a triable issue of fact." *Roos, supra, citing Alvarez v. Prospect Hosp.*, 68 NY2d 320, 324 [1986].

In opposition, "the nonmoving party need only rebut the *prima facie* showing made by the moving party so as to demonstrate the existence of a triable issue of fact." *Poon v. Nisanov*, 162 AD3d 804, 806 [2d Dept. 2018], *citing Alvarez, supra*. "The function of a court on a motion for summary judgment is not to resolve issues of fact or determine matters of credibility, but merely to determine whether such issues exist." *114 Woodbury Realty, LLC v. 10 Bethpage Rd., LLC*, 178 AD3d 757, 759 [2d Dept. 2019]. Summary judgment should be granted only where there are no material and triable issues of fact and the papers shall be scrutinized in the light most favorable to the party opposing the motion. *Id.* Such relief is a drastic remedy that

deprives a litigant of his or her day in court that should only be employed when there is no doubt as to the absence of triable issues. *Castlepoint Ins. Co. v. Command Sec. Corp.*, 144 AD3d 731, 733 [2d Dept. 2016].

Facts

The following facts are not materially in dispute.[1] Plaintiff checked into the Hampton Inn on April 3, 2019 and was assigned Room 128. That evening, he used the toilet without issue and did not observe any water leaking in the bathroom. The next morning, Plaintiff showered and used the toilet, without issue. When Plaintiff left for work at 6:30 am, there was no water on the floor of the bathroom.

Plaintiff returned to the hotel on April 4, 2019 at approximately 7:35 pm and went directly to his guest room. He opened the door, took two steps into the room and slipped and fell on clear liquid. He did not observe any liquid on the floor until after he fell, which is when he noticed water leaking from the toilet valve located on the water fill hose. He reported the incident to the employees working at the front desk and the front desk supervisor instructed an employee to inspect the guest room. Plaintiff testified that he was present when the employee inspected the bathroom, at which time there was still water leaking from the toilet hose. According to Plaintiff, that employee turned the knob on the toilet valve and that stopped the water from dripping.

The front desk supervisor, Shane Robertson, testified that he went to Room 128 after Plaintiff reported the incident. He noted that the entryway was damp and there was water on the

[1] Defendant submits a Statement of Material Facts in compliance with Uniform Court Rule §202.8-g(a) and Plaintiff submits a counter statement in response thereto. The following facts have either been admitted or were not specifically controverted by the opposing party.

floor of the bathroom. He testified that the toilet itself was not leaking, nor was it overflowing. Instead, he believed that the leak was coming from the area where the wall connection meets the hose that goes into the toilet. It was not actively dripping when he saw it and he does not recall tightening the handle.

Defendant has detailed policies and procedures in place for inspecting guest rooms for potentially dangerous conditions. Every room assigned to a guest is inspected twice, first by the housekeeper who cleans the room, followed by the housekeeping supervisor once the room has been cleaned. The supervisor's inspection of guest bathrooms includes a test flush of the toilet to ensure that it flushes without issue. Josefina Jurado, the housekeeper assigned to clean Room 128 on the day of the incident, testified on behalf of Defendant. When she cleaned the bathroom in 128 on April 4, 2019, she mopped the floor and then wiped the floor with a dry rag to make sure the floor was left dry. If she had noticed water leaking or dripping from the toilet, she would have reported the issue to the maintenance department. Ten minutes after she cleaned the room, Blanca Lopez, the housekeeping executive, inspected Room 128. Jurado was not advised of any water leak or other problem after Lopez's inspection of the room.

The general manager of the Hampton Inn, Dee Earle, testified that there were no reports of a leak inside Room 128 prior to April 4, 2019 and no maintenance tickets were generated for that room in the year before the incident. In addition, Roger Molina, the chief engineer of the Hampton Inn, testified that when he arrived to work on April 5, 2019, he was advised of the leak in the bathroom of Room 128. When he arrived in the bathroom, there was no water on the ground and upon inspection of the toilet hose and valve, he found no evidence of a water leak. As such, he opined that the toilet must have clogged on April 4, 2019.

Discussion

Defendant maintains that it is entitled to summary judgment as it did not create or have notice of the condition in question. "In a premises liability case, a defendant real property owner or a party in possession or control of real property that moves for summary judgment has the initial burden of making a prima facie showing that it neither created the allegedly dangerous or defective condition nor had actual or constructive notice of its existence." *Williams v. Island Trees Union Free Sch. Dist.*, 177 AD3d 936, 937 [2d Dept. 2019]. "A defendant has constructive notice of a hazardous condition on property when the condition is visible and apparent, and has existed for a sufficient length of time to afford the defendant a reasonable opportunity to discover and remedy it." *Id.* at 938. "To meet its initial burden on the issue of lack of constructive notice, the defendant must offer evidence as to when the area in question was last cleaned or inspected relative to the time when the plaintiff fell." *Id.*

Defendant's submissions show that it did not create the condition at issue as the housekeeper testified that there was no leak when she cleaned the bathroom and no leak was observed when her supervisor inspected the room ten minutes later. In addition to this testimony, the evidence that the hotel had not received any prior complaints or maintenance tickets with respect to leaks involving the toilet establishes that Defendant did not have actual notice of the leak. As for constructive notice, Defendant submits proof that Plaintiff's bathroom was cleaned and inspected the morning of the accident and no leak was present. Accordingly, Defendant establishes *prima facie* that the condition did not exist for a sufficient length of time for Defendant to have had a reasonable opportunity to discover and remedy it. As such, the burden shifts to Plaintiff.

In opposition, Plaintiff does not dispute that Defendant met its burden with respect to creation of the condition and notice thereof. Instead, Plaintiff argues that there is a question of fact as to whether the Defendant is liable through the theory of *res ipsa loquitor*. This doctrine applies when the injury-causing event (1) is of a kind which ordinarily does not occur in the absence of someone's negligence; (2) is caused by an agency or instrumentality within the exclusive control of the defendant; and (3) was not due to any voluntary action or contribution on the part of the plaintiff. *Zhigue v. Lexington Landmark Properties, LLC*, 183 AD3d 854, 856 [2d Dept. 2020]. "Res ipsa loquitur does not create a presumption of negligence; rather, it is a rule of circumstantial evidence that permits, but does not require, the jury to infer negligence." *Marinaro v. Reynolds*, 152 AD3d 659, 661 [2d Dept. 2017]; *see also Dilligard v. City of New York*, 170 AD3d 955, 956 [2d Dept. 2019].

Despite Defendant's arguments in reply, the Court finds that Plaintiff has raised triable issues of fact as to the application of the doctrine of *res ipsa loquitur*. *Marinaro, supra*. As to the first two prongs, it is uncontested that only Defendant's employees had access to Plaintiff's guest room bathroom during the day of April 4, 2019, between the time that Plaintiff left in the morning and returned at approximately 7:30 pm. Although Defendant's engineer opines that the water condition must have been the result of a clogged toilet, this theory is controverted by Defendant's own witnesses as Robertson observed the condition immediately after Plaintiff's fall and testified that the toilet itself was not leaking and it was not overflowing. Plaintiff also testified that the employee who inspected the toilet in his presence tightened the water valve, which stopped the leak. Given the testimony that the dripping stopped once the handle was tightened and the engineer's testimony that he found no evidence of a leak elsewhere on the

toilet, a logical conclusion may be that someone negligently loosened the valve handle.

Plaintiff also demonstrated that the leak was not due to any voluntary action or contribution of on his part, as there was no leak when he left in the morning and Defendant's housekeeper testified that there was no leak when she cleaned the room. As such, Plaintiff has raised triable issues of fact as to whether this incident was the kind that ordinarily does not occur in the absence of someone's negligence, that it was caused by an instrumentality within the exclusive control of the Defendant, and that it was not due to any voluntary act on the part of the injured plaintiff. *Ramjohn v. Port Auth. of New York*, 151 AD3d 1090, 1093 [2d Dept. 2017]. In reply, Defendant did not negate the applicability of the doctrine of *res ipsa loquitor*. *Jappa v. Starrett City, Inc.*, 67 AD3d 968, 969 [2d Dept. 2009]. Accordingly, Defendant's motion is denied.

The Court has considered the additional contentions of the parties not specifically addressed herein and finds them unavailing. To the extent any relief requested by either party was not addressed by the Court, it is hereby denied. Therefore, it is hereby

ORDERED that Defendant's motion for summary judgment is DENIED; and it is further

ORDERED that this case is scheduled for jury selection on **February 28, 2022**; and the attorneys shall appear for a virtual settlement conference via Microsoft Teams on **December 6, 2021 at 10:00 a.m.**

The foregoing constitutes the Decision and Order of the Court.

Dated: Poughkeepsie, New York
October 8, 2021

CHRISTI J. ACKER, J.S.C.

To: All Counsel Via NYSCEF