

Dan v City of New York
2023 NY Slip Op 35187(U)
June 13, 2023
Supreme Court, Bronx County
Docket Number: Index No. 21313/2016E
Judge: Mitchell J. Danziger
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, IAS PART 3

JANET DAN

Index №. 21313/2016E

-against-

Hon. Mitchell J. Danziger

CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF EDUCATION, AND NEW
YORK CITY BOARD OF EDUCATION

Justice Supreme Court

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The following papers were read on this motion (Seq. No. 1) for **summary judgment** noticed for December 22, 2022 and submitted on February 21, 2023

Notice of Motion - Affirmation and Exhibits	NYSCEF Doc. # 40
Affirmation in Opposition and Exhibits	NYSCEF Doc. # 42-50
Reply Affirmation	NYSCEF Doc. # 60

Motion by the Defendants,¹ the City of New York (“the City”), New York City Department of Education (“DOE”), and New York City Board of Education (“BOE”) (collectively, “the City Defendants”), for an order granting summary judgment pursuant to CPLR 3212, dismissing Plaintiff’s complaint, is decided as follows:

I. Background

This action stems from personal injuries sustained by the plaintiff, Janet Dan (“Plaintiff”), on October 26, 2015 (Pl. 50-h at 10; NOC). In support of their motion, the City Defendants submitted, among other things, Plaintiff’s deposition transcripts. On the date of the incident, Plaintiff was employed by Pablo Casals middle school, located at 800 Baychester Avenue, in the Bronx, where she is a dean (Pl. 50-h at 6). Plaintiff is responsible for morning entry at the school (Pl. 50-h at 11; Pl. EBT at 12). As part of morning entry, Plaintiff usually holds open the double doors located in the main entrance of the building (Pl. 50-h at 11-12, 16). There are two separate sets of double doors upon entering the building – an outer set of double doors and an inner set of double doors (Pl. EBT at 14). The subject incident occurred at the inner set of double doors (Pl. EBT at 14). If someone is entering the building, they must pull open the double doors (*id.* at 16-17).

On the morning of the subject incident Plaintiff was bringing the last set of students, who arrived late, into the school (*id.* at 17). Plaintiff opened the double-doors on the left side only (*id.* at 17). When Plaintiff pulled

¹ Moving counsel is admonished and notified to label exhibits properly and separately by using descriptions that identify the exhibit, *i.e.*, Note of Issue or Notice of Claim, and not by simply submitting exhibits titled as Exhibit A and Exhibit B, as was done in Doc Nos. 27-42.

open the door with her left hand (Pl. 50-h at 18), the door “swung out” and “smashed” her left hand against the tile wall (Pl. 50-h at 17; Pl. EBT at 13-14). Plaintiff stated, “the apparatus that works to slow the door down from swinging out wasn’t working” (Pl. EBT at 14). Plaintiff clarified that the apparatus is located at the top of the door (*id.*). Plaintiff further stated that there was no door stop for the door (*id.*).

Plaintiff testified that neither she, nor anyone that she was aware of, made complaints about the double doors prior to the subject incident (Pl. 50-h at 15-16; Pl. EBT at 15). Plaintiff further stated she did not notice any problems with the double doors prior to the subject incident (Pl. 50-h at 15-16).

The City Defendants also submitted the deposition transcripts of Judith Caraballo, the custodian engineer for Pablo Casals middle school, during the time of the subject incident (Caraballo 2021 EBT at 9-10). Caraballo’s “daily routine” began by taking a “walk around the building” and “mak[ing] sure that everything was ready and good to go” (Caraballo 2018 EBT at 9-10). Throughout the day Caraballo filled out, among other things, a daily custodian logbook (submitted as NYSCEF Doc No. 37) and a maintenance logbook for repairs (submitted as NYSCEF Doc No. 38) (Caraballo 2021 EBT at 16, 51-52, 54-55). Caraballo would daily “check the door closures to make sure they’re functioning properly” (Caraballo 2021 EBT at 34-35). If Caraballo found that a door closure was not functioning properly, she would have a coworker make a repair (*id.* at 34-35). The daily custodian logbook contains a notation for October 26, 2015, stating the building and grounds were checked (NYSCEF Doc. No. 37 at 0114-0115).

On the day of the subject incident, Caraballo inspected the subject double door prior to Plaintiff’s injury and found no issues (Caraballo 2021 EBT at 35-36). Prior to the incident, Caraballo was not aware of any other accidents where somebody was injured because of the subject double door (*id.* at 43-44). Caraballo testified that at the time of Plaintiffs’ injury the subject double door did not have door stop, but further stated that following Plaintiff’s injury a doorstop was installed (*id.* at 28-30).

