

Padilla v Holrod Assoc. LLC
2022 NY Slip Op 31401(U)
April 28, 2022
Supreme Court, New York County
Docket Number: Index No. 156977/2018
Judge: Sabrina Kraus
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS **PART** **57TR**

Justice

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MICHELLE PADILLA

Plaintiff,

- v -

HOLROD ASSOCIATES LLC,

Defendant.

-----X

INDEX NO. 156977/2018

MOTION DATE 12/14/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 66, 68, 69, 70, 71, 75 were read on this motion to/for JUDGMENT - SUMMARY.

BACKGROUND

Plaintiff was an office manager employed by Quality Meats restaurant located at 57 West 58th Street in Manhattan. Quality Meats had two staircases which led down to the basement. One staircase was both for the customers and the employees, and the other one was just for employees. Plaintiff fell going down the employee staircase, when she alleges her foot got caught in a crack on the first or second step from the top. Plaintiff commenced this action against the owner of the premises for damages based on injuries she alleges were incurred as a result of the accident.

PENDING MOTIONS

On September 21, 2021, defendant moved for an order granting summary judgment as to liability and seeking dismissal of the complaint.

On November 23, 2021, defendant cross-moved for summary judgment as to liability.

In December 2021, the motions were fully briefed and marked submitted.

Recently the motions were referred to this court for determination. For the reasons stated below, the motions are denied.

ALLEGED FACTS

Plaintiff was an office manager employed by Quality Meats restaurant located at 57 West 58th Street in Manhattan. Defendant owned the condominium unit that the restaurant was located in and leased it to Quality Meats in 1983. The subject building has commercial tenants on the first floor and residential units above. The restaurant had two floors for dining, and a bar. The main kitchen, office, and restrooms were in the basement, or lower level.

Quality Meats had two staircases which led down to the basement. One staircase was open to the public and the other one is just for employees. The staircase open to the public went down to the customer and restroom area and the employee staircase went straight into the kitchen. Plaintiff's accident occurred on January 31, 2017 at approximately 10 am. Plaintiff was on the employee staircase, descending to the first floor when she alleges her foot got caught in a crack on one of the top stairs causing her to fall down the flight of stairs.

Quality Meats and its parent company, Quality Branded, have consistently taken care of all necessary maintenance and repairs within the restaurant since 1983, including repairs to the employee staircase.

On October 30, 2016, Marisol Alvarado, a pastry chef employed at Quality Meats fell on the same employee staircase, while walking down from the first floor kitchen to the basement. Plaintiff alleges that as a result of this earlier accident, defendant had actual notice of the conditions leading to her accident.

The restaurant ultimately paid to replace the stairs at a cost of about \$98,000.

DISCUSSION

Defendant has established a *prima facie* entitlement to summary judgment as an out of possession landlord, however plaintiff has rebutted this by establishing a triable issue of fact as to whether defendant was on notice of the alleged defect.

Defendant established *prima facie* entitlement to summary judgment with evidence it was “out of possession” of the leased restaurant space, had no notice of the cracked step, and no contractual obligation to repair; nor was there any “structural or design defect,” or Building Code violation. *Dirschneider v. Rolex Realty Company LLC*, 157 A.D.3d 538, 539 (1st Dept. 2018); *Kittay v. Moskowitz*, 95 A.D.3d 451, 451-2 (1st Dept. 2012), *lv denied* 20 N.Y.3d 859 (2013). Such evidence shifted the burden of proof to the plaintiff to raise a triable issue of fact with evidence in admissible form.

Plaintiff argues the evidence establishes that defendant had actual notice of the defective condition at least 42 days prior to the incident. Marisol Alvarado fell on a different level of the same staircase. Plaintiff further argues that on January 13, 2017, the Ms. Alvarado’s attorneys sent defendant a spoliation letter in regard to the staircase.

In opposition to plaintiff’s cross motion for summary judgment, defendant submits the affidavits of James Nicholson and Michael Rothschild, who both attest that neither the December 16, 2016 letter, nor the January 13, 2017 notice of inspection and preservation provided notice that the subject staircase was in a hazardous state of disrepair. Mr. Rothschild states that neither the letter nor notice of inspection and preservation made any reference to Quality Meats and did:

... not indicate where the staircase was, or what unit it was in. It does not mention Quality Meats or a restaurant. It only says the accident had to do with "interior steps" and gives the building address. As noted above, this is a big building with many sets of stairs

* * *

There is simply not enough information in either document to allow anyone to identify what stairs the attorney was referring to. There are two staircases in the residential area, that each go up 11 floors. Most of the 11 commercial units have interior stairs, some going down to the basement and others up to second floors inside the commercial spaces. There are numerous staircases in the building.

However, plaintiff notes that defendant was served with process in the Alvarado case on January 18, 2017, 12 days before plaintiff's accident. While Mr. Rothschild and Mr. Nicholson claim that the letters and inspection notices failed to give them notice about what staircase Ms. Alvarado fell on, the complaint stated:

That on or about the 30th day of October, 2016, at approximately 1:00 AM, while the plaintiff MARISOL ALVARADO was lawfully and properly in the aforesaid premises, and more particularly the interior stairway descending from the first floor to the basement, said plaintiff was caused to fall by reason of the dangerous and hazardous conditions which existed thereat, in consequence whereof, said plaintiff sustained serious and severe personal injuries

Knowledge of a dangerous condition in one portion of a structure may impose on the owner a duty of inspection for similar conditions in other areas of the structure; the owner must "ascertain what is ascertainable in the exercise of reasonable care" (*Rodriguez by Rodriguez v. Amigo*, 244 AD2d 323 [2d Dept. 1997]; *Chin v. Harp Mktg.*, 232 AD2d 601 [2d Dept. 1996]; *Lo Jacono v. Schieder*, 281 AD 799 [4th Dept. 1953]; *Spaeth v. Manhattan R. Co.*, 109 AD 819 [2d Dept. 1905]; *see generally, Z.D. v. MP Mgmt., LLC*, 150 AD3d 550 [1st Dept. 2017]).

While defendant argues that plaintiff should not be permitted to proceed on this theory because the documents were not included or referenced in the bill of particulars, the court disagrees and the pleadings do allege that plaintiff had actual knowledge of the alleged defect and refer to the Alvarado lawsuit.

CONCLUSION

WHEREFORE it is hereby:

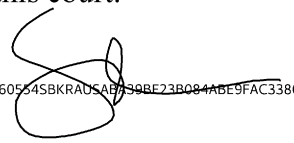
ORDERED that the motion and cross-motion for summary judgment are denied; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that any relief not expressly addressed has nonetheless been considered and is hereby denied; and it is further

ORDERED that this constitutes the decision and order of this court.

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4/28/2022
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE