

Bathey v Morning Star Full Gospel Assembly

2022 NY Slip Op 32315(U)

January 13, 2022

Supreme Court, Bronx County

Docket Number: Index No. 30529/2018

Judge: Laura G. Douglas

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX
PART 6

Index No. 30529/2018

CHANEL BATTEY,

Plaintiff,

-against-

MORNING STAR FULL GOSPEL ASSEMBLY,

Defendant.

DECISION/ORDER

Present:
Hon. Laura G. Douglas
J. S. C.

Recitation, as required by Rule 2219(a) of the C.P.L.R., of the papers considered in the review of this motion for summary judgment (seq. no. 1):

<u>Papers</u>	<u>Numbered</u>
Defendant’s Notice of Motion, Affirmation of Maria E. Stamatelatos, Esq. dated March 26, 2021 in Support of Motion, and Exhibits (“A” through “J”).	1
Memorandum of Law by Maria E. Stamatelatos, Esq. dated March 26, 2021 in Support of Motion.	2
Affirmation of Dana Stricker, Esq. dated April 20, 2021 in Opposition to Motion and Exhibits (“A” and “B”).	3
Affidavit of Chanel Battey dated April 20, 2021 in Opposition to Motion.	4
Reply Affirmation of Maria E. Stamatelatos, Esq. dated June 7, 2021 and Exhibits (“A” and “B”).	5

Upon the foregoing papers and after due deliberation, the Decision/Order on this motion is as follows:

The defendant (“Gospel Assembly” or “Church”) seeks summary judgment pursuant to CPLR § 3212 dismissing the plaintiff’s complaint in its entirety. The motion is granted.

The plaintiff (“Battey”) seeks monetary damages for personal injuries allegedly sustained on September 30, 2017 in Bronx County when she slipped and fell while descending the two front exterior

steps at the entrance to the defendant's Church building after having served as a bridesmaid at her friend's wedding ceremony. Gospel Assembly contends that there is no legally admissible evidence that the Church breached any duty to Battey or that it was negligent in any manner. Specifically, the Church argues that the area where Battey allegedly fell did not contain a defect at any relevant time or that, alternatively, any purported defect was trivial and the Church did not have notice of or create any non-trivial defect.

To obtain summary judgment, Gospel Assembly must demonstrate that there are no material issues of fact in dispute and that it is entitled to judgment as a matter of law under these undisputed facts (see *Winegrad v. New York University Medical Center*, 64 NY2d 851 [Ct App 1985] and *Flores v. City of New York*, 29 AD3d 356 [1st Dept 2006]). The moving party's "[f]ailure to make [a] prima facie showing [of entitlement to summary judgment] requires a denial of the motion, regardless of the sufficiency of the opposing papers" (*Vega v Restani Constr. Corporation.*, 18 NY3d 499, 503 [Ct App 2012]). To defeat such a showing, Battey must present facts in admissible form demonstrating that a genuine, triable issue(s) of fact exists which precludes summary judgment (see *Zuckerman v. City of New York*, 49 NY2d 557 [Ct App 1980] and *Flores v. City of New York*, 29 AD3d 356 [1st Dept 2006]). In this premises liability action, Battey must demonstrate the existence of a defective or dangerous condition and either that Gospel Assembly created such condition or had actual or constructive notice of the hazard and failed to timely correct it (see *Litwack v. Plaza Realty Investors, Inc.*, 11 NY3d 820 [Ct App 2008]).

In support of its motion, Gospel Assembly submits Battey's sworn deposition testimony. Battey stated that she had been a parishioner of the Gospel Assembly Church from 2003 – 2009 and visited the church some three times a month from 2009 until the accident date. Battey served as part of her friend's wedding party on the accident date, a day that she described as cool, brisk, and windy. Battey testified that she entered through the Church's front door and noticed that the granite steps had "little cracks in them". However, she stated that she had no difficulty walking up the steps. Battey was wearing sling back shoes with an open toe and a heel of approximately two inches. She had worn these shoes on two or three prior occasions, the most recent being in October 2016. As she was exiting the Church after the service, Battey stepped out with her left foot, which "slipped from under [her]", sending her falling back first and landing on her left side (see Battey deposition transcript, p. 37, ll. 15-21). After she fell, she looked at the step and saw a small crack. She was "not a hundred percent sure if the heel or my foot

got caught in the little crack or it was just the texture of the granite” (*see* Battey deposition transcript, p. 38, ll. 1-7). Battey was eventually able to mark the alleged crack in a photograph shown to her at the deposition.

In addition, Gospel Assembly submits a report from Robert L. Grunes (“Grunes”), a licensed engineer that it retained to serve as a liability expert and who prepared a report after reviewing the marked photographs and Battey’s deposition testimony. Grunes found that the exit landing in question with two exterior steps, since it is beyond the door opening, was not required by the New York City Building Code to have handrails and was otherwise in compliance with the Code. Grunes concluded that the “little cracks” mentioned by Battey would not have contributed to the slipping that she described.

Finally, Gospel Assembly submits several affidavits from certain members of the Church and guests of the wedding:

Dothlyn Morris (“Morris”)

Morris is a member of Gospel Assembly who also served as a bridesmaid at the wedding. Morris avers that she has never had an issue with these steps, has never noticed a defective or hazardous condition with the steps, and has never observed anyone fall on these steps due to such a condition. She did not notice any such condition while entering or exiting the Church on the accident date. Morris states that she observed Battey talking to someone with her head turned over her shoulder and descend the first of the two steps, missing the second step and stepping directly onto the sidewalk instead, losing her balance and falling forward.

Stephene Deschamps (“Deschamps”)

Deschamps is a member of Gospel Assembly who was a guest at the wedding. She, too, avers that she has never had an issue with the two steps outside of the front entrance to the Church or noticed a defect or observed anyone falling due to a hazardous condition. Deschamps did not notice any such condition on the accident date while traversing the steps to enter and later exit the Church. Deschamps did not observe the accident, but exited the Church upon hearing that someone had fallen. Deschamps accompanied Battey to the restroom after her fall. Battey did not mention that her fall was caused by any defect or hazardous condition. Deschamps did not notice any cracks, defects, debris, or hazardous condition on the steps upon exiting the Church afterwards.

Susie Washington ("Washington")

Washington has served as Office Manager for Gospel Assembly since 2005 and was present to observe the wedding. Washington avers that the steps were cleaned daily, including on the accident date, by Robert Singleton, the Church's Sexton. Washington did not notice any defect, hazardous condition, cracks, or debris while entering or exiting the Church on the accident date. In her 15 years at the Church, Washington has never had an issue with the steps, has never received any complaints regarding the condition of the steps, and has never received any violation from the Department of Buildings concerning the steps.

Robert Singleton (Singleton")

Singleton serves as a Sexton at Gospel Assembly. His responsibilities include cleaning the Church's perimeter, including sweeping the front two exterior steps every morning. After cleaning, he inspects the perimeter for any defects, cracks, or other hazardous condition. Singleton had performed these duties on the date of the accident, finding no such conditions. Singleton notes that the accident date was a dry, clear day, without liquid or moisture on the exterior steps.

Mark Davis ("Davis")

Davis is a Staff Elder at Gospel Assembly who officiated the wedding. He did not notice any defect or hazardous condition with the steps when he entered the Church that day or any cracks or defects when he exited. Davis also notes that the day was bright and sunny, free of precipitation.

Frederick Keith ("Keith")

Keith is a freelance photographer who was hired to photograph the wedding. Keith was familiar with the Church, having photographed many events held there. He never had any issue with the steps, noticed any defects or hazardous condition, or observed anyone falling on them due to such a condition. He did not notice any such issues while entering or exiting the Church on the accident date. Keith did not witness the accident and was not asked to photograph the steps or any hazardous condition thereon. After the ceremony, Keith took photographs of the bridal party at the reception. He did not recall Battey complaining of injury or wearing a dirty or torn dress. Keith submits several photographs depicting

Batthey taken inside the Church prior to the accident and after the accident.

With this evidence, Gospel Assembly has satisfied its initial burden to show the absence of any material factual issues and entitlement to judgment as a matter of law (*see Johnson v. 301 Holdings, LLC*, 89 AD3d 550 [1st Dept 2011]). The testimony of the various wedding guests and attendees, especially Washington in her role as the property's office manager and Singleton in his role as Sexton - that no prior complaints had been received about the steps, that no related violations had been issued, and that they never noticed any cracks or other hazardous condition on the steps on the accident date or on any of hundreds, if not thousands, of prior entries and exits spanning multiple years - demonstrates that the condition of the subject steps could not have been a proximate cause of Batthey's injuries. In addition, Morris' testimony provides an eyewitness description of the accident which attributes the fall to Batthey speaking with her head turned while descending the steps.

In opposition, Batthey inexplicably argues that Gospel Assembly has not met the standards to succeed on a CPLR Rule 3211 motion, which is not the basis for the relief sought in this motion. In addition, she submits an affidavit in which she cites the following testimony from her deposition:

“As I was exiting the church, I exited and then I took my left foot to go down the step. And the next thing I know, my left foot slipped from under me and I went back first then I landed on my left side. And as I was on my left, I landed with my shoulder, hit the second step and then my left foot went to the concrete. I was kind of in a contorted position. And as I looked up and looked at the step, I'm like “What happened?” I saw the little crack. So I am not a hundred percent sure if the heel or my foot got caught in the little crack or it was just the texture of the granite.”

Batthey disputes the veracity of the affidavits submitted on behalf of the Church by various wedding guests/Church members and argues that these affidavits must be discredited. She alleges that the affiants have close ties to the Church, including that Deschamps is the Pastor's sister. In addition, Batthey contends that Grunes' report must be disregarded because it is unsworn and therefore not in admissible form.

Finally, Batthey submits a report from Michael Kravitz (“Kravitz”), an engineer retained by her. Kravitz discredits Grunes' report for relying on inapplicable sections of the Building Code. Kravitz

states that the landing at this exit way is shorter than that required by the Building Code and that the exit door opening does not extend the required number of feet in the direction of travel. Without explanation, he opines that the exit door and landing caused Battey's trip and fall. Kravitz makes no mention of the existence of any cracks or other defect on the steps.

Initially, the Court will not disregard the various affidavits submitted on the Church's behalf. Much testimony in litigation is from self-interested parties, such as Battey herself. This does not disqualify the substance of their testimony, which can support summary judgment in the absence of any demonstrated factual or credibility issues. Moreover, Battey's disputes are with what was said or not said after the accident, when the key issue is whether there is a triable question of fact that Gospel Assembly created the alleged defect or had adequate notice of such defect to cure the hazard prior to the plaintiff's accident.

With respect to Grunes' unsigned report, while his affidavit submitted by Gospel Assembly in reply cannot be used to cure this defect in the original, it can be used to rebut the allegations made for the first time in Kravitz' report submitted by Battey in opposition (*see Citimortgage, Inc. v. Espinal*, 134 AD3d 876 [2nd Dept 2015]). In any event, Gospel Assembly satisfies its initial burden even without Grunes' report (*see Williams v. SNS Realty of Long Island, Inc.*, 70 AD3d 1034 [2nd Dept 2010] (testimony of store occupants that they had no knowledge of prior trip-and-fall accidents, that no one ever complained about the alleged defect, and that the defective condition was not observed when traversing the area shortly before the plaintiff's accident was sufficient to set forth a prima facie entitlement to summary judgment)).

Under these circumstances, Battey has failed to raise a triable issue of fact that precludes summary judgment. She specifically attributes her fall to a defective condition on last of the two steps, beyond the exit door and landing which she had successfully maneuvered. Since Kravitz is silent about any defective condition on the steps, his expert opinion does not raise a material issue of fact. In fact, Kravitz states that the steps were considered "slip resistant". His failure to make any negative finding with respect to the condition that Battey complains of bolsters the Church's claim that the steps were free of any defect.

The fact that Battey simply identified a "crack", without any physical or other description, such as its dimensions or how long it had existed, is insufficient to raise a triable issue of fact, particularly in light of her own testimony that she was not sure whether the issue was with the "texture" of the granite


instead. Even the area circled by Battey on the photograph at her deposition does not clearly demonstrate a crack, but simply the grout line spacing between the steps' surface tiles. Grunes opined that nothing in this area would have caused her to slip. Battey's uncertainty regarding whether her foot slipped or whether her heel was caught in the little crack and whether the texture of the steps or a crack caused her fall would leave the jury hearing this case to inappropriately speculate as to the cause of the accident (*see Smith v. City of New York*, 91 AD3d 456 [1st Dept 2012]).

Here, Battey herself had not made any complaints about the condition of the steps nor had she observed the allegedly hazardous condition during any of her numerous visits to the church prior to the accident. She has not submitted an affidavit from any Church goer or wedding attendee challenging the statement made by the Church's various witnesses that the steps contained no cracks. There is no admissible evidence that raises any material question that Gospel Assembly created or had notice of any defect on the steps, leaving nothing but conjecture to support a finding that Gospel Assembly was legally liable for Battey's injuries.

For these reasons, the motion is granted.

The foregoing constitutes the Decision/Order of this Court.

DATED: January 13, 2022
Bronx, New York



HON. LAURA G. DOUGLAS
J.S.C.