Gonzalez v New York City Health & Hosps. Corp.

2021 NY Slip Op 33843(U)

February 3, 2021

Supreme Court, Kings County

Docket Number: Index No. 509322//2017

Judge: Carl J. Landicino

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At an IAS Term, Part 81 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, On the 3rd day of February, 2021.

PRESENT:

CARL J. LANDICINO, J.S.C.

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MARLENE GONZALEZ,

Plaintiff,

- against -

NEW YORK CITY HEALTH AND HOSPITALS CORPORATION A/K/A NYC HEALTH & HOSPITALS CORPORATION,

Defendants,

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Index No. 509322/2017

DECISION AND ORDER

Motion Sequence #1

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers Numbered (NYSCEF)	
Notice of Motion/Cross-Motion and Affidavits (Affirmations) Annexed	18-33
Opposing Affidavits (Affirmations)	35-43
Reply Affidavits (Affirmations)	44

After a review of the papers and oral argument the Court finds as follows:

The instant action arises from an incident on December 29, 2013 when the Plaintiff, Marlene Gonzalez (hereinafter referred to as the "Plaintiff"), was allegedly injured while visiting a relative at Coney Island Hospital, owned and operated by Defendant New York City Health and Hospitals Corporation (hereinafter the "Defendant"). Specifically, the Plaintiff contends that the Defendant was negligent as a result of a defective public restroom door closing on her right hand, resulting in part of her right index finger being amputated.

The Defendant now moves (motion sequence #1) for summary judgment and dismissal of the Plaintiff's Complaint pursuant to CPLR 3212. The Defendant contends that summary judgment should be granted as the door at issue was not defective. Also, the Defendant contends that even assuming, *arguendo*, that the door was defective, there is insufficient evidence to support the Plaintiff's claim that the Defendant either, (i) caused and/or created the dangerous condition; or (ii) the Defendant knew or should have known of the alleged defective condition at issue. The Plaintiff opposes the motion and contends that there are issues of fact that must be decided at trial. The Plaintiff also contends that the Defendant has failed to meet its *prima facie* burden as it has failed to show when the door at issue was last inspected prior to the incident at issue.

Generally, "[s]ummary judgment is a drastic remedy that deprives a litigant of his or her day in court, and it 'should only be employed when there is no doubt as to the absence of triable issues of material fact." *Kolivas v. Kirchoff*, 14 AD3d 493 [2d Dept 2005], citing *Andre v. Pomeroy*, 35 N.Y.2d 361, 364, 362 N.Y.S.2d 1341, 320 N.E.2d 853[1974]. The party seeking summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate absence of any material issues of fact. See *Sheppard-Mobley v. King*, 10 AD3d 70, 74 [2d Dept 2004], citing *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572 [1986], *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642 [1985].

Once a moving party has made a *prima facie* showing of its entitlement to summary judgment, "the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action." *Graham & Han Real Estate Brokers v. Oppenheimer*, 148 AD2d 493 [2d Dept 1989]. Failure of the moving party to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers. See

Demshick v. Cmty. Hous. Mgmt. Corp., 34 AD3d 518, 520, 824 N.Y.S.2d 166, 168 [2d Dept 2006]; see *Menzel v. Plotnick*, 202 AD 558, 558-559, 610 N.Y.S.2d 50 [2d Dept 1994].

Turning to the merits of the instant motion, the Court finds that the Defendant has met its *prima facie* burden. The Defendant has provided sufficient evidence that the Plaintiff's injuries were not caused by a defective door. "In order for a landowner to be liable in tort to a plaintiff who is injured as a result of an allegedly defective condition upon property, it must be established that a defective condition existed and that the landowner affirmatively created the condition or had actual or constructive notice of its existence." *Lezama v. 34-15 Parsons Blvd, LLC*, 16 AD3d 560, 560, 792 N.Y.S.2d 123, 124 [2d Dept 2005]. In support of its motion the Defendant relies on the Plaintiff's 50-H hearing testimony, her deposition testimony and the deposition testimony of Defendant's employee, Donald McManamon. The Plaintiff testified that she was at Coney Island Hospital visiting her father. The Plaintiff further testified that she was injured when she was leaving the public restroom and her right hand slipped and was caught between the hinge of the door and the wall, "because the door was coming towards me, and it pulled my hands toward the edge." "… [B]ecause it was coming with a lot of force, because it was heavy" (See Defendant's Motion, Exhibit "H", pages 11-14).

Donald McManamon testified that at the time of the accident he was employed as the Director of Engineering at Coney Island Hospital. As part of his testimony, Mr. McManamon testified that there were no complaints prior to the incident regarding this public restroom door and that, as reflected in a work record ("ticket") generated, the door was inspected two weeks after the accident and was found to be in good working order. He also indicated that no other work orders for this restroom were in relation to the door, which indicated that no complaints had been made (See Defendant's Motion, Exhibit "J", pages 45-57, and 60-65). The Plaintiff did not challenge or object to the admissibility of these work tickets and provided them as Exhibit "G" to his opposition papers.

This testimony, taken together, is sufficient for the Defendant to meet his *prima facie* burden. *See DeCarlo v. Vill. of Dobbs Ferry*, 36 AD3d 749, 750, 828 N.Y.S.2d 532, 533 [2d Dept 2007]. In *DeCarlo*, the Court found that the movant had met its *prima facie* burden by providing testimony from an inspector who stated that he examined the allegedly defective door shortly after the accident, there was no defect and no prior complaints had been made. Similar evidence was also the basis for a movant to establish its *prima facie* burden, "that the fire door was not defective and that the defendant did not create or have actual or constructive notice of any defective or dangerous condition" in *Donnelly v. St. Agnes Cathedral Sch.*, 106 AD3d 773, 773, 964 N.Y.S.2d 262, 263 [2d Dept 2013]. See also *Fontana v. R.H.C Dev., LLC*, 69 AD3d 561, 562, 892 N.Y.S.2d 504, 506 [2d Dept 2010] and *Eskridge v. TJBM Enterprises, Inc.*, 171 AD3d 1135, 1135, 96 N.Y.S.3d 895, 896 [2d Dept 2019].

In opposition, the Plaintiff has failed to raise a material issue of fact. The Plaintiff incorrectly contends that because the Defendant did not present evidence regarding when the door at issue was last inspected this at least creates an issue of fact regarding whether the Defendant should have had constructive notice of the condition at issue. See *De Carlo*, 36 AD3d 749, 750, 828 N.Y.S.2d 532, 533 [2d Dept 2007], *Lezama*, 16 AD3d 560, 560, 792 N.Y.S.2d 123, 124 [2d Dept 2005], and *Hoffman v. Mucci*, 124 AD3d 723, 2 N.Y.S.3d 531 [2d Dept 2015]. Moreover, the Plaintiff's testimony concerning the force and weight of the door fails to raise an issue of fact. "[T]hat the door was defective, or improperly maintained, cannot be inferred merely from the fact that it could (close) fast enough or hard enough, to knock [the] Plaintiff down." *Lezama*, 16 AD3d 560, 792 N.Y.S.2d 123 [2d Dept 2005] quoting *Hunter v. Riverview Towers*, 5 AD3d 249, 773 N.Y.S.2d 290 [1st Dept 2004]. In addition, the Plaintiff's expert never inspected the door and apparently conducted his own inspection on a similar device ('exemplar") utilized for closing doors. This renders his report speculative and lacking probative value. See *Maldanado v. Su Jong Lee*, 278 AD2d 258, 717 N.Y.S.2d 258 [2d Dept 2000]. He also did not explain how the

photographs he purportedly reviewed supported his findings. See *Eskridge*, 171 AD3d 1135, 1135, 96 N.Y.S.3d 895, 896 [2d Dept 2019]. Accordingly, the Defendant's motion is granted.

It is hereby ordered:

The Defendant's motion (motion sequence #1) for summary judgment dismissing the Plaintiff's complaint is granted and the complaint is dismissed.

This constitutes the Decision and Order of the Court.

ENTER:

Carl J. Landicino, J.S.C.

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