

Perele v 220 S. St. Bldg. Co.

2024 NY Slip Op 30973(U)

March 25, 2024

Supreme Court, New York County

Docket Number: Index No. 158583/2019

Judge: David B. Cohen

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DAVID B. COHEN

PART 58

Justice

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INDEX NO. 158583/2019

ELBA PERELE,

MOTION SEQ. NO. 002

Plaintiff,

- v -

220 SOUTH STREET BUILDING COMPANY, 220 SOUTH
STREET LAND CO., MANHATTAN MINI STORAGE, LLC.,
SHUSMITA CHOWDHURY, and AARON SKINNS

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65

were read on this motion to/for

JUDGMENT - SUMMARY.

In this premises liability action, defendants 220 South Street Building Company, 220 South Street Land Co., and Manhattan Mini Storage, LLC (collectively, movants) move, pursuant to CPLR 3212, for summary judgment dismissing the complaint as against them.

I. Factual and Procedural Background

On December 8, 2018, plaintiff was injured when she fell after slipping on a spilled liquid on the entry ramp of a storage facility located at 220 South Street in Manhattan (the premises) (NYSCEF Doc No. 39), owned and operated by movants (Doc No. 40). Plaintiff then commenced the captioned action against movants,¹ alleging that she was injured due to their negligent ownership, control, management, and/or maintenance of the ramp (Doc No. 39). Movants joined issue by their answer dated November 12, 2019, denying all substantive allegations of wrongdoing

¹ Plaintiff also named Shusmita Crowdhury and Aaron Skinns as defendants in this action, however, those defendants are not seeking summary dismissal of the complaint as against them.

and asserting various affirmative defenses (Doc No. 40). Movants now move for summary dismissal of the complaint as against them (Doc No. 37), which plaintiff opposes (Doc No. 53).

A. Deposition Testimony of Plaintiff (Doc No. 43)

At her deposition, plaintiff testified that, on the day of the accident, she went to the premises with her daughter to retrieve some items they had in storage. She and her daughter exited the premises by walking down a ramp, with her daughter walking ahead of her. The lighting was clear and she could see all of her surroundings. Plaintiff fell after slipping on a liquid substance that had spilled on the ramp. She did not see the spilled liquid prior to slipping, and her daughter did not mention any spill as she walked in front of plaintiff. After getting back on her feet, plaintiff and her daughter went to the maintenance office nearby inside the entrance. Plaintiff was unaware of any prior complaints about the ramp, and previously used it to enter the premises on multiple other occasions. When shown surveillance video footage of the accident, she confirmed that the video accurately depicted her and her daughter on the ramp, the spilled liquid, and the events of her accident.

B. Deposition Testimony on Behalf of Movants (Doc No. 46)

An employee for movants' parent company testified on behalf of movants and explained the business relationship amongst them. Defendant 220 South Street Land Co. owned the land underneath the premises, defendant 220 South Street Building Co. owned the building at the premises, and defendant Manhattan Mini Storage LLC managed the daily operations. The premises had multiple entrances, one of which contained a ramp, and used two systems to monitor the property: a card reader system and a video surveillance system. The card reader system was used by employees and customers, and logged card swipes when people entered specific locations like the elevator and employee office. The video surveillance system used cameras throughout the

building to monitor people's movements. When shown card reader data from the date of the accident, he confirmed that the data was accurate and established that there was at least one employee in the office at the time of plaintiff's accident. When shown video surveillance footage, he confirmed that it accurately represented the footage of plaintiff's accident.

Although he was not at the premises on the date of the accident, a manager and a maintenance employee were present. Employees were not required to routinely walk the premises and inspect for issues, and he was unable to confirm whether there were specific procedures for reporting spills and whether movants kept any maintenance or inspection logs. However, he explained that incidents were documented on a standard incident report form, and when shown a copy of the incident report generated the day of plaintiff's accident, he verified its accuracy.