Lastly, the City Defendants submitted, and Plaintiff references, nine photographs depicting the area of the subject double doors – including the outer set of double doors and the inner set of double doors.

In opposition to the motion, Plaintiff submitted the expert affidavit of Harold Krongelb (“Krongelb”), P.E., a professional engineer.

II. Standard of Review

“The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Winegrad v N.Y Univ. Med. Ctr.*, 64 N.Y.2d 851 [1985] [citations omitted]). “Once this showing is made, the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the

existence of triable issues of fact” (*Melendez v Parkchester Med. Set-vs., P.C.*, 76 A.D.3d 927 [1st Dept 2010], citing *Zuckerman v New York*, 49 N.Y.2d 557, 562 [1980]). “[T]he opposing party must assemble and lay bare its affirmative proof to demonstrate that genuine triable issues of fact exist” and “the issue must be shown to be real, not feigned since a sham or frivolous issue will not preclude summary relief” (*Kornfeld v NRX Technologies, Inc.*, 93 A.D.2d 772 [1st Dept 1983], *affd* 62 N.Y.2d 686 [1984]). The evidence submitted on a motion for summary judgment is construed in the light most favorable to the opponent of the motion (*see Branham v Loews Orpheum Cinemas, Inc.*, 8 N.Y.3d 931, 932 [2007]). “It is not the function of a court deciding a summary judgment motion to make credibility determinations or findings of fact, but rather to identify material triable issues of fact (or point to the lack thereof)” (*Vega v Restani Constr. Corp.*, 18 N.Y.3d 499, 503, 505 [2012], citing *Sillman v Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 404 [1957]).

III. The City Defendants’ Motion

A. The City’s Motion for Summary Judgment

Plaintiffs do not oppose the portion of the City’s motion seeking summary judgment on the grounds that the City is not a proper party to this action, as the City cannot be held liable for the torts allegedly committed by the DOE and BOE. As such, the portion of the motion seeking summary judgment on behalf of the City, is granted. The remainder of the decision will reference DOE and BOE as the City Defendants.

B. The City Defendants’ Motion for Summary Judgment

The City Defendants argue that the notice of claim only alleges “a defective doorstep, but... not... a defective door check” (Armand affirmation, ¶33). In other words, Plaintiff claimed that the “door swung open ‘too far,’ but not that it swung too fast,” (*id.* at ¶12), since “[t]here is no specific claim in Plaintiff’s notice of claim that states with specificity that the door closer/check was defective” (*id.* at ¶34). The City Defendants further argue that they did not have actual or constructive notice of the door’s alleged defect.

As an initial matter, a notice of claim must set forth “the nature of the claim,” “the time when, the place where and the manner in which the claim arose,” and “the items of damage or injuries claimed to have been sustained” (General Municipal Law § 50-e [2]). This statutory provision does not require “those things to be stated with literal nicety or exactness” (*Castro v City of New York*, 141 A.D.3d 456, 459 [1st Dept 2016]), quoting *Brown v City of New York*, 95 N.Y.2d 389, 393 [2000]). A plaintiff need “not denominate the claim in *haec verba*” (*Scollar v City of New York*, 160 A.D.3d 140, 145 [1st Dept 2018] [*italics in original*]). “Rather, the test of the

notice's sufficiency is whether it includes information sufficient to provide a municipal authority with an opportunity to investigate the claim" (*Castro*, 141 A.D.3d at 459), "and '[n]othing more may be required'" (*Wiggins v City of New York*, 201 A.D.3d 22, 26 [1st Dept 2021], quoting *Brown v City of New York*, 95 N.Y.2d at 393). Thus, in determining compliance with the requirements of General Municipal Law § 50-e, "courts should focus on the purpose served by a Notice of Claim," (*Brown v City of New York*, 95 N.Y.2d at 393), "which is to provide a description so that 'municipal authorities can locate the place, fix the time and understand the nature of the accident'" (*Bhakjan v City of New York*, 210 A.D.3d 519, 520 [1st Dept 2022], quoting *Brown v City of New York*, 95 N.Y.2d at 393).

Here, the notice of claim alleges that Plaintiff "was caused to be struck by a defective door due to the negligence of the" City Defendants, and also asserts that the City Defendants were negligent in their "ownership, operation, maintenance and control of said premises and more particularly the subject defective door located on the first floor of the premises" at the subject address. The Court finds that the allegations stated in the notice of claim were sufficient for the City Defendants to conduct their investigation of the claims alleged. Plaintiff did not need to make a specific claim that the door closer/check was defective, as compared to a defective doorstep, the latter of which the City Defendants raise no contention (see Armand affirmation, ¶33).

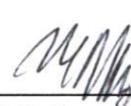
The City Defendants next argue that they had no actual or constructive notice of the alleged defect and that they did not create a defective condition. In support of this argument, the City Defendants rely upon Plaintiff's and Caraballo's testimony. Initially, the Court finds as a matter of law that a door, and more specifically a door without a doorstep, is not an inherently dangerous condition (*Van Dyk v C & M 974 Rte. 45 LLC*, 181 A.D.3d 457 [1st Dept 2010]; *O'Brien v Sayville Union Free School Dist.*, 87 A.D.3d 569, 571 [2d Dept 2011]; *Walsh v City Sch. Dist.*, 237 A.D.2d 811, 812 [3d Dept 1997]; see also *Barber v Barber*, 255 A.D.2d 934, 935 [2d Dept 1998] ["the door had been used in the same fashion for almost 20 years without incident" and "not install[ing] a door stop... is not evidence of constructive notice of a defect or dangerous condition"]). Accordingly, the Court finds the City Defendants have established prima facie that they did not create a defective condition as to the subject double door for not installing a door stop for the door prior to the subject incident.

Plaintiff's testimony that the door "swung out" is not a proper "infer[ence] that the subject door was defective or improperly maintained merely because it could close [or open] fast enough, or hard enough, to cause" the alleged injuries (*E.W. v City of New York*, 179 A.D.3d 747, 748 [2d Dept 2020]; see also *Davila v City of New York*, 95 A.D.3d 560, 561 [1st Dept 2012] ["that the door was defective, or improperly maintained, cannot be inferred merely from the fact that it could be opened fast enough, or hard enough, to knock plaintiff down"], quoting *Hunter v Riverview Towers, Inc.*, 5 A.D.3d 249 [1st Dept 2004]). Moreover, Caraballo testified that she checked the school grounds daily, including the subject double door (*E.W.*, 179 A.D.3d at 748), and prior to the incident she was not aware of any other accidents where somebody was injured because of the double door

(Caraballo 2021 EBT at 43-44) (*see Choudhury v City of New York*, 106 A.D.3d 523 [1st Dept 2013] [“there had been no repairs made or complaints received regarding the [subject] door prior to the accident”]; *Davila*, 95 A.D.3d at 561). Similarly, Plaintiff testified that neither she, nor anyone that she was aware of, made complaints about the double doors prior to the subject incident (Pl. 50-h at 15-16; Pl. EBT at 15). Plaintiff further stated she did not notice any problems with the double doors prior to the subject incident (Pl. 50-h at 15-16). This testimony establishes that there were no known complaints made regarding the subject double door and that the double door was in “regular use” by Plaintiff and many other students at the school (*E.W.*, 179 at 748).

Thus, the City Defendants have established prima facie that they did not have actual or constructive notice of the alleged defect which caused Plaintiff’s injury. In opposition, Krongelb’s affidavit, which claims that “the failure to equip the door with a doorstep violated good and accepted building/property maintenance standards,” (Rubenstein affirmation, ¶5), fails to raise a triable issue of fact, as explained above, and as a result Plaintiff has failed to submit evidence raising a triable issue of fact. Accordingly, the City Defendants’ motion for summary judgment dismissing Plaintiff’s complaint is granted.

The City Defendants shall serve a copy of this order with notice of entry upon Plaintiff within 30 days of the entry date hereof. This constitutes the decision and judgment of the Court.

Dated: 6/13/23Hon. 

Mitchell J. Danziger, J.S.C.

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| 1. CHECK ONE..... | ☒ CASE DISPOSED IN ITS ENTIRETY | ☐ CASE STILL ACTIVE |
| 2. MOTION IS..... | ☒ GRANTED | ☐ DENIED ☐ GRANTED IN PART ☐ OTHER |
| 3. CHECK IF APPROPRIATE..... | ☐ SETTLE ORDER ☐ SUBMIT ORDER | ☐ SCHEDULE APPEARANCE |
| | ☐ FIDUCIARY APPOINTMENT | ☐ REFEREE APPOINTMENT |

The Principal Court Attorney did not participate in the rendering of this decision pursuant to Judicial Ethics Opinions 08-71, 15-233 and 16-166.