NEW YORK SUPREME COURT – COUNTY OF BRONX

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX : PART IA2

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NILDA MARTINEZ,

Plaintiff,

-against-

SOUTH BRONX HOUSING DEVELOPMENT FUND COMPANY, INC