C. Deposition Testimony of Defendant Skinns (Doc No. 45)

At his deposition, Skinns testified that he visited the premises on the date of plaintiff's accident and spilled a liquid substance on the ramp as he entered the building. After the spill occurred, he proceeded inside to drop off some items. He then returned to the spill and grabbed his remaining items. At some point after the spill occurred, he entered the employee office and informed someone of the spill. Although he could not identify the individual he spoke to, whether the person was an employee, or when exactly he spoke to him or her, he reiterated several times that he told someone at the premises about the spill before plaintiff slipped and fell. When shown a copy of the incident report providing that movants were not aware of the spill before plaintiff's accident, he disagreed with that statement and reaffirmed that he told somebody in the employee office about the spill.

D. Incident Report (Doc No. 48)

An incident report was prepared by one of movants' managers, although it was not signed by plaintiff. It indicated that plaintiff's accident occurred at approximately 4:15p.m., she informed the manager of the spill after her accident, and the presence of the spill was confirmed after further investigation. It further provided that the spill "was not reported to anyone in the office" prior to accident.

E. Carder Reader System Logs (Doc No. 58)

The card reader system logged multiple card swipes into the employee office around the time of plaintiff's accident. The swipes appeared to be from at least three different individuals, none of whom were the manager at the premises that day.

G. Surveillance Video Footage (Doc No. 49)

The video surveillance footage showed the ramp where plaintiff fell from 4:10 p.m. to approximately 4:25 p.m. Skinns caused the spill at roughly 4:12 p.m., leaving a white liquid substance visible on the ramp. He then proceeded to take his belongings further into the building. He returned to the spill twice over the course of the next two minutes, before ultimately leaving the premises. Plaintiff fell around eleven minutes later after slipping on it. In the time between the spill and the fall, multiple other people at the premises passed by the spill. However, it appears there were no employees of movants in the immediate area for the entire fifteen-minute period.

II. Legal Analysis and Conclusions

Movants contend that they are entitled to summary dismissal of the complaint as against them because they have made a prima facie showing that they did not create the spill. They further contend that they had no actual notice, because the spill was not reported prior to plaintiff's

accident, and no constructive notice because the elapsed time between the spill occurring and plaintiff's accident was insufficient, as a matter of law, to find it had constructive notice.

Plaintiff argues in opposition that questions of fact exist regarding actual notice, because of the conflict created by the incident report and Skinns' testimony regarding whether movants were informed of the spill before plaintiff's accident. She also argues that there are questions of fact regarding constructive notice because there is no de minimis period of time for constructive notice.

“[A] defendant property owner moving for summary judgment has the burden of making a prima facie showing that it neither (1) affirmatively created the hazardous condition nor (2) had actual or constructive notice of the condition and a reasonable time to correct or warn about its existence” (*Parietti v Wal-Mart Stores, Inc.*, 29 NY3d 1136, 1137 [2017]). “To constitute constructive notice, a [hazardous condition] must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit [a] defendant's employees to discover and remedy it” (*Gordon v American Museum of Natural History*, 67 NY2d 836, 837-838 [1986]; accord *Franco v D'Agostino Supermarkets, Inc.*, 34 AD3d 328, 329 [1st Dept 2006]).

A defendant may demonstrate a lack of 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 & Shop*, 188 AD3d 436, 439 [1st Dept 2020]). That evidence may come through witness testimony that the area was inspected shortly before a plaintiff's accident (*see Kennedy v 30W26 Land, L.P.*, 179 AD3d 556, 557 [1st Dept 2020] [finding no constructive notice where employee testified that she did not see puddle on floor when she inspected area five to ten minutes before plaintiff's accident]; *Gomez v J.C. Penny Corp., Inc.*, 113 AD3d 571, 571-572 [1st Dept 2014])

[similar]), or through a regular maintenance schedule that was followed prior to the accident (*see Vilomar v 490 E. 181st St. Hous. Dev. Fund Corp Corp.*, 50 AD3d 469, 470 [1st Dept 2008] [finding no constructive notice where witness testified that stairs cleaned twice per day, once in the morning and once at night, and that area free of alleged dangerous condition when witness finished cleaning it night before accident]; *cf. White v MP 40 Realty Mgt. LLC*, 187 AD3d 561, 563 [1st Dept 2020] [“Proof of a regular maintenance schedule (alone) does not suffice for purposes of showing that it was followed” (internal quotation marks and citations omitted)]).

Here, it is undisputed that movants did not create the spill, given that Skinns explicitly stated at his deposition that he caused the liquid to spill on the ramp, which is corroborated by the surveillance video footage. Nevertheless, movants may be liable if they had actual or constructive notice.

Regarding actual notice, although the incident report provided that movants’ manager was not informed of the spill until plaintiff mentioned it after her fall, that is contradicted by Skinns’ testimony that he did inform someone in the employee office, which he reiterated multiple times at his deposition. Thus, drawing all inferences in favor of plaintiff, as the nonmoving party, movants did not establish that they lacked actual notice of the spill before plaintiff slipped (*see Hamilton v 3339 Park Dev. LLC*, 158 AD3d 440, 441 [1st Dept 2018] [finding defendant failed to make prima facie showing of lack of actual notice because of contradicting testimony about wet floor]).

With respect to constructive notice, although movants presented the surveillance video demonstrating that roughly eleven minutes elapsed from the time of the spill until plaintiff’s accident, they fail to submit any evidence of their maintenance or inspection activities. There is no witness testimony averring that the area was inspected shortly before plaintiff fell (*see e.g.*

Kennedy, 179 AD3d at 557), and there is no evidence that any regular maintenance schedule was followed (*see e.g. Vilomar*, 50 AD3d at 470). The only evidence even remotely relevant to maintenance and inspection was movants' testimony providing that employees were not required to walk the premises and inspect for issues, which works against movants' argument. Thus, there is no evidence of when the ramp was last cleaned or inspected before plaintiff's accident. Therefore, movants failed to make a prima facie showing that they lacked constructive notice, and their motion for summary judgment dismissing the complaint as against them must be denied (*see Belton v Vornado Gun Hill Rd., LLC*, 189 AD3d 531, 531-532 [1st Dept 2020] [finding "general testimony as to when the floor might have been inspected" and what employees "were supposed to look at" insufficient to demonstrate constructive notice]; *Graham v YMCA of Greater N.Y.*, 137 AD3d 546, 547 [1st Dept 2016] [finding defendant failed to demonstrate lack of constructive notice because it failed to indicate when employees "last cleaned or inspected the accident location before the incident occurred"]).

Lastly, movants' contention that the elapsed time between the spill occurring and plaintiff's fall is insufficient, as a matter of law, to find it had constructive notice is unpersuasive; any alleged de minimis period of time prohibiting constructive notice would only amount to "moments before the accident" (*see Nepomuceno v City of New York*, 137 AD3d 646, 647 [1st Dept 2016] [finding no constructive notice where "one minute" elapsed before plaintiff slipped on fruit]; *Espinal v New York City Hous. Auth.*, 215 AD2d 281, 281-282 [1st Dept 1995] ["The lapse of a five-minute interval between the deposit of a banana peel or other debris and the accident is insufficient, as a matter of law, to establish constructive notice"]).

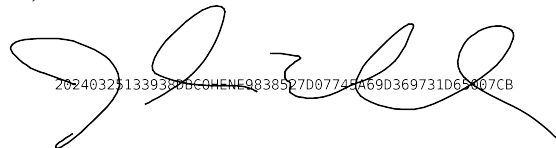
"Given the foregoing determination, there is no need to consider the sufficiency of plaintiff's opposing papers" (*Graham*, 137 AD3d at 547 [citations omitted]). However, even

assuming movants satisfied their burden, plaintiff demonstrated that questions of fact exist regarding actual notice. As explained above, the incident report and Skinns' testimony are diametrically opposed on the subject of whether movants were informed of the spill before plaintiff's accident. Therefore, movants' motion for summary dismissal would still be denied (*see Iaccarino v Koenig*, 220 AD3d 443, 444 [1st Dept 2023] [denying summary dismissal because contradictory testimony established existence of questions of fact]).

Accordingly, it is hereby:

ORDERED that the motion for summary judgment dismissing the complaint as against them by defendants 220 South Street Building Company, 220 South Street Land Co., and Manhattan Mini Storage, LLC is denied; and it is further

ORDERED that the parties shall appear for a settlement/pretrial scheduling conference in person at 71 Thomas Street, Room 305, on May 29, 2024, at 10:00 a.m.



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3/25/2024
DATE

DAVID B. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: