

Simmons v Cliffside Props., LLC
2022 NY Slip Op 35172(U)
October 12, 2022
Supreme Court, Bronx County
Docket Number: Index No. 25129/2020
Judge: Laura G. Douglas
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Index No. 25129/2020

MAURICE SIMMONS,

Plaintiff,

-against-

CLIFFSIDE PROPERTIES, LLC,

Defendant.

DECISION/ORDER

Present:

Hon. Laura G. Douglas

J.S.C.

Part 6

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 and related relief (seq. no. 1):

Papers

Numbered

Plaintiff's Notice of Motion, Statement of Material Facts by Regis A. Gallet, Esq. dated April 12, 2022, Affirmation of Regis A. Gallet, Esq. dated April 12, 2022 in Support of Motion, and Exhibits ("A" through "G")..... 1

Affirmation of Susan Panoyan, Esq. dated June 7, 2022 in Opposition to Motion, Response to Statement of Material Facts by Susan Panoyan, Esq. dated June 7, 2022, Memorandum of Law by Susan Panoyan, Esq. dated June 2, 2022 in Opposition to Motion, and Exhibits ("1" and "2")..... 2

Reply Affirmation of Regis A. Gallet, Esq. dated June 8, 2022..... 3

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

The plaintiff ("Simmons") seeks summary judgment pursuant to CPLR Rule 3212 and an award of costs pursuant to CPLR § 8106. The motion is granted solely as ordered below and is denied in all other respects.

Simmons seeks monetary damages for personal injuries allegedly sustained on October 29, 2019 when he slipped and fell on a hallway floor located in a building owned by the defendant purportedly due to a "large amount of water which had accumulated on the floor outside the apartment in the hallway . . . due to a leak in the ceiling" (*see* Gallet Aff., pp. 1-2).

At his deposition, Simmons testified that he had been visiting his friend, Christopher Simmons

(no alleged relation), in Apartment # 2B located on the second floor, which he had done many times before. While it had been raining that day, Simmons did not observe any water on the hallway floor when he entered the apartment and did not know whether there was any water on the hallways walls. Simmons stated that his accident occurred when he was exiting the apartment. He had not observed any water damage or a leak on any prior visits and was unaware of any prior complaints or other accidents related to this condition.

In further support of his motion, Simmons relies on the deposition testimony of Yvonne Pantojas ("Pantojas"), the property manager for the building in question. In pertinent part, Pantojas testified that she never received complaints about water on the floor near the subject apartment and never observed same during her visits to the building. She was aware of the walls being damp. However, she did acknowledge notice of an alleged prior incident in that hallway, but observed no water when she arrived to inspect the location. In addition, she stated that the superintendent had plastered the wall within a week after that alleged slip and fall accident. Pantojas conceded that she did receive additional complaints about the condition of the second floor hallway within one month prior to Simmons' accident and that work was being done in the building related to fixing a leak in the ceiling of the hallway coming from the third floor onto the second floor. She stated that she was probably notified about the condition by the building's superintendent one to two weeks before the work began. Pantojas testified that additional complaints came in during the time when work was being done to address the complaints, but that they couldn't pinpoint the exact source of the leak. Finally, Pantojas admitted that she was notified about the leak condition in connection with a similar accident which allegedly occurred six days prior to Simmons' accident and is now the subject of a different lawsuit.

In addition, Simmons offers an affidavit dated September 22, 2020 from Christopher Simmons, the plaintiff's friend whom he was visiting at the time of the accident. In pertinent part, Mr. Simmons avers that he has seen water leaking from the ceiling in the second floor hallway after rainstorms. The water runs down the walls and ends up on the floor. He alleges that this condition had been ongoing for years prior to the plaintiff's accident and that he had notified "Aneudi", the building superintendent, about it on several occasions.

In opposition, the defendant submits the deposition testimony of Maximal Garcia Para ("Para"), its building superintendent for some six years. In pertinent part, Para testified that he is the only superintendent at this building. He denied knowing of any leaks in the area around Apartment #2B and

was not previously aware of Simmons' accident, although he would have been at the building on the date and time of the alleged accident. Para stated that he never received a complaint of a leak in the hallway ceiling nor had seen one. Para did admit that he observed mold in that hallway, which he believed was caused by humidity and not by a leak. The defendant also highlights Pantojas' deposition testimony that she never saw any flooding in the area of Apartment #2B and never received any complaints about flooding at that location. Finally, the defendant argues that Simmons has offered no evidence that water was somehow finding its way from the walls of the hallway to the floor or that any condition on the walls was mold and not a leak.

To demonstrate negligence in this slip and fall case, Simmons is required to show that the defendant created the slippery condition that caused him to fall or that the defendant had actual or constructive notice of this condition (*see Uhlich v. Canada Dry Bottling Company of New York*, 305 AD2d 107 [1st Dept 2003]). The defendant will be charged with constructive notice where the defective condition was visible and apparent and existed for a sufficient period prior to the accident to allow the defendant to discover and remedy the hazard (*see Gordon v. American Museum of Natural History*, 67 NY2d 836 [Ct App 1986]). Simmons can meet his burden by presenting evidence that the hazardous condition was ongoing and recurring and was left unaddressed by the landlord (*see Narvaez v. River View Redevelopment Co., LP*, 146 AD3d 722 [1st Dept 2017]).

Here, Pantojas' testimony demonstrates that the defendant had notice of a leaking condition in the second floor hallway prior to the date of Simmons' accident. Pantojas admitted that she was aware of a similar claim made by a different building resident that occurred prior to Simmons' accident. That other resident claimed that her accident was a result of a leak in the same hallway. This occurred "way before" Simmons' accident, about one month prior (*see Pantojas deposition transcript*, p. 32). Pantojas also admitted that the water condition on the walls of the second floor hallway was still present on the date of this other resident's accident. Pantojas arrived at the building on the date of this prior accident and felt the walls of the hallway wet, although she did not see any water on the floor. Pantojas testified that the leak continued despite the superintendent having plastered the wall. That was when he "started to notice that it was a leak coming from somewhere up – on the upper floors (*see Pantojas deposition transcript*, p. 72). Pantojas admitted that she ultimately realized that the condition was a continuous leak and an outside contractor was hired to remedy the condition (*see Pantojas deposition transcript*, p. 77).

The defendant's unsuccessful plaster repair and subsequent retention of an outside contractor demonstrate that the defendant was aware of recurring water infiltration in the second floor hallway and had time to correct the condition or otherwise safeguard Simmons from the hazard presented way before his accident (*see De Barcadel v. 1015 Concourse Owners Corp.*, 204 AD3d 605 [1st Dept 2022] and *Williams v. New York City Housing Authority*, 183 AD3d 523 [1st Dept 2020]).

The Court notes that Simmons describes the relief requested in this motion as follows:

“Plaintiff has moved this Court seeking an order granting him **Summary Judgment on the issue of Notice of a Defective Condition** – **NOT Summary Judgment on the issue of liability.**”

(*see* Gallet Reply Aff., p. 4).

Since Simmons does not seek judgment on liability, he acknowledges that liability remains unresolved even if his motion were to be granted. Remaining issues might include proximate cause and Simmons' comparative negligence. Therefore, this decision/order does not trigger prejudgment interest under CPLR § 5002.

The branch of Simmons' motion seeking an award of costs is denied. While the defendant failed to execute the stipulation proffered by Simmons that would have obviated the need for this motion, Para's testimony provided the defendant with a good faith basis for its position. In addition, the Court cannot review the appropriateness of the plaintiff's proposed stipulated language, since his stipulation has not been submitted on this motion.

Accordingly, it is hereby

ORDERED that the plaintiff have partial summary judgment on the issue of the defendant's notice of a hazardous condition existing on the second floor hallway of the subject premises prior to the date of the plaintiff's accident.

The foregoing constitutes the Decision/Order of this Court.

DATED: October 12, 2022
Bronx, New York


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