Mszanski v Pierre Congress Apts. LLC

2024 NY Slip Op 30399(U)

February 5, 2024

Supreme Court, New York County

Docket Number: Index No. 159697/2020

Judge: Paul A. Goetz

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. PAUL A. GOETZ** **PART** **47**

Justice

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ARTHUR MSZANSKI,

Plaintiff,

- v -

PIERRE CONGRESS APARTMENTS LLC, THE BRODSKY ORGANIZATION LLC

Defendant.

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INDEX NO. 159697/2020

MOTION DATE 08/24/2023

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62

were read on this motion to/for JUDGMENT - SUMMARY.

In this personal injury action arising out of a slip and fall in an apartment building located at 19 West 69th Street, New York, NY 10023, plaintiff moves for summary judgment on his negligence claim against defendant-owners of the building, asserting that they created a hazardous condition by mopping the floor and failing to provide warning of same and for dismissal of defendants' comparative negligence affirmative defense (NYSCEF Doc No 42). Defendants oppose plaintiff's motion on the grounds that questions of fact remain regarding the location of his accident, the presence of caution signs, and the issue of plaintiff's contributory negligence (NYSCEF Doc No 55).

BACKGROUND

Plaintiff's Deposition

Plaintiff testified that on August 2, 2020, he had gone down to the basement floor of his apartment building to retrieve his clothes from the laundry room, which was accessible by a single hallway (NYSCEF Doc No 47, 29:21-24, 31:4-10, 37:2-8, 37:21-24). He states that the

hallway was dry when he entered the laundry room (*id.*, 38:20-23). Once inside, he spent a few minutes unloading the dryer (*id.*, 38:13-19). He then exited the laundry room, but as soon as he stepped back into the hallway, he slipped and fell (*id.*, 31:4-32:4). He then noticed that the floor was "soaking wet" (*id.*, 32:19-25). Plaintiff surmises that the floor was wet from being freshly mopped "[b]ecause when I fell, I saw a man standing 10 to 15 feet away from me holding a mop" (*id.*, 34:7:23). He believes that the worker must have mopped the floor while plaintiff was in the laundry room, and that he did not notice because he was facing the dryers, with his back turned to the hallway (*id.*, 39:6-12). Plaintiff testified that he did not observe any wet floor caution signs, either in the hallway or in the laundry room (*id.*, 39:24-40:6). Plaintiff stated that he wrote an email to the building's management as soon as he got back upstairs (*id.*, 47:3-4).[1]

Nikola Cubi's Deposition

The Brodsky Organization LLC produced Cubi, the superintendent of the building where plaintiff was injured, for a deposition (NYSCEF Doc No 52, 10:25-11:25). He testified that it was the building's practice to erect a caution sign any time that floors were mopped in any of the common areas (*id.*, 21:3-7). In the basement and connecting hallway, however, caution signs were displayed "24/7" and were always in the same conspicuous places (*id.*, 21:6-22:2, 56:13-63:6).[2] He stated that he also had instructed workers that, in addition to the caution signs which were displayed 24/7, an additional sign should be displayed while mopping (*id.*, 73:5-20). There were no witnesses to plaintiff's accident, but Cubi heard about it from an employee, Santos Santana, who was right around the corner when it occurred (*id.*, 77:9-22, 85:10-20). According

[1] The e-mail, dated August 2, 2020 at 12:42 p.m., states: "Today I slip [sic] on wet floor in laundry room and twist [sic] my ankle. There was no signage in the basement saying floor was being mopped" (NYSCEF Doc No 48).
[2] Defendants submit photos of the laundry room and hallway, in which the caution signs are displayed (NYSCEF Doc No 58). Plaintiff states that the photos are fair and accurate depictions of the space, but that the caution signs were absent at the time of plaintiff's fall (NYSCEF Doc No 42).

to Cubi, Santana stated that the floor was dry when plaintiff fell and that the caution sign was displayed (*id.*, 77:24-78:7, 79:25-80:2). Cubi made an entry in his logbook reflecting that plaintiff had fallen (*id.*, 80:5-21). He also visited the site of plaintiff's fall and he observed a dry floor and the caution sign in the place (*id.*, 83:16-24). He did not recall, however, how much time passed between plaintiff's accident and his visit to laundry area (*id.*, 82:24-83:15).

DISCUSSION

"It is well settled that '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 demonstrate the absence of any material issues of fact.'" (*Pullman v Silverman*, 28 NY3d 1060, 1062 [2016], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). "Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers." (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985] [internal citations omitted]). "Once such a prima facie showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to raise material issues of fact which require a trial of the action." (*Cabrera v Rodriguez*, 72 AD3d 553, 553-554 [1st Dept 2010], citing *Alvarez*, 68 NY2d at 342).

"The court's function on a motion for summary judgment is merely to determine if any triable issues exist, not to determine the merits of any such issues or to assess credibility." (*Meridian Mgmt. Corp. v Cristi Cleaning Serv. Corp.*, 70 AD3d 508, 510-11 [1st Dept 2010] [internal citations omitted]). The evidence presented in a summary judgment motion must be examined "in the light most favorable to the non-moving party" (*Schmidt v One New York Plaza Co.*, 153 AD3d 427, 428 [2017], quoting *Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 339 [2011]) and bare allegations or conclusory assertions are insufficient to create genuine issues of

fact (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*id.*).

"To establish negligence in [a] slip-and-fall case, a plaintiff must demonstrate, inter alia, that the defendant breached its duty to the plaintiff by either creating a dangerous condition or, because it had actual or constructive notice thereof, failing to remedy the situation" (*Kesselman v Lever House Rest*, 29 AD3d 302, 304 [1st Dept 2006]). Plaintiff established that defendants, as the property owners, had a duty to maintain the safety of common areas (*Scurry v New York City Hous. Auth.*, 193 AD3d 1, 5 [2d Dept 2021] [referencing the "common-law legal duty of providing reasonable care in making common areas of the building reasonably safe for tenants and invitees"], citing *Nallan v Helmsley-Spear, Inc.*, 50 NY2d 507, 519 [1980]). Plaintiff also sufficiently established that defendants created the slippery condition of the floors (*Irizarry v 1915 Realty LLC*, 135 AD3d 411, 41-12 [1st Dept 2016] ["rather than rely on speculation as to causation, plaintiff's theory is based upon her observation that the condition was [] wet, resembling what one would see when using a [] mop, and the presence of a mop[and] bucket . . . in the nearby lobby. Defendant's creation of the alleged condition could be reasonably inferred from such testimony"]).

Defendants contend that issues of fact remain which preclude summary judgment. Specifically, they emphasize Cubi's testimony that there were warning signs on display 24/7 in both areas, and that an additional sign would have been erected where mopping occurred as an extra precaution (NYSCEF Doc No 52, 21:6-22:2, 56:13-63:6).[3] However, "[p]roof of a regular

[3] Defendants also note that there is a discrepancy between plaintiff's e-mail to the building's management, with the subject line "Slip on Wet Floor *in laundry room*" (NYSCEF Doc No 48 [emphasis added]), and plaintiff's bill of particulars, which alleges that he slipped in the *hallway outside of* the laundry room (NYSCEF Doc No 46). Plaintiff explained that his e-mail was in error, testifying: "My English is not [] great" and that it was "written very quickly" (NYSCEF Doc No 47, 157:25-158:9). The precise location and cause of plaintiff's fall is, of course, central to this case. However, regardless of whether plaintiff fell in the laundry room or hallway, he alleges that he did not observe a caution sign in either location, so this discrepancy does not necessarily raise a material issue of fact.

maintenance [practice] 'does not suffice for purposes of showing that it was followed'" (*White v MP 40 Realty Mgt. LLC*, 187 AD3d 561, 562 [1st Dept 2020], citing *Gautier v 941 Intervale Realty LLC*, 108 AD3d 481, 481 [1st Dept 2013] [defendant offered testimony of its superintendent regarding the building's regular janitorial schedule but "offered no evidence that the schedule was followed on the day of the accident"]). Cubi's testimony regarding the conditions he observed when he visited the laundry area after he heard of plaintiff's accident is unhelpful, as he cannot recall if it was within half an hour or "way more than that" (NYSCEF Doc No 52, 82:24-83:15). Nor is Cubi's hearsay testimony—that Santana told Cubi that the caution sign was up and the floor was dry when plaintiff fell—sufficient to raise an issue of fact (*Nava-Juarez v Mosholu Fieldston Realty, LLC*, 167 AD3d 511, 512 [1st Dept 2018] ["Hearsay, standing alone, is insufficient to defeat summary judgment"]). Accordingly, as defendants have failed to raise an issue of fact, plaintiff's motion for summary judgment as to liability will be granted.

CONCLUSION

Accordingly, it is

ORDERED that part of plaintiff's motion for summary judgment as to liability is granted; and it is further

ORDERED that part of plaintiff's motion to dismiss defendants' first affirmative defense (comparative negligence) is granted.

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2/5/2024
DATE

PAUL A. GOETZ, J.S.C.

CHECK ONE:		**CASE DISPOSED**		**X**	**NON-FINAL DISPOSITION**		
	X	**GRANTED**	**DENIED**		**GRANTED IN PART**		**OTHER**
APPLICATION:		**SETTLE ORDER**			**SUBMIT ORDER**		
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**			**FIDUCIARY APPOINTMENT**		**REFERENCE**