

**Thompson v 735 Equities LLC**

2022 NY Slip Op 34666(U)

March 24, 2022

Supreme Court, Bronx County

Docket Number: Index No. 23328/2019e

Judge: Paul L. Alpert

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SUPREME COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX: PART 26

\_\_\_\_\_  
KAREN THOMPSON

X

Plaintiff,

Index No.:23328/2019e

-against-

**DECISION/ORDER**

735 EQUITIES LLC

**Present:  
HON. Paul L. Alpert**

Defendant

\_\_\_\_\_  
X

**Paul L. Alpert, Judge**

The plaintiff and defendant each move for summary judgment in this action. The motions are consolidated for disposition.

Defendant, 735 Equities LLC moves for summary judgment dismissing the complaint on the grounds that the plaintiff has failed to establish that it had either actual or constructive notice of the alleged defective condition which caused the plaintiff to fall and injure herself. The plaintiff moves for summary judgment on the issue of liability alleging that the defendant had both actual and constructive notice of the alleged defective condition which caused the plaintiff's accident.

This is an action for personal injuries which arise out of a fall on a stairwell located inside the premises at 735 East 182<sup>nd</sup> Street, Bronx, NY., which is owned by the defendant. The plaintiff

who lived on the fifth floor of the building for more than 20 years, alleges she fell as she was descending the staircase from the third to the second floor. She claims that her foot slipped on the stair which was wet and that there was a defect in the stair that caused her to fall.

The defendant argues in support of its motion for summary judgment that it had neither actual or constructive notice of any defect in the stairway and therefore cannot be held liable for the plaintiff's injuries. Moreover the defendant maintains that based on the examination of the stairway by its engineering expert, no defective or hazardous condition could be located. Finally the defendant argues that summary judgment is appropriate because the plaintiff failed to definitively establish what caused her to fall.

The plaintiff has submitted the report of her own expert who opines that the subject stairs were not reasonably safe as a result of various dangerous and hazardous defects. The plaintiff claims that photos of the condition of the steps clearly indicate that they were hazardous. She states that the condition of the stairs existed for a significant period of time prior to her accident. The plaintiff testified that she had complained about the condition of the steps to an employee of defendant before the date of her accident and also claims that two other tenants had fallen down the same set of stairs prior to her accident.

A defendant moving for summary judgment in a slip and fall case has the burden of demonstrating, prima facie, that it did not create the alleged condition or have actual or constructive notice of its existence for a sufficient length of time to discover and remedy it (Pagan v. New York City Housing Authority 172 A.D.3d 888; Jeremias v. Lake Forest Estates 147 A.D.3d 742). Once a defendant establishes prima facie entitlement to such relief as a matter of law, the burden shifts to plaintiff to raise a triable issue of fact as to the creation of the defect

or notice thereof (Smith v. Costco Wholesale Corp. 50 A.D.3d 499). A general awareness that a dangerous condition may be present is legally insufficient to constitute notice of a particular condition that caused a plaintiff to fall (Piacquadio v. Recine Realty Corp. 84 N.Y.2d 967). A defendant is said to have constructive notice of a defect when it is visible and apparent and existed for a sufficient length of time before the accident that it could have been discovered (Gordon v. American Museum of Natural History 67 N.Y.2d 836).

Generally, evidence of a worn tread on a step without more is not an actionable defect and merely alleging that a tread is worn is insufficient to defeat summary judgment (see, DeCarbo v. Omonia Realty 181 A.D.3d 438). An expert opinion about the hazardous nature of a slippery step without personally inspecting the step or without performing slip resistance testing on the stairs is insufficient to raise a triable issue (Wong v. 15 Monroe Realty Inc. 194 A.D.3d 534; Navarro v. H. Heiden, LLC, 115 A.D.3d 564).

Here, there is sufficient evidence presented by the plaintiff to create issues of fact which warrant a trial. In that same vein the plaintiff has failed to establish her entitlement to summary judgment on the issue of liability. The affidavit of the plaintiff's expert in which he opines that there are a number of defects on the stairs, linked with the photos of the stairs and the testimony of the plaintiff regarding the nature of the defect and the alleged notice provided by her to the defendant before the incident, all raise issues to be determined by the trier of fact (see Rodriguez v. Leggett Holding LLC, 96 A.D.3d 555). The plaintiff's testimony that the steps were slippery, and uneven and that this condition had existed for a substantial period of time before the accident creates a factual issue for trial. The photos showing the condition of the steps may lead a jury to conclude that they were in a dangerous or hazardous condition and that the defendant knew or

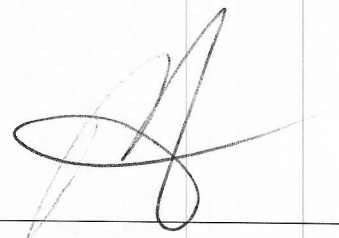
should have known of such condition (see eg, Conklin v. 500-512 Seventh Ave., LP, LLC., 159 A.D.3d 451). While the report of the defendant's engineer opines that the steps were not in any way defective, the plaintiff's experts states that the steps were worn and poorly maintained and that a slip resistance test he performed on the steps indicated that the treads on the subject steps were sub standard. It is for a jury to determine which of the experts to believe.

The courts function on motion for summary judgment is issue finding and not issue determination (Sillman v. Twentieth Century Fox Film Corp. 3 N.Y.2d 395) Each of the parties has failed to establish their entitlement to judgment as a matter of law. Questions of fact exist with respect to whether the steps in question were dangerous or defective, and whether the defendant had actual or constructive notice of the defect.

Accordingly, both the plaintiff and the defendant's motions for summary judgment are denied.

This shall constitute the decision and order of the court

Dated: March 24, 2022



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Hon. Paul L. Alpert, J.S.C.