SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 73
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ELIZABETH MASON,

Plaintiff,

-against-

HAYFIELD BARNS, LLC, and ANNA MAVROMATIS

Defendants.
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Index No.: 506733/2018
Motion Date: 12-5-22
Mot. Seq. No.: 10, 11

DECISION/ORDER

Upon the following papers, listed on NYSCEF as document numbers 400-421, 427 -458 were read on motion sequence 11:

In this action to recover damages for personal injuries, in motion sequence # 10, the plaintiff, ELIZABETH MASON, moves for an order granting her summary judgment against the defendants, HAYFIELD BARNS, LLC and ANNA MAVROMATIS, on the issue of liability. The motion was marked off calendar on December 5, 2022 due to plaintiff's failure to appear for oral argument.

In motion sequence # 11, the defendants move for an order granting them summary judgment dismissing plaintiff's complaint, or in the alternative, an order granting partial summary judgment in their favor, dismissing the plaintiff's claim that the sliding doors, stairway railings and landings did not render the premises dangerous as the sliding doors, stairway railings and were in compliance with all applicable statutes and building codes.

Background:

On Sunday, September 17, 2017, at approximately 9:30 a.m. plaintiff, Elizabeth Mason, fell while attempting to enter a barn at the premises known as Hayfield Barn, located at 221 County Road 56, Maplecrest, New York. As a result of

the accident, plaintiff is claiming that she sustained injuries to her right shoulder. Defendant Ann Mavromatis was the owner premises and defendant Hayfield Barns LLC, was in the business of providing the premises as a wedding venue. The plaintiff was at wedding at the premises at the time of her accident. Defendant Mavromatis purchased the premises on or about January 26, 2016, and after its purchase and prior to plaintiff's accident, the barn structure was extensively renovated and changed from an agricultural structure to a Place of Public Assembly.

The accident occurred as the plaintiff was attempting to negotiate a single step entrance to the barn which plaintiff claims exceeded sixteen (16) inches in height. As she was entering the barn, the plaintiff was holding onto what she believed was a wall in the area of the step. What she believed was a wall turned out to be a sliding door. The sliding door moved away from her as she was holding onto it and plaintiff claims that the existence of the sliding door constituted a dangerous condition which contributed to causing her to fall.

In support of the motion, plaintiff submitted that affidavit of John Stinemiere, P.E., who opined that that the height of the step (which was more than 16 inches), the lack of a handrail, and the existence of a sliding rather than a hinged door and the location of plaintiff's fall were violations of New York State building codes. In opposition to the motion, the defendants submitted the report of Richard E. Nolan, P.E., who opined, in sum and substance, that the step height was indeed out of compliance with the applicable building codes. He opined, however, that the lack of railings, landing and sliding door were not prohibited by said codes.

Discussion:

Although plaintiff's motion was marked off calendar on December 5, 2022, the motion would have been denied. As a general rule, liability for a dangerous condition on real property must be predicated upon a defendant's ownership, occupancy, control, or special use of that property (*see, Golds v. Del Aguila,* 259 A.D.2d 942, 686 N.Y.S.2d 908; *Allen v. Pearson Publ.*

Empire, 256 A.D.2d 528, 683 N.Y.S.2d 100; *Millman v. Citibank*, 216 A.D.2d 278, 627 N.Y.S.2d 451).The owner of a premises and those in in control of a premises cannot be held liable for injuries caused by an allegedly defective condition unless the plaintiff establishes that they either created or had actual or constructive notice of the alleged dangerous condition (*Bolloli v. Waldbaum, Inc.*, 71 A.D.3d 618, 619, 896 N.Y.S.2d 400 [internal quotation marks omitted]). To permit a finding of constructive notice, "a defect must be visible and apparent, and it must exist for a sufficient length of time [for the defendant] to discover and remedy it" (*Gordon v. American Museum of Natural History*, 67 N.Y.2d 836, 837, 501 N.Y.S.2d 646, 492 N.E.2d 774). Whether a dangerous condition exists on real property so as to create liability depends on the peculiar facts and circumstances of each case and is generally a question of fact for the jury (*see Trincere v. County of Suffolk*, 90 N.Y.2d 976, 665 N.Y.S.2d 615, 688 N.E.2d 489; *Adsmond v. City of Poughkeepsie*, 283 A.D.2d 598, 725 N.Y.S.2d 80; *Guerrieri v. Summa*, 193 A.D.2d 647, 598 N.Y.S.2d 4).

Here, plaintiff's submission did not demonstrate as a matter of laws that a dangerous condition existed in the area of the accident. As stated, whether a dangerous condition existed in inherently a question of fact for the jury and there is no reason in this case to take the question away from a jury. While the plaintiff submitted compelling evidence that the excessive height of the single step riser constituted a building code violation, evidence of a building code violation "constitute[s] only some evidence of negligence" rather than negligence per se (*Elliott v. City of New York*, 95 N.Y.2d 730, 735, 724 N.Y.S.2d 397, 747 N.E.2d 760; *see Morreale v. Froelich*, 125 A.D.3d 1280, 1281; *cf. generally Yenem Corp. v. 281 Broadway Holdings*, 18 N.Y.3d 481, 489–490, 941 N.Y.S.2d 20, 964 N.E.2d 391). Thus, the violationwas insufficient to meet plaintiffs' initial burden on her motion for summary judgment (*see generally Alvarez*, 68 N.Y.2d at 324, 508 N.Y.S.2d 923, 501 N.E.2d 572).

Defendants' motion is DENIED. To demonstrate entitlement to summary judgment in a trip-and-fall case, the defendant must establish that it maintained the premises in a reasonably safe condition and that it did not create a dangerous or defective condition on the property or

have either actual or constructive notice of a dangerous or defective condition for a sufficient length of time to remedy it (*see Ross v. Bretton Woods Home Owners Ass'n, Inc.*, 151 A.D.3d 774, 775, 55 N.Y.S.3d 417, 419; *Baron v. 305–323 E. Shore Rd. Corp.*, 121 A.D.3d 826, 827, 994 N.Y.S.2d 651; *Villano v. Strathmore Terrace Homeowners Assn., Inc.*, 76 A.D.3d 1061, 908 N.Y.S.2d 124). Moreover, while a landowner has a duty to maintain its premises in a reasonably safe manner (*see Basso v. Miller*, 40 N.Y.2d 233, 241, 386 N.Y.S.2d 564, 352 N.E.2d 868), there is no duty to protect or warn against an open and obvious condition which, as a matter of law, is not inherently dangerous (*see Lazic v. Trump Vil. Section 3, Inc.*, 134 A.D.3d 776, 20 N.Y.S.3d 643; *Weiss v. Half Hollow Hills Cent. School Dist.*, 70 A.D.3d 932, 933, 893 N.Y.S.2d 877).

Here, the defendants' submissions failed to establish as a matter of law that the entrance to the barn was reasonable safe or that the alleged dangerous conditions were open and obvious, and not inherently dangerous as a matter of law (*see id.*; *Katz v. Westchester County Healthcare Corp.*, 82 A.D.3d 712, 713, 917 N.Y.S.2d 896; *Gubitosi v. Pulte Homes of N.Y., LLC*, 81 A.D.3d 690, 691, 916 N.Y.S.2d 516; *Roros v. Oliva*, 54 A.D.3d 398, 399–400, 863 N.Y.S.2d 465; *Kempter v. Horton*, 33 A.D.3d 868, 869, 824 N.Y.S.2d 308; *Scher v. Stropoli*, 7 A.D.3d 777, 776 N.Y.S.2d 870; *see generally Schwartz v. Reisman*, 135 A.D.3d 739, 740, 22 N.Y.S.3d 879). Indeed, the plaintiff submitted evidence demonstrating that the single step riser was excessive in height and violated a relevant building code, which constitutes evidence of negligence, demonstrating a triable issue of fact as to whether her accident was caused by a dangerous condition in the area of the accident. The evidence also sufficiently demonstrated triable issue as to whether the defendants were knew of should have known of the existence of this condition.

Assuming, arguendo, that the Court accepts as true that the sliding doors, stairway railings and landings were in compliance with the applicable building codes, as defendants' contend, compliance with such codes do " ' not necessarily preclude a jury from finding that the ... [these conditions] [were] was part of or contributed to any inherently dangerous condition existing in the area of [plaintiff's] fall' " (*Bamrick v. Orchard Brooke Living Ctr.*, 5 A.D.3d

1031, 1032, 773 N.Y.S.2d 712; *see Eisenhart,* 176 A.D.2d at 1220, 576 N.Y.S.2d 713). For these reasons, all aspects of defendants' motion must be denied.

Accordingly, it is hereby

ORDERED the defendants' motion is decided as indicated above.

This constitutes the decision and order of the Court.

Dated: February 17, 2023

PPS

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020