

Bonilla v Vaszer Realty, LLC

2023 NY Slip Op 35001(U)

October 12, 2023

Supreme Court, Bronx County

Docket Number: Index No. 28127/2020E

Judge: Wilma Guzman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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DILANIA BONILLA,

Plaintiff,

DECISION & ORDER

-against-

Index No.: 28127/2020E

VASZER REALTY, LLC,

Motion Sequence No. 1

Defendant.

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GUZMAN, J.

Plaintiff commenced this action to recover damages for personal injuries she allegedly sustained on January 26, 2020, inside of the apartment building where she lived at 3038 Hull Avenue in Bronx, New York. Plaintiff alleges that she went to the ground floor of the building in order to bring some garbage and a chair that she had decided to throw out to the garbage area. Plaintiff testified at her deposition that as she was exiting through the vestibule door, the door closed behind her, hitting her in the back, causing her to lose her balance and fall down the interior steps of the vestibule. The complaint alleges, *inter alia*, that Plaintiff was caused to fall and sustain severe and permanent injuries as a result of the dangerous and defective interior vestibule door.

At her deposition, Plaintiff testified as follows:

Q. Did you pull the door back towards you in order to open it up?

A. Yes, I opened it widely so I could go out with everything, but then the door hit me in my back and I fell down.

Q. Did the door actually strike your back?

A. Yes, it hit me in the back and I lost my balance and I couldn't go down stairs and I just fell down.

Q. When the door hit you in the back, where was the garbage bag; was the garbage bag in front of you, was it next to you, was it behind you or somewhere else?

A. I don't know, but I think that I had it in my hand because I fell down with everything.

Q. When the door hit you in the back, where was the chair; was it in front of you, next to you, behind you or something else?

A. At my left.

See NYSCEF Doc. 47, at page 40.

* * *

Q. If you are inside and you want to walk down to the street, do you push that door away from you or towards you?

A. Away from me, the accident happened there where the door threw me to the ground.

Id. at page 34-35.

* * *

Q. How did you get the chair through the upper door?

A. I opened the door and put the chair there and then I took the garbage bag and I was going out and at that moment the door pushed me and I fell down with everything.

Id. at 37-38.

* * *

Q. How long did the door remain open before it closed on your back on the day of the Incident?

A. The day of the accident, I couldn't tell you what I can tell you it was instantly because it threw me to the ground. It didn't give me time to go out.

Q. How long did it take you to walk through the door frame with yourself, the garbage and the chair?

A. It didn't take me any time because the door pushed me. The door took me out.

Q. When you got to the door with the garbage and the chair, were you aware that this door would close quickly?

A. Yes, I knew that, but I thought I could make it before it closed.

Id. at page 42-43.

On the motion before the Court, Defendant moves for summary judgment on the grounds that the door never made contact with the Plaintiff, based on video footage of the subject accident.

On a motion for summary judgment, the burden rests with the moving party to make a prima facie showing they are entitled to judgment as a matter of law and demonstrate the absence of any material issues of fact. *Friends of Thayer Lake, LLC v. Brown*, 27 N.Y.3d 1039, 1043, 33 N.Y.S.3d 853 (2016); *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923 (1986). If the moving party meets its burden, the burden shifts to the nonmoving party to establish, through admissible evidence, the existence of disputed issues of material facts for trial. CPLR § 3212 (b); *Zuckerman v. New York*, 49 N.Y.2d 557, 560, 427 N.Y.S.2d 595 (1980). Because summary judgment is a “drastic remedy,” it should only be employed “when there is *no doubt* as to the absence of triable issues.” *Andre v. Pomeroy*, 35 N.Y.2d 361, 364, 362 N.Y.S.2d 131 (1974) (emphasis added). Issue-finding, not issue-determination, is the role of the court on a motion for summary judgment. *Lebedev v. Blavatnik*, 193 A.D.3d 175, 142 N.Y.S.3d 511 (1st Dep’t 2021). Additionally, the court views the evidence in the light most favorable to the non-moving party and gives the non-moving party the benefit of all reasonable inferences that can be drawn from the evidence. *Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499, 503, 942 N.Y.S.2d 13 (2012).

In support of its motion, Defendant has submitted a copy of the Plaintiff’s deposition testimony, video footage of the subject accident retrieved a building security camera, an affidavit authenticating the video in question, photographs of the steps, and deposition testimony from the property manager and the superintendent of the building. *See* NYSCEF Docs. 44-53.

The video link is contained within NYSCEF Doc. 45 at ¶ 12. The angle of the video camera is positioned in such a way that it does not show the door. It is also unclear whether all of the steps are depicted. However, the video shows that Plaintiff’s entire body was on the steps at the moment when she fell, and that she had already passed through the door. She is carrying one or more small bags in her left hand, and appears to be maneuvering or dragging a chair

behind her, with her right hand. Plaintiff's back, hands, and part of the chair that she is carrying are all depicted on camera at the moment when she falls on the steps. There is no door in view when she falls. Thus, it is evident from the video that the door does not hit her or otherwise cause her to fall.

It is well established that it is not the function of the court to weigh evidence or assess the credibility of witnesses at the summary judgment stage, but rather to identify material triable issues of fact. *Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499, 505, 243, 942 N.Y.S.2d 13,16 (2012). Nevertheless, "there are rare instances where credibility may be determined as a matter of law." *Carthen v. Sherman*, 169 A.D.3d 416, 94 N.Y.S.3d 34 (1st Dep't 2019); *see also, e.g., MRI Broadway Rental v. United States Min. Prods. Co.*, 242 A.D.2d 440, 443, 662 N.Y.S.2d 114 (1st Dep't 1997) *aff'd* 92 N.Y.2d 421, 681 N.Y.S.2d 783 (1998) (stating that a court is not required to "shut its eyes" to the patent falsity of a defense).

Thus, where a plaintiff's deposition testimony is belied by video surveillance footage or is otherwise demonstrably false or incredible as a matter of law, the court may award summary judgment in a defendant's favor. *See Schneider v Gap, Inc.*, 208 A.D.3d 606, 607, 172 N.Y.S.3d 725 (2d Dept 2022) (reversing trial court's order denying summary judgment for defendants where video footage of plaintiff's accident established that she tripped over her own feet, and "contrary to the plaintiff's contention, her deposition testimony that she stepped backwards and slipped on a security tag is belied by the video surveillance footage"); *Gaffney v New York City Tr. Auth.*, 210 AD3d 426, 426, 177 N.Y.S.3d 577 (1st Dep't 2022) (affirming summary judgment for defendants where plaintiff's testimony about how the accident occurred was proven "demonstrably false and incredible as a matter of law" by video surveillance from the bus, which showed that the bus remained within one lane at all times); *Batista v. Metropolitan Transp. Auth.*, 210 A.D.3d 487, 178 N.Y.S.3d 45 (1st Dep't 2022) (plaintiff's deposition testimony that the bus was halfway down the block when he started to make a left turn is contradicted by surveillance video from the bus demonstrating that the bus had entered the intersection with a green light when plaintiff started to make the turn" and therefore plaintiff's testimony is "incorrect" and "does not raise a credibility issue for trial") *see also, e.g., Carthen v. Sherman*, 169 A.D.3d 416, 94 N.Y.S.3d 34 (1st Dep't 2019) (evidence may be deemed incredible as a matter of law when it "is demonstrably false . . . [or] contradicts every other piece of evidence in the record").

In opposition, Plaintiff has submitted an affidavit from her daughter, who states, *inter alia*, that she resided in the building for twelve years and passed through the vestibule door on a daily basis, and “on many different occasions” she complained that the interior vestibule door was “broken.” *See* NYSCEF Doc. 60. This affidavit is insufficient and too vague to raise a triable issue of fact in opposition to Defendant’s motion. Similarly, the video created by Plaintiff, purportedly showing how fast the door of the vestibule area closed on the date of Plaintiff’s accident, does not, in and of itself, raise any triable issue of fact.¹ Even assuming that the door was dangerous or defective on the date of Plaintiff’s accident, this fact does not raise a triable issue of fact with respect to the proximate cause of the accident. *See, e.g., Nunez v. Chase Manhattan Bank*, 155 A.D.3d 641, 63 N.Y.S.3d 481 (2d Dep’t 2017) (to find a property owner liable for breaching its duty of care, a plaintiff must show that a defective condition existed and it was a proximate cause of his or her injuries). Accordingly, for the foregoing reasons, it is hereby:

ORDERED AND ADJUDGED that Defendant’s motion for summary judgment is granted; and it is further

ORDERED AND ADJUDGED that the complaint is dismissed; and it is further

ORDERED AND ADJUDGED that Defendant is directed to serve a copy of this Decision & Order with Notice of Entry within twenty days of the date of Entry.

The foregoing constitutes the Decision & Order of the Court.

Dated: Bronx, New York
October 12, 2023



HON. WILMA GUZMAN, J.S.C.

¹Plaintiff’s video is submitted as NYSCEF Doc. 62. The Court was unable to access the link provided and therefore Plaintiff submitted the video via email, in a different format.