

Karel v Pizzorusso

2022 NY Slip Op 34563(U)

February 1, 2022

Supreme Court, Westchester County

Docket Number: Index No. 53329/2020

Judge: Linda S. Jamieson

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeal of right (CPLR § 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

Disp x Dec Seq. No. 1 Type SJ

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

PRESENT: HON. LINDA S. JAMIESON

-----X

HERB KAREL,

Plaintiff,

Index No. 53329/2020

-against-

DECISION AND ORDER

MARY ANN PIZZORUSSO,

Defendant.

-----X

The following papers numbered 1 to 4 were read on this motion:

| <u>Paper</u> | <u>Number</u> |
|---|---------------|
| Notice of Motion, Affidavit, Affirmation and Exhibits | 1 |
| Memorandum of Law | 2 |
| Statement of Material Facts | 3 |
| Affidavit, Affirmation and Exhibit in Opposition | 4 |
| Memorandum of Law in Opposition | 5 |
| Counterstatement of Material Facts ¹ | 6 |
| Reply Affidavit and Affirmation | 7 |
| Reply Memorandum of Law | 8 |

Defendant homeowner brings her motion seeking summary judgment dismissing the complaint in this slip and fall action. Plaintiff, a friend who had been to defendant's home on multiple

¹This fails to comply with 22 NYCRR § 202.70.19-a(d), in that plaintiff entirely omits any citations to evidence, as is required.

occasions, decided to help defendant by changing the batteries in a smoke detector at the top of the stairs to the second floor. Plaintiff went up and down the stairs a couple of times just before he fell. He admitted at his deposition that he had not had any trouble with the stairs prior to his fall. Plaintiff further admitted at his deposition that the stairs were adequately lit, and they were not worn out.

Plaintiff testified at his deposition that the accident occurred when he was in the middle of the landing and he "reached for the banister and the step was a little uneven or something, I don't know what it was, the first step, and I fell. I actually fell head over heels. The banister was a little low beyond the first landing. It was not up there -- right up there. So I reached down, stepped down. The step was a little bit, I don't know, maybe short. I'm not quite sure. I stepped over and just fell over, head over heels." Plaintiff further explained how the accident happened, testifying that "I said I reached for the banister in my right hand and I stepped down on the first step, the first upper step, and as I said, it -- I just fell. The banister was a little low. I may have been leaning forward trying to grab it and just fell over. I fell forward." He clarified that "It was uneven, the first step. I leaned forward on the banister and it just made it -- I was just going forward." Plaintiff further testified that he felt that there was not

"enough room" and he fell forward. He did not explain what he meant by this statement. Plaintiff also testified that "the first step is a little bit different from the rest of the steps. I didn't realize that. When I stepped down and I tried to grab the handrail, it was a little bit below that, and I just lost my footing and fell down because of that. There wasn't enough room at the top, either."

On this motion for summary judgment, defendant must satisfy her "prima facie burden of establishing [her] entitlement to judgment as a matter of law. The defendant[] established, prima facie, that [she] did not create the allegedly defective conditions with regard to the stairs, nor did [she] have actual or constructive notice of any allegedly defective conditions." *Lieb v. Guzman*, 134 A.D.3d 913, 913, 21 N.Y.S.3d 338, 339 (2d Dept. 2015). On her motion, defendant submits the report of her expert, a licensed professional engineer, who opines that the stairs were in good condition, with adequate lighting, a handrail and nonslip pads on each step. The expert further states that the stairs did not violate any codes that applied. This suffices to establish defendant's prima facie case. *Jung v. Kum Gang, Inc.*, 22 A.D.3d 441, 442, 806 N.Y.S.2d 62, 63 (2d Dept. 2005) (Defendants "established their prima facie entitlement to judgment as a matter of law by demonstrating that the stairs on

which the plaintiff Chaehee Jung . . . allegedly fell were not defective.”).

In opposition, plaintiff contends that the accident occurred because there were two “notches in the hallway which reduced the walking area by two and a half inches on either side of the step causing a dangerous, trap-like condition. Secondly, the notches in the hallway, [sic] meant that the minimum width of the stair and approach landing were not consistent.” He submits in his opposition the report of a previously-undisclosed expert, an architect, who admits that the stairs were “largely code compliant.” The architect does not state that there is any code provision with which the stairs did not comply, however; it thus appears that “largely” should have been “entirely.” The architect asserts that these code-compliant stairs nonetheless were hazardous because the notches at the top - where the wood of the floor met the molding at the side of the stairs² - created “a hazardous, trap-like condition that would have been expected to have been a contributing cause to plaintiff’s accident.” This is speculative - particularly because plaintiff plainly testified at his deposition that he was in the center of the landing before he reached down for the banister, not at the edges. *DeCarbo v. Omonia Realty Corp.*, 181 A.D.3d 438, 120 N.Y.S.3d 315, 316 (1st

²Based on the photos submitted to the Court by the parties, this appears to be a decorative flourish. The Court notes that this house was built in 1954.

Dept. 2020) ("Nor did the experts' affidavits raise a triable issue of fact, since the opinions concerning the cause of plaintiff's slip were speculative."). Plaintiff argues that "as a result of the cutouts into the second floor landing, the handrail does not reach the very top stair tread which causes one to incorrectly perceive the distance to start decent [sic] down the staircase. In other words, plaintiff [sic] decent [sic] down the staircase started before plaintiff perceived it to be and because the handrail was not accessible at the very top, plaintiff was unable to effectively grab the handrail to prevent such a fall." Again, this is speculative. Plaintiff clearly testified at his deposition that he was in the middle of the landing when he leaned over to grasp the banister, and fell over because in his mind there were two things wrong with it: (1) the top step was uneven - a finding that his own expert does not make; and (2) "the banister doesn't come all the way down and it doesn't go all the way up." As stated, there is no indication that the banister did not comply with all applicable code provisions.

The Court finds that, as a matter of law, that plaintiff has failed to rebut defendant's prima facie showing that there was no hazardous condition with respect to the stairs or the handrail. The "notches" at the top of the landing did not create a "trap-like condition." See *Pwangsunthie v. Marco Realty Assocs., L.P.*,

136 A.D.3d 502, 502-03, 26 N.Y.S.3d 9, 10 (1st Dept. 2016)

("Plaintiff failed to contradict, or submit evidence to rebut the showing that the two steps did not constitute a dangerous condition on the premises."). It appears, from the evidence submitted to the Court, that plaintiff leaned over to grab the code-compliance handrail and lost his balance, unfortunately falling down the stairs and being injured in the fall. While the Court is sympathetic to his plight, it has no choice but to grant summary judgment dismissing the complaint.

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York
February 1, 2022



HON. LINDA S. JAMIESON
Justice of the Supreme Court

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