

Rodriguez v Kwik Realty LLC
2022 NY Slip Op 30892(U)
March 16, 2022
Supreme Court, New York County
Docket Number: Index No. 160267/2017
Judge: William Perry
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. WILLIAM PERRY PART 23

Justice

-----X
 SANTA RODRIGUEZ, MIGUEL RODRIGUEZ
 Plaintiff,
 - v -
 KWIK REALTY LLC, SUCCESSFUL MANAGEMENT
 CORP.,
 Defendants.
 -----X

INDEX NO. 160267/2017
 MOTION DATE 08/18/2021
 MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78

were read on this motion to/for JUDGMENT - SUMMARY.

Plaintiff Santa Rodriguez alleges that on December 18, 2016, she slipped and fell in the vestibule of her apartment building, located at 520 West 183rd Street, New York, NY, due to the negligence of Kwik Realty LLC, the building owner, and Successful Management Corporation, the building’s managing agent. Plaintiff Miguel Rodriguez, the husband of Plaintiff Santa Rodriguez, alleges a loss of consortium claim, and that he was also caused to expend monies for the treatment of his wife’s injuries.

In motion sequence 001, Defendants move for summary judgment, arguing that “Plaintiffs have failed to offer sufficient proof in admissible form that the Defendants were on notice, either actual or constructive, of a dangerous condition.” (NYSCEF Doc No. 40, Defs.’ Memo, at 5-6.) Plaintiffs cross-move for summary judgment on the issues of notice and liability. (NYSCEF Doc No. 61, Cross-motion.)

Discussion

“The proponent of a motion for summary judgment must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law.” (*Dallas-Stephenson v Waisman*, 39 AD3d 303, 306 [1st Dept 2007], citing *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985].) “Failure to make such a prima facie showing requires denial of the motion, regardless of the sufficiency of the opposing papers.” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986] [citation omitted].) Upon proffer of evidence establishing a prima facie showing of entitlement by the movant, “the party opposing a motion for summary judgment bears the burden of ‘produc[ing] evidentiary proof in admissible form sufficient to require a trial of material questions of fact.’” (*People v Grasso*, 50 AD3d 535, 545 [1st Dept 2008], quoting *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980].)

“It is well established that owners and lessees have a duty to maintain their property in a reasonably safe condition under the existing circumstances.” (*Walters v N. Tr. Co. of New York*, 29 AD3d 325, 326 [1st Dept 2006].) “In general, to impose liability for an injury proximately caused by a dangerous condition created by weather tracked into a building, a defendant must either have created the dangerous condition, or had actual or constructive notice of the condition and a reasonable time to undertake remedial actions.” (*Friedman v Gannett Satellite Info. Network, Inc.*, 302 AD2d 491, 491–92 [2d Dept 2003].) “Courts have consistently held that summary judgment is appropriately granted to a defendant where the plaintiff did not notice the alleged defect prior to the accident and there is no evidence as to how long the alleged defect existed before the accident occurred.” (*James v Cushman & Wakefield of New York, Inc.*, 2007 WL 2931036 [Sup Ct, NY County 2007] [citing cases].)

Here, “[t]here is no evidence on this record that would permit a finder of fact to infer that defendants created or had actual or constructive notice of a dangerous condition. There is no evidence demonstrating how long the allegedly slippery condition existed on the floor where [Plaintiff] fell.” (*Kassirer v RCPI Holdco, LLC*, 17 Misc 3d 1132[A], at *3 [Sup Ct, NY County 2007].) In light of Plaintiff’s testimony that she did not see water on the floor until after she fell (NYSCEF Doc No. 55 at 38:08), any contention that a visible accumulation of water existed prior her fall would be speculative, and “[i]n the absence of proof as to how long a condition existed, no inference can be drawn that defendants had constructive notice of a dangerously wet floor.” (*Kassirer*, 17 Misc 3d 1132[A] at *4.)

In Plaintiffs’ Responses to Defendants’ Counter-Statement of Material Facts they admit that “[a]t no time before she fell in the vestibule did Ms. Rodriguez ever see water on the floor of the vestibule.” (NYSCEF Doc. Nos. 68 and 74, ¶27.) Additionally, Plaintiff admits that she “never made a complaint to the building about water on the floor of the vestibule before her accident.” (Id. ¶28.) Plaintiffs have simply failed to rebut Defendants’ showing that they had no notice of the existence of water on the floor prior to her accident. (see, *Thompson v The Stop & Shop Supermarket Companies, Inc.*, 277 AD2d 48, 48, 715 N.Y.S.2d 147 [1st Dept 2000] [affirming grant of summary judgment to defendant where "plaintiff failed to rebut defendant's showing that it had no prior notice of the existence of the patch of spilled liquid upon which plaintiff allegedly fell"].)

Plaintiffs’ testimony that other persons had slipped prior to the instant accident does not require a contrary result. (*Gibbs v Port Authority of New York*, 17 AD3d 252, 255 [1st Dept 2005] [dismissing complaint in slip-and-fall case where there was no proof in the record as to how long water was on floor, despite plaintiff testifying that at least two other persons had slipped before

her.) Even “[a]ssuming that the defendant was aware that water on the lobby floor was a recurring condition in rainy weather, proof that the defendant was aware of this general condition would not be sufficient to establish constructive notice of the particular wet condition on the marble floor which caused the plaintiff to slip.” (*Yearwood v Cushman & Wakefield, Inc.*, 294 AD2d 568, 569 [2d Dept 2002].) In any event, Defendants were “not required to cover all of its floors with mats, nor to continuously mop up all moisture resulting from tracked-in, melting snow.” (*Kovelsky v City Univ. of New York*, 221 AD2d 234, 235 [1st Dept 1995].)

Plaintiffs are not entitled to summary judgement on the issue of liability. Plaintiffs have not established that a defective condition proximately caused Plaintiff, Santa Rodriguez to fall, or that any claimed defective condition existed for a sufficient length of time to provide constructive notice to the Defendants. (see *Frederick v New York City Hous. Auth.*, 172 AD3d 545, 100 N.Y.S.3d 258 [1st Dept 2019]; *Manderson v Phipps Houses Servs., Inc.*, 173 AD3d 459, 103 N.Y.S.3d 40 [1st Dept 2019].) Accordingly, Plaintiffs cross-motion is denied and it is hereby

ORDERED that Defendants’ motion sequence 001 for summary judgment is granted and the complaint is dismissed with costs and disbursements to Defendants as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that Plaintiffs’ cross-motion for summary judgment is denied; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

3/16/22
DATE


WILLIAM PERRY, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER
 INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER
 FIDUCIARY APPOINTMENT REFERENCE

CHECK IF APPROPRIATE: