

Carmenati v Sea Park E. L.P.

2022 NY Slip Op 34849(U)

June 27, 2022

Supreme Court, Kings County

Docket Number: Index No. 509958/2018

Judge: Devin P. Cohen

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Supreme Court of the State of New York
County of Kings

Index Number 509958/2018
Seq. 001

Part 91

DECISION/ORDER

RALPH CARMENATI,

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion:

Plaintiff,

Papers Numbered

against

Notice of Motion and Affidavits Annexed	<u>1</u>
Order to Show Cause and Affidavits Annexed	<u>2</u>
Answering Affidavits	<u>3</u>
Replying Affidavits	<u>3</u>
Exhibits	<u>Var</u>
Other	<u> </u>

SEA PARK EAST L.P. AND SEA PARK NORTH L.P.,

Defendants.

Upon the foregoing papers, defendant’s motion for summary judgment (seq. 001) is decided as follows:

Factual Background

This action arises out of an alleged slip and fall on December 16, 2017. Mr. Carmenati was descending the stairwell designated “A” in the building located at 2828 West 28th Street, Coney Island, NY. At around 5:30 p.m. on the date in question, the plaintiff alleges that he slipped on a wet substance near the bottom of the stairwell and fell down multiple stairs. The defendants submit a security camera recording in support of their motion that shows the plaintiff proceeding down the stairs, falling, and after several minutes shaking a water bottle over his shoulder (Security Footage at 6:52; 7:00). The plaintiff does not deny splashing water on the stairs, testifying that he was “sitting on urine and . . . was in hysteria” (Carmenati EBT at 45–46).

Analysis

On a motion for summary judgment, the moving party bears the initial burden of making a prima facie showing that there are no triable issues of material fact (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003]). Once a prima facie showing has been established, the burden shifts to the non-moving party to rebut the movant's showing such that a trial of the action is required (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]). "A defendant who moves for summary judgment in a slip-and-fall case has the initial burden of making a prima facie showing that it neither created the allegedly hazardous condition nor had actual or constructive notice of its existence" (*Aspyrou v Hellenic Orthodox Community of Astoria*, 185 AD3d 641, 641 [2d Dept 2020]).

The defendants correctly note that the plaintiff presents no evidence that the defendants created the dangerous condition. The plaintiff also testified that neither he nor his son or his son's mother notified the defendants of the condition (Carmenati EBT at 40). Accordingly, the only avenue of argument available to the plaintiff is that the defendants had constructive notice of the condition. "To constitute constructive notice, a defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit defendant's employees to discover and remedy it" (*Gordon v American Museum of Natural History*, 67 NY2d 836, 837 [1986]).

The defendants contend that the plaintiff has not presented any evidence that the subject condition was present for a sufficient amount of time to support a constructive notice claim. In support of this argument, the defendants provide the affidavit of Robert Rivera, the security director for the defendants, as foundation for the inspection logs from the day of the accident. These inspection logs indicate that the portion of the stairwell near the ground level where the

accident occurred was inspected at 2:46 p.m. on the day of the accident. That inspection would have taken place slightly under three hours before 5:30 p.m., when Mr. Carmenati estimated that he fell. Moreover, the building superintendent Ravindra Madramathu testified that she personally performed walkthroughs daily on the stairwells at 8:30 a.m., 11 a.m. and 3:00 p.m. (Madramathu EBT at 18; Madramathu Aff. at ¶ 4). Mr. Madramathu further attested to the employment of two porters, Everton Clemmings and Hector Torres, who would daily sweep and mop both of the building's stairways at 7:00 a.m. daily and would then perform spot checks of the full stairwell at approximately 2:00 p.m. (Madramathu EBT at 25-26; Madramathu Aff. at ¶¶ 10, 12-13).

The plaintiff seeks to resist summary judgment on two grounds. First, the plaintiff contends that the defendants fail to address the plaintiff's contentions that the step was "worn down," instead only addressing the allegations that plaintiff slipped on water or urine. However, the plaintiff does not submit any evidence that the step was worn down, citing only to the security video and providing only an attorney's interpretation of that video. Mere speculation is insufficient to resist summary judgment (*Zuckerman v City of New York*, 49 NY2d 557, 563 [1980]).

Second, the plaintiff seeks to argue that even if the defendants lacked constructive notice of the specific dangerous condition on the day of the accident, the defendants had constructive notice of the recurring condition of urine in the stairwells. "A party who has actual knowledge of an ongoing and recurring dangerous condition can be charged with constructive notice of each specific recurrence of that condition. . . . A question of fact regarding a recurrent dangerous condition can be established by offering evidence that an ongoing and recurring dangerous

condition existed in the area of the accident which was routinely left unaddressed” (*Asprou*, 185 AD3d at 641 [internal citations omitted]).


Mr. Carmenati testified that what he slipped on “could have been a little bit of dog urine, [because] dogs are always urinating in that building and it smelled like urine very bad” and that he had seen urine on the stairs during some of the “the previous thirty times that [he] had been to this apartment building” (*id.*). However, the plaintiff does not provide evidence that there was ever urine that was “was routinely left unaddressed,” which is a necessary condition of a recurrent dangerous condition. The evidence marshaled by the defendants shows a systematic approach to cleaning the stairwells of the building and monitoring for dangerous conditions. Additionally, a review of the security footage submitted to the court does not reveal any accumulated liquid on the steps where plaintiff fell until after the plaintiff splashed water from his water bottle over his shoulder. In the absence of such evidence, plaintiff cannot resist summary judgment on the grounds that a recurrent, unaddressed dangerous condition caused his fall. Accordingly, defendant’s motion is granted.


Conclusion

Defendant’s motion for summary judgment (scq. 001) is granted; the plaintiff’s action is hereby dismissed.

This constitutes the decision and order of the court.

June 27, 2022
DATE


DEVIN P. COHEN
Justice of the Supreme Court


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