

**Hernandez v 207 E. 14th St. Realty Corp.**

2024 NY Slip Op 30994(U)

March 26, 2024

Supreme Court, New York County

Docket Number: Index No. 152237/2020

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*

-----X

ANA HERNANDEZ

Plaintiff,

- v -

207 EAST 14TH STREET REALTY CORP.,

Defendant.

-----X

**INDEX NO.** 152237/2020

**MOTION DATE** 09/25/2023

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47

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

Upon the foregoing documents, it is

In this premises liability slip and fall action, defendant moves for summary judgment on liability, dismissing the plaintiff’s complaint in its entirety.

**BACKGROUND**

Plaintiff is a tenant in Apartment 3C of 207 East 14th Street, New York, New York (the “Premises”) (NYSCEF Doc No 29 ¶ 1). On December 23, 2019 between 4:00PM and 5:00PM plaintiff alleges she was descending the interior stairs at the Premises and that when she reached the stairs between the second and first floors she slipped on the third step from the bottom (*id.* at ¶¶ 2- 4). Plaintiff alleges that she slipped because the steps were too smooth which made them slippery causing her to lose her balance (*id.* ¶ 5). Plaintiff also alleges that as she fell down the stairs she did not have a handrail to hold on to (NYSCEF Doc No 46 ¶ 26). The staircase plaintiff fell on had a handrail on one side of the staircase which terminated at the second to last step (*id.*).

## DISCUSSION

Defendant first argues that the staircase did not constitute a dangerous condition. Further, they argue that even if there was a dangerous condition that they lacked constructive notice of it and therefore cannot be held liable. Plaintiff opposes arguing that there are triable issues of fact regarding both the existence of a dangerous condition, and whether defendant had constructive notice of that condition.

A defendant moving for summary judgment in a slip and fall action has the initial burden of establishing “that it neither created a hazardous condition, nor had actual or constructive notice of its existence” (*Ruiz v Stop 1 Gourmet Deli*, 185 AD3d 496, 496 [1st Dept 2020]). “Proof that a floor is ‘inherently slippery,’ standing alone, is insufficient to support a cause of action for negligence” (*Caicedo ex rel. Ferreira v Sanchez*, 116 AD3d 553, 555 [1st Dept 2014]). “In cases involving inherently smooth, and thus potentially slippery tiled or stone floors, absent competent evidence of a defect in the surface or some deviation from an applicable industry standard, no liability is imposed” (*Kalish v HEI Hosp., LLC*, 114 AD3d 444, 445 [1st Dept 2014]). Defendant’s awareness of a condition “is irrelevant where the alleged defective condition is not actionable” (*Sims v 3349 Hull Ave. Realty Co. LLC*, 106 AD3d 466, 467 [1st Dept 2013]). While, “[v]iolation[s] of [the] New York City Building Code ... does not constitute negligence per se, [it can represent] evidence of negligence” (*Baez v 1749 Grand Concourse LLC*, 178 AD3d 520, 522 [1st Dept 2019]).

Here, in support of their argument that a dangerous condition did not exist at the premises, defendant submits the testimony of expert witness Jeffrey Laux an engineering consultant who conducts investigations and evaluations of design and construction elements related to civil and safety engineering (Laux Aff; NYSCEF Doc No 36 ¶ 3). Laux performed dry

dynamic slip resistance tests along the surface of the two stair treads where plaintiff's accident allegedly occurred and concluded that the surface of the steps conformed with standard industry practice for safe walking surfaces (*id.* ¶¶ 7 - 9). Laux further opined that the handrail complied with applicable code and met the standard practice in the industry (*id.* ¶11). Laux concludes that the stairway was entirely within the applicable code and standard (*id.* ¶8).

In opposition, plaintiff submits testimony of expert witness Joel Schachter, an engineer who owns companies that perform commercial and residential inspections, including exterior sidewalks, streets, stairs, and exterior steps (Schachter Aff; NYSCEF Doc No 43 ¶ 1). Schachter also performed a dynamic coefficient of friction test along the surface of the third stair and concluded that the step did not provide enough traction and was a hazard to its users. Schachter also opined that since the “handrails terminate at the second step from bottom without any round-outs” this created a hazardous condition that could have been remedied with reasonable measures (*id.* at ¶ 10). Schachter cites to a section of the NYC Building Code which states:

Handrails shall return to a wall, guard or the walking surface or shall be continuous to the handrail of an adjacent flight of stairs or ramp run. Where handrails are not continuous between flights, the handrails shall extend horizontally not less than 12 inches (304.8 mm) beyond the top riser and continue to slope for the depth of one tread beyond the bottom riser. At ramps where handrails are not continuous between runs, the handrails shall extend horizontally above the landing 12 inches (304.8 mm) minimum beyond the top and bottom of ramp runs. The extensions of handrails shall be in the same direction of the flights of stairs at stairways and the ramp runs at ramps.

(New York City, N.Y., Code § 1014.6).

Here, defendant has established prima facie evidence that the condition was not dangerous by submitting expert testimony. However, plaintiff has raised a triable issue of fact by rebutting this testimony with her own expert witness testimony. While a slippery floor alone cannot support a negligence claim, plaintiff submits evidence of a violation of § 1014.6 of the

NYC Building Code because the handrail terminated before reaching the bottom of the stairs.

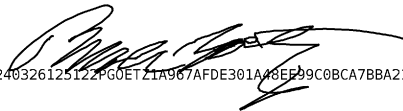
Further “[c]onstructive notice may be found [where] as here, the landlord [is responsible for] inspection, maintenance and repair, and there is a specific statutory violation”

(*Lopez v 1372 Shakespeare Ave. Hous. Dev. Fund Corp.*, 299 AD2d 230, 231 [1st Dept 2002]).

Therefore, plaintiff has presented a triable issue of fact on the existence of a dangerous condition and whether the defendant had notice of this condition. Accordingly, defendant’s summary judgement motion must be denied.

Based on the foregoing, it is

ORDERED that defendant’s motion for summary judgment is denied.

  
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3/26/2024  
DATE

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PAUL A. GOETZ, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: