

Marrero v New York City Hous. Auth.

2023 NY Slip Op 30924(U)

March 27, 2023

Supreme Court, New York County

Docket Number: Index No. 152711/2019

Judge: David B. Cohen

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

<p>PRESENT: <u>HON. DAVID B. COHEN</u></p> <p align="center"><i>Justice</i></p> <p>-----X</p> <p>LORRAINE MARRERO</p> <p align="center">Plaintiff,</p> <p align="center">- against -</p> <p>NEW YORK CITY HOUSING AUTHORITY,</p> <p align="center">Defendant.</p> <p>-----X</p>	<p>PART 58</p> <p>INDEX NO. <u>152711/2019</u></p> <p>MOTION DATE <u>12/19/2022</u></p> <p>MOTION SEQ. NO. <u>004</u></p> <p align="center">DECISION + ORDER ON MOTION</p>
--	---

The following e-filed documents, listed by NYSCEF document number (Motion 004) 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74 were read on this motion to/for JUDGMENT - SUMMARY.

In this personal injury action, defendant New York City Housing Authority (NYCHA) moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint.

I. BACKGROUND

This personal injury matter arises out of claims that plaintiff was injured when she allegedly slipped and fell on liquid present on the 2nd floor hallway of 1595 Madison Avenue, in New York (the building), the premises where her parents resided. Plaintiff testified that on July 31, 2018, she picked her father up from the building (*see* NYSCEF Doc. No. 63 p 13 lines 10-15), accompanied him home to the building “about 3:45” pm, and remained in her parents’ apartment with her father for “about 20 to 30 minutes” before departing to return to her home “after 4:00 something,” and slipping on “liquid on the floor” in the hallway (*see Id.* p 20 line 6). Plaintiff did not know how long the liquid had been there, and did not observe any liquid on the floor in the hallway when she brought her father home (*see Id.* p 19 lines 22-25 – p 20 lines 1-10), nor anything else wrong with the location before the accident (see NYSCEF Doc. No. 62 p 30 lines 16-20). Plaintiff also did not observe any warning signs at the location at the time the

incident occurred, nor anyone from NYCHA working in that area before the accident (*see Id.* p 36 lines 9-15). Finally, plaintiff did not make any prior complaints to NYCHA about liquid on the floor, nor was she aware of any complaints made by other people (*see Id.* p 37 lines 3-12).

Lisa Epton, a NYCHA employee and Caretaker at the building where plaintiff claims she was injured, testified on NYCHA's behalf, and her responsibilities included taking care of the building, cleaning, mopping, and garbage disposal (*see* NYSCEF Doc. No. 64 p 9 lines 10-11). At the time of plaintiff's accident, Epton was on duty from 7:10am to 3:55pm (*see* NYSCEF Doc. Nos. 68, 69), and she did two walk-throughs of the building the day of the incident at approximately 8:10am, and then again at 2:00pm, and that these walk-throughs included inspecting all 20 of the hallway floors (*see* NYSCEF Doc. No. 64 p 15 lines 7-23; NYSCEF Doc. No. 67). If she found a spill, leak, or hazardous condition during her walk-through, Epton would clean it up and call in a report so that a ticket could be made for maintenance to address it (*see Id.* at p 15 lines 24-25 – p 16 lines 2-11).

Epton also testified that on the day of the alleged incident, she assisted another employee in cleaning the floors in the building using a T-2 machine (*see Id.* at p 27 lines 2-25 – p 28 lines 2-15; NYSCEF Doc. No. 68), which “mops and dries the floor in fifteen minutes” (*see Id.* at p 28 lines 12-13). Epton also stated that there were no complaints made regarding the condition of the hallway at issue on the date of the accident (*see* NYSCEF Doc. No. 65 ¶ 9).

In support of the instant motion, Epton submitted an affidavit wherein she averred that she followed the afternoon janitorial schedule on the day of the accident, and that the schedule did not call for NYCHA staff to be present at the location of the accident between 3:45pm (when plaintiff walked through the hallway without seeing any liquid), and 4:30pm (the approximate time when the accident occurred) (NYSCEF Doc. No. 65, ¶ 7).

II. CONTENTIONS

NYCHA moves for summary judgment dismissing plaintiff's complaint, arguing that liability cannot be imposed upon it because it did not cause the condition, nor did it have actual or constructive notice of it. NYCHA argues that its staff cleaned and mopped the hallways of the building as scheduled without incident and that no liquid condition was observed by staff on the accident date. Moreover, NYCHA contends that plaintiff has not established that it had constructive notice of the alleged condition and that such condition was visible, apparent, and existed for a sufficient length of time for NYCHA to have discovered and remedied it.

In opposition, plaintiff argues that NYCHA failed to meet its prima facie burden of showing that it neither created the hazardous condition nor had actual or constructive notice of it for a reasonable time to correct it. Plaintiff maintains that there is a clear question of fact as to when Epton and her coworker mopped the hallway and when she inspected it. Plaintiff further asserts that as NYCHA created the liquid condition, it is irrelevant whether it had notice, and that there is overwhelming direct evidence that multiple NYCHA employees were using water to mop the floor in the exact location where plaintiff's accident occurred, less than an hour before the accident. Plaintiff also argues that NYCHA's mopping is the only plausible cause of the liquid condition and is a question for a jury to decide.

In reply, NYCHA argues that pursuant to 22 NYCRR § 202.8-g, its Statement of Material Facts may be deemed admitted because plaintiff failed to offer a counter-statement, and that, therefore, it demonstrates prima facie entitlement to dismissal. NYCHA asserts that there is no clear evidence that it created the condition, and that in fact, the record demonstrates that NYCHA could not have created it.

III. ANALYSIS

"Summary judgment is a drastic remedy made in lieu of a trial which resolves the case as a matter of law" (*Reyes v Arco Wentworth Mgt. Corp.*, 83 AD3d 47, 54 [2d Dept 2011], citing *Andre v Pomeroy*, 35 NY2d 361, 364 [1974]; see also *Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012] [Vega]). A summary judgment movant must show prima facie entitlement to judgment as a matter of law by producing sufficient admissible evidence demonstrating the absence of any material factual issues (CPLR 3212 [b]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of any opposition (*Vega*, 18 NY3d at 503). The opposing party overcomes the movant's showing only by introducing "evidentiary proof in admissible form sufficient to require a trial of material questions" (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980] [Zuckerman]).

Consideration of a summary judgment motion requires viewing the evidence "in the light most favorable to the non-moving party" (*Vega*, 18 NY3d at 503 [internal quotation marks and citation omitted]). However, "mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" to defeat a summary judgment motion (*Zuckerman*, 49 NY2d at 562). "The court's function on a motion for summary judgment is to determine whether material factual issues exist, not to resolve such issues" (*Ruiz v Griffin*, 71 AD3d 1112, 1115 [2d Dept 2010] [internal quotation marks and citation omitted]).

"The imposition of liability in a slip-and-fall case requires evidence that the defendants created the dangerous condition which caused the accident, or that they had actual or constructive notice of that condition and failed to remedy it within a reasonable time" (*Perlongo v Park City 3 & 4 Apts., Inc.*, 31 AD3d 409, 410 [2d Dept 2006]; see *Mercer v City of New York*,

88 NY2d 955, 956 [1996]). “A defendant establishes that it lacked actual notice when it produces a witness who can testify that no complaints about the location were received before the accident, and there were no prior incidents in that area before plaintiff fell” (*see Velocci v Stop & Shop*, 188 AD3d 436, 439 [1st Dept 2020]).

“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” (*Mitchell v City of NY*, 29 AD3d 372, 374 [1st Dept 2006], quoting *Gordon v American Museum of Natural History*, 67 NY2d 836, 837 [1986]). “To meet its initial burden on the issue of lack of constructive notice the defendant must offer some evidence as to when the area in question was last cleaned or inspected relative to the time when the plaintiff fell” (*Johnson v Pawling Cent. Sch. Dist.*, 196 AD3d 686, 688 [2d Dept 2021] quoting *Birnbaum v New York Racing Assn., Inc.*, 57 AD3d 598, 598-599 [2008]). “Mere reference to general cleaning practices, with no evidence regarding any specific cleaning or inspection of the area in question, is insufficient to establish a lack of constructive notice” (*Williams v Island Trees Union Free Sch. Dist.*, 177 AD3d 936, 938 [2d Dept 2019], quoting *Herman v Lifplex, LLC*, 106 AD3d 1050, 1051 [2d Dept 2013] [additional citation omitted]).

NYCHA sustained its initial burden of establishing that it did not create the hazardous condition, based on plaintiff’s testimony that she saw no liquid in the hallway before her accident or any NYCHA employee mopping the floor at the accident location before she fell, and she did not know the cause of the condition (*see Velocci*, 188 AD3d at 441). Moreover, Epton’s affidavit establishes that no NYCHA employee mopped in the hallway between 3:45 pm, when plaintiff first walked through the hallway without noticing a liquid condition, and 4:30 pm, when the accident occurred. Contrary to plaintiff’s contention, Epton’s affidavit does not directly

contradict her prior deposition testimony with respect to this issue (*see generally Capuano v Tishman Constr. Corp.*, 98 AD3d 848 [1st Dept 2012]).

NYCHA also established that the liquid was not on the floor for a reasonable period of time to correct it, as plaintiff testified that she remained inside her parents' apartment for only 20 to 30 minutes, before leaving and slipping on the liquid in the hallway. This brief period of time was insufficient to afford NYCHA a reasonable opportunity to discover and remedy it (*see Green v Gracie Muse Rest. Corp.*, 105 AD3d 578 [1st Dept 2013] [45 minutes was insufficient amount of time to provide reasonable opportunity to discover and remedy hazardous condition]).

As to actual notice, NYCHA relies on Epton's testimony that she conducted two inspections of the building on the accident date and saw no liquid condition present, that she followed a specific cleaning and maintenance protocol that day, and that NYCHA received no complaints about the condition before the accident, which satisfies its prima facie burden (*see Gadzhiyeva v Smith*, 116 AD3d 1001, 1002 [2d Dept 2014]). Therefore, NYCHA has established its entitlement to judgment as a matter of law.

In opposition to NYCHA's prima facie showing, plaintiff failed to raise a triable issue of fact as to whether NYCHA caused or had actual notice of the liquid condition, or if the accumulation of the liquid existed for a period of time sufficient to impute constructive notice to NYCHA. While plaintiff contends that NYCHA employees had mopped the hallway immediately before the accident, the evidence does not support her allegation.

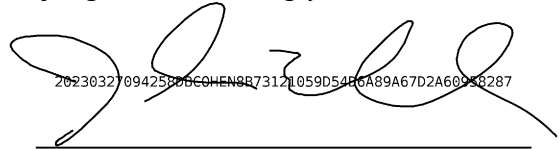
Given this result, there is no need to address the parties' remaining contentions.

IV. CONCLUSION

Accordingly, it is hereby

ORDERED, that defendant’s motion for summary judgment dismissing the complaint is granted in its entirety, and the complaint is dismissed; and it is further

ORDERED, that the Clerk of the Court shall enter judgment accordingly.



202303270942580560HEN8873121059D5486A89A67D2A60958287

3/27/2023

DATE

DAVID B. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE