

**Pichardo v George Units LLC**

2024 NY Slip Op 32025(U)

June 12, 2024

Supreme Court, New York County

Docket Number: Index No. 152229/2021

Judge: Dakota D. Ramseur

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAKOTA D. RAMSEUR PART 34M

Justice

-----X

JULIA PICHARDO,

Plaintiff,

- v -

THE GEORGE UNITS LLC, EILAT MANAGEMENT CORP.,
RENAISSANCE EQUITY HOLDINGS LLC, CLIPPER
EQUITY NEW YORK LP, CLIPPER EQUITY LLC, CLIPPER
EQUITY GP LLC

Defendants.

-----X

INDEX NO. 152229/2021
MOTION DATE 09/13/2023
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 33, 34, 35, 36, 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, 66, 67, 68, 69, 70

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

Plaintiff, Julia Pichardo (plaintiff), commenced this action for personal injuries against co-defendant The George Units, LLC (The George) stemming from a December 7, 2019 trip and fall down the interior stairs within the building located at 260 Audubon Avenue, New York, New York (the building). The George now moves pursuant to CPLR 3212 for summary dismissal of the amended complaint. The motion is opposed. For the following reasons, the motion is granted.

Plaintiff alleges that she slipped on a wet condition on the stairway landing in an inadequately illuminated stairway on Saturday, December 7, 2019 at approximately 10:20 a.m. A review of the record reveals that there are three lights on each set of stairs—one at the top, one in the middle, and one at the bottom. Plaintiff testified that the lights were working at the time of her accident, but that the lighting on the landing of the stairway on the 10th to the 11th floor was “cloudy” and “wasn’t too clear” (NYSCEF doc. no. 41 at 33:13-25). Plaintiff further testified that she was unsure how the landing became wet and for how long the condition existed prior to her incident (id. at 25:4-25). Plaintiff testified that she believed that the floor was wet because they mopped earlier. When asked the foundation for her belief, plaintiff stated that “[b]ecause my pants got damp, they were wet” (id.).

Plaintiff’s sister, Brunilda Pichardo (Pichardo), testified that while “[t]he lights were on, they’re not bright white lights” (NYSCEF doc. no. 42 at 28:18-23). Pichardo also testified that the floor was wet because The George recently mopped. When asked how she knew the George mopped, she testified that “[b]ecause the whole floor looked wet” and that the floor “[w]as shiny and wet as if they had just finished cleaning it” (id., at 13:3-14:11). Pichardo indicated that she did not see anyone mopping on the date of plaintiff’s incident (id. at 18:3-8).

Solomon Schwimmer (Schwimmer), The George's general manager, testified that the lighting in the area was new LED lighting that was installed in early 2019, that those bulbs generally last 10-15 years, that the building was not aware of any issues or complaints with the lighting before the plaintiff's accident, and that the lights were not changed since the plaintiff's accident. Schwimmer further testified that porters only mop the staircases once a week on weekdays, on a rotating schedule. Schwimmer stated that on weekends, there is only one porter on staff at the building.

Jorge Almonte, the building's porter, stated in an affidavit that on December 7, 2019, he began his shift around 8:00 a.m. At the beginning of his shift, he walked through the building, including the subject stairwell, to inspect for any hazards such as debris or spills and to check the lighting conditions. Almonte states that the inspection concluded around 9:30 a.m. Almonte found that the lighting in the 10th floor stairwell "B" was working properly and that he did not observe any spills or hazardous conditions in the stairway. Almonte further stated that defendants did not mop on the weekends and that neither he, or any other porter, mopped the subject stairway on the date of plaintiff's accident.

Timothy Sass, MSCE, PE (Sass), The George's expert witness, inspected the property for the defendants on February 14, 2023. Sass reviewed the applicable building records for the property, finding no violations, including relating to the stairwell at issue. He also reviewed photographs of the stairs, the bill of particulars, and the depositions of the plaintiff, defendant, and two non-party witnesses. During the inspection, Sass measured the stairs and handrail. He also measured the lighting using a Lutron LX-103 light meter, which demonstrated that the light levels were in excess of 1 foot candle in compliance with NFPA 101 Section 7.8.1.3. Sass also inspected the handrail and found it to be well maintained and compliant with applicable codes.

William Marletta, Ph.D., CSP (Marletta), plaintiff's expert witness, states that he also conducted a site inspection on the same day as Sass and reviewed Sass' affidavit. Marletta states that the subject stairway is slippery and dangerous when wet or with other foreign debris and that the handrail on the subject staircase was not easily graspable. Marletta further states that he took lighting measurements of "5.91 Fc" at the stairway. Marletta states that these lighting conditions are inconsistent with plaintiff's testimony, "[i]ndicating that it is very likely that the lighting conditions were changed prior to our inspection of the incident area" (NYSCEF doc. no. 63 at ¶ 71). The photographs submitted by both Sass and Marletta reveal that the area where plaintiff fell was illuminated.

To prevail on a motion for summary judgment, the movant must make a prima facie showing of entitlement, tendering sufficient admissible evidence to demonstrate the absence of any material issues of fact (*Zuckerman v City of N. Y.*, 49 NY2d 557 [1980]; *Jacobsen v New York City Health and Hospitals Corp.*, 22 NY3d 824 [2014]; *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]). If the moving party meets its burden, the burden shifts to the party opposing the motion to establish, by admissible evidence, the existence of a factual issue requiring a trial of the action, or to tender an acceptable excuse for the failure to do so (*Zuckerman*, 49 NY2d at 560; *Jacobsen*, 22 NY3d at 833; *Vega v Restani Construction Corp.*, 18 NY3d 499, 503 [2012]).

A defendant who moves for summary judgment in a slip-and-fall case has the initial burden of making a prima facie showing that it neither created the hazardous condition nor had actual or constructive notice of its existence for a sufficient length of time to discover and remedy it (*Seabury v County of Dutchess*, 38 AD3d 752, 752 [2d Dept 2007]).

Here, The George establishes, prima facie, its entitlement to summary dismissal of the amended complaint. The George demonstrates that lighting condition within the subject stairway was not inadequate by submitting the affidavit of its expert, Sass, wherein he states that the lighting measurements taken in the stairway complied with code. The George also demonstrates that it did not create the subject condition by submitting Almonte's affidavit, wherein he states that neither he, nor any other porter mopped that morning. Almonte's affidavit further establishes that The George did not have notice of the alleged wet condition or defective lighting, wherein Almonte states that The George did not receive any complaints about a hazardous condition on the floor at any time before the accident, and that he inspected the subject premises approximately two hours prior to plaintiff's incident and did not observe any defective condition (*Ross v Betty G. Reader Revocable Tr.*, 86 AD3d 419, 421 [1st Dept 2011] ["A defendant demonstrates lack of constructive notice by producing evidence of its maintenance activities on the day of the accident, and specifically that the dangerous condition did not exist when the area was last inspected or cleaned before plaintiff fell"]).


In opposition, plaintiff fails to raise an issue of fact. Plaintiff's testimony that the landing was not adequately illuminated is insufficient to rebut The George's expert report that the lighting at the landing of the stairway was sufficient and the photographs revealing that the area where plaintiff fell was illuminated. While plaintiff's expert states in conclusory terms that the lighting in the stairway was inadequate, Marletta does not rebut Sass' scientific findings that the lighting was adequate. Further, there is no evidence that the lighting has been changed from the time of the plaintiff's accident until the time of Marletta's inspection. To the extent Marletta claims that the handrail was defective, plaintiff testified that there was nothing wrong with that handrail and that her accident was caused by the wet substance and poor visibility. Moreover, plaintiff's claim that the area was mopped by The George is speculative, as she is unable to present any facts sufficient to establish when the subject stairway was mopped or if the cause of the wet stairway was due to The George mopping the stairway. Finally, plaintiff's argument that she did not have notice of Almonte as a witness is without merit, as The George disclosed his identity in their May 17, 2023 supplemental discovery response.

Accordingly, it is hereby,

ORDERED that The George Units, LLC's motion pursuant to CPLR 3212 for summary dismissal is granted, and the amended complaint is dismissed; and it is further

ORDERED that The George Units, LLC shall serve a copy of this decision and order upon plaintiff, with notice of entry, within ten (10) days of entry.

This constitutes the decision and order of the Court.

  
 20240613104106DRAMSEUR1K35DB1E7F47E18A360A1D8583E42A  
 \_\_\_\_\_  
**DAKOTA D. RAMSEUR, J.S.C.**

**6/12/2024**  
 \_\_\_\_\_  
**DATE**

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE