Newman v City of New York
2023 NY Slip Op 35060(U)
December 14, 2023
Supreme Court, Bronx County
Docket Number: Index No. 22338/2019E
Judge: Paul L. Alpert
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 26

----------X Index No.: 22338/2019E

Ronald Newman,

Plaintiff,

DECISION/ORDER

-against-

The City of New York, Camba, Inc., 4607 Park Development LLC and Empire Realty Maintenance LLC,

Defendants.

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Recitation, as required by CPLR §2219(a), of the papers considered in the review of the order to show cause as indicated below:

Papers	Numbered
Notice of Motion and Affirmation in Support & Exhibits	**1**
Affirmation in Opposition & Exhibits	**2**
Affirmation in Reply & Exhibits	**3**

The plaintiff commenced this action for personal injuries following a slip and fall accident that occurred on September 11, 2018. Ronald Newman was employed as a security guard with Arrow Security Company and he was assigned to work on the defendants premises located at 4607 Park Avenue, Bronx, New York. The defendants move for summary judgment dismissing the plaintiffs complaint. The plaintiff opposes the motion.

On September 11, 2018, Mr. Newman was employed at Arrow Security as a security guard (Defendants motion, Exhibit A, page 49, lines 4-10). Mr. Newman was assigned to be a security guard at a shelter location named Camba (page 51 lines). As a security guard, Mr. Newman changed rotation on every floor per hour. It was his responsibility to take notation of people that stayed in the shelter. He was also responsible for reporting health issues, drug abuse, and unsanitary issues to the supervisor (page 51 lines 11-25).

On the date of the accident, Mr. Newman was scheduled to work the overnight shift from midnight until 8:00 in the morning (page 59 line 25- page 60 line 9). Mr. Newman's accident occurred in the morning closer to 8:00 a.m. (page 60 lines 10-17). At the end of his shift, Mr. Newman stepped outside and turned to walk back inside the building to speak with his supervisor and sign out for the day (page 84 lines 16-22). Mr. Newman was crossing over the mats, and onto the floor when the accident occurred (page 70 lines 14-18). There were two mats placed down immediately inside the doorway of the main entrance. Mr. Newman took less than 15 steps inside the building before his fall (page 86 lines 5-11). He was not standing on either of the mats when his accident occurred (page 91 lines 19-21). He was walking across the lobby tiled floor at the time of his accident (page 91 line 22- page 92 line 4). Mr. Newman slipped and fell forward on his knees (page 85 lines 16- 23).

Summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to the non-moving party (see *Assaf v. Ropog Cab Corp.*, 153 AD2d 520). A party seeking summary judgment must make a prima facie showing that it is entitled to judgment as a matter of law by proffering sufficient evidence to demonstrate the absence of any material issue of fact (*Alvarez v. Prospect Hospital*, 68 NY2d 320). Once the proponent of a motion for summary judgment meets this burden it is incumbent upon the party opposing the motion to submit proof in admissible form that an issue of fact exists which necessitates a trial (*Zuckerman v. City of New York*, 49 NY2d 557). The courts function on a motion for summary judgment is issue finding and not issue determination (*Sillman v. Twentieth*

Century Fox Film Corp., 3 NY2d 395). Summary judgment will only be granted if there are no material, triable issues of fact (*Id.)*.

A defendant who moves for summary judgment in a slip and fall action has the initial burden of making a prima facie demonstration that it neither created the hazardous condition, nor had actual or constructive notice of its existence (*Smith v. Costco Wholesale Corp.*, 50 AD3d 499). Once a defendant establishes prima facie entitlement to such relief as a matter of law, the burden shifts to the plaintiff to raise a triable issue of fact as to the creation of the defect or notice thereof (*Id.*). It is not plaintiff's burden in opposing a motion for summary judgment to establish that defendants had actual or constructive notice of the dangerous condition (*Giuffrida v. Metro North Commuter R. Co.*, 279 AD2d 403). The burden is on the defendant to establish lack of notice as a matter of law (*Id.*).

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 (*Gordon v American Museum of Natural History*, 67 NY2d 836). Furthermore, "'a general awareness' that a dangerous condition may be present is legally insufficient to constitute notice of the particular condition that caused the plaintiff's fall" (*Piacqado v. Recine Realty Corp.*, 84 NY2d 967, quoting *Gordon v. American Museum of Natural History*, 67 NY2d 836). A defendant can meet its burden of showing that it lacked constructive notice by producing evidence of its maintenance activities on the day of the accident, and specifically showing that the alleged condition did not exist when the area was last inspected or cleaned before the plaintiff fell (*Velocci v. Stop and Shop*, 188 AD3d 436). Should defendant fail to meet its initial burden to show that it did not cause, create, or have actual or constructive notice of the alleged condition, the burden never shifts to the plaintiff to raise a triable issue of fact (*Id.*). A showing of general

cleaning procedures is insufficient to satisfy the burden of demonstrating lack of constructive notice of the condition prior to the accident (*Smith v. Montefiore Medical Center*, 192 AD3d 609).

The defendants first argue that they are entitled to summary judgment because they did not create the alleged hazardous condition that caused the plaintiffs fall. In support of this argument, the defendants maintain that Mr. Newman's testimony is speculative as to the existence of the slippery substance on the floor of his accident. The defendant relies on Mr. Newman's testimony that he did not see a slippery substance on the floor before or after his fall. However, Mr. Newman testified that immediately after his accident, his knees were wet (page 99 lines 11-14). There was a slippery or wet substance that made him slip (page 86 lines 2-4). Whether a dangerous condition exists is a question of fact to be decided by a jury (*Trincere v. County of Suffolk*, 90 NY2d 976, 977).

The defendants further fail to produce any evidence to demonstrate lack of notice. Jacob Shafran is a partner in 4607 Park Development, LLC (defendants motion, Exhibit D, page 9 lines 4-5). 4607 Park Development, LLC is an entity that owns a percentage of the property (page 9 lines 23-25). As a partner of 4607 Park Development, LLC, Mr. Shafran does not have any management responsibilities (page 11 lines 2-4). The superintendent or property manager of the building is Empire Realty Maintenance (page 11 lines 5-11). The responsibilities of Empire Realty include mechanical maintenance, systems throughout the building, and standard building maintenance (page 12 lines 15-21). The defendants failed to produce evidence demonstrating when the area was last cleaned or inspected before Mr. Newman's fall. Accordingly, the defendant failed to establish lack of notice.

The defendants failed to meet their burden in demonstrating that there was no dangerous condition or that they lacked notice of the condition. Accordingly, the defendants motion for summary judgment pursuant to CPLR 3212 dismissing the plaintiffs complaint is denied.

Based on the foregoing, it is hereby:

ORDERED AND ADJUDGED, that the defendants motion for summary judgment pursuant to CPLR § 3212 is denied, and it is further,

ORDERED AND ADJUDGED, that the defendant shall serve a copy of this decision and order upon the plaintiff within twenty (20) days of notice of entry.

This constitutes the decision and order of the court.

Dated: December 14, 2023

Hon. Paul L. Alpert, J.S.C.