

Assad v Richmond County Ambulance Servs. Inc.

2023 NY Slip Op 34865(U)

February 9, 2023

Supreme Court, Kings County

Docket Number: Index No. 511337/2019

Judge: Carl J. Landicino

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At an IAS Term, Part 81 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 9th day of February 2023.

PRESENT:

CARL J. LANDICINO, J.S.C.

-----X

MAZUZA ASSAD,

Index No.: 511337/2019

Plaintiff,

DECISION AND ORDER

- against -

RICHMOND COUNTY AMBULANCE SERVICES INC.,

Motion Sequence #2

Defendants.

-----X

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

Papers Numbered (NYSCEF)

Notice of Motion/Cross Motion and Affidavits (Affirmations) Annexed.....	26-33,
Opposing Affidavits (Affirmations):.....	37-39,
Reply Affidavits (Affirmations).....	
Memorandum of Law.....	34, 41

Upon the foregoing papers, and after oral argument, the Court finds as follows:

Defendant Richmond County Ambulance Services, Inc. (the "Defendant") moves (motion sequence #2) for an order, pursuant to CPLR 3212, granting them summary judgment and dismissal of the complaint. The Plaintiff, Mazuza Assad (hereinafter, the "Plaintiff") alleges that she was injured as she attempted to board a van owned by the Defendant and slipped on a step (runner) utilized to assist entry to the vehicle. The Defendant argues that it was not negligent, and that the Plaintiff has failed to properly identify a defective condition. In support of its position, the Defendant relies on the deposition testimony of the Plaintiff, the deposition of Richard Eckman, the Defendant's Director, and Anthony Lapide, who was the ambulette operator at the time of the alleged incident.

The Plaintiff opposes the motion. The Plaintiff contends that the Defendant has failed to meet its *prima facie* burden and that the Plaintiff did in fact identify the defect at issue. The Plaintiff also argues that the Defendant has failed to show that it was without actual or constructive notice of the alleged hazardous condition. What is more, the Plaintiff contends that there is an issue of fact regarding whether the actions of the Defendant's employee, together with the condition at issue, was a proximate cause of the accident and the Plaintiff's injuries.

Summary judgment is a drastic remedy that deprives a litigant of his or her day in court, and it "should only be employed when there is no doubt as to the absence of triable issues of material fact." *Kolivas v. Kirchoff*, 14 AD3d 493 [2d Dept 2005], citing *Andre v. Pomeroy*, 35 NY2d 361, 364, 362 N.Y.S.2d 1341, 320 N.E.2d 853[1974]. The proponent for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. See *Sheppard-Mobley v. King*, 10 AD3d 70, 74 [2d Dept 2004], citing *Alvarez v. Prospect Hospital*, 68 NY2d 320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572 [1986], *Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642 [1985]. "In determining a motion for summary judgment, evidence must be viewed in the light most favorable to the nonmoving party, and all reasonable inference must be resolved in favor of the nonmoving party." *Adams v. Bruno*, 124 AD3d 566, 566, 1 N.Y.S.3d 280, 281 [2d Dept 2015] citing *Valentin v. Parisio*, 119 AD3d 854, 989 N.Y.S.2d 621 [2d Dept 2014]; *Escobar v. Velez*, 116 A.D.3d 735, 983 N.Y.S.2d 612 [2d Dept 2014].

Once a moving party has made a *prima facie* showing of its entitlement to summary judgment, "the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action"

Garnham & Han Real Estate Brokers v Oppenheimer, 148 AD2d 493 [2d Dept 1989]. Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers. See *Demshick v. Cmty. Hous. Mgmt. Corp.*, 34 AD3d 518, 520, 824 N.Y.S.2d 166, 168 [2d Dept 2006]; see *Menzel v. Plotnick*, 202 AD2d 558, 558–559, 610 N.Y.S.2d 50 [2d Dept 1994].

Turning to the merits of the instant motion, the Defendant contends that the Plaintiff failed to identify the alleged dangerous condition at issue. However, during her deposition the Plaintiff identified the worn metal step and stated that she slipped on the step. When asked to address the condition of the the step, the Plaintiff stated, “I remember its like a metal step.” When asked how her accident occurred, the Plaintiff stated, “[t]he second I put my foot [on the metal step], it slip.” (See Defendant’s Motion, Exhibit D, Pages 18-19). When asked again about what caused her to fall, the Plaintiff stated “[a]ll I know is was something metal in there, it was steps and it’s slippery.” (See Defendant’s Motion, Exhibit D, Page 26). Additionally, when Anthony Lapide, who was the ambulette operator at the time of the alleged incident, was asked about the condition of the metal runner, he stated, “[i]t might have been worn.” When shown a photograph of the area at issue, Mr. Lapide stated, “[i]t looks like it’s worn out a little bit, maybe dirty.” When asked whether the step looked the same in the photograph as it did on the day of the accident, Mr. Lapide stated, “I guess. I think so.” (See Defendant’s Motion, Exhibit F, Pages 42-42). Mr. Eckerman stated that he took photographs of the vehicle some days prior to his deposition (more than two years after the date of the accident), identified them and stated that the photographs reflected how the vehicle looked on the date of the accident. “No change.” (Defendant’s motion, Exhibit “E”, Pages 17-18). A review of the photographs shows areas of exposed metal, and areas where the metal is covered, indicating a worn condition. Defendant does not contend that these photographs, provided and identified by Eckman and identified by Lapide, were not the same as those proffered by the

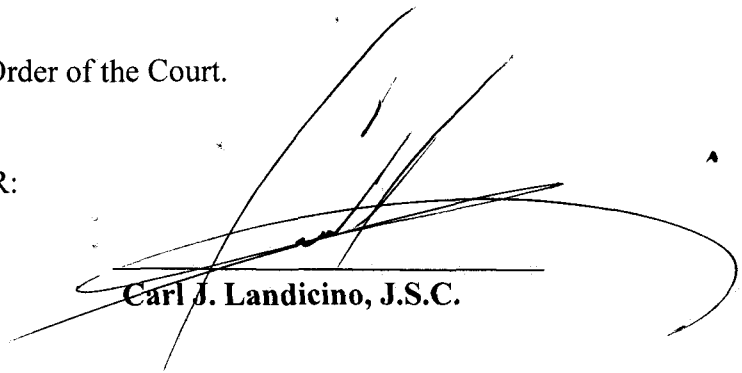
Plaintiff in opposition. Defendant did not provide these photographs in its moving papers. As a result, the Court finds that there are issues of fact regarding the condition of the step, the Defendant's actual or constructive notice of the condition, and Defendant's employee's actions on the day of the accident, that should be addressed at trial. *See Dioguardi v. Hampton Jitney, Inc.*, 28 AD3d 706, 813 N.Y.S.2d 536, 536 [2d Dept 2006].

Based on the foregoing, it is hereby ORDERED as follows:

The Defendant's motion (motion sequence #2) is denied.

The foregoing constitutes the Decision and Order of the Court.

ENTER:



Carl J. Landicino, J.S.C.

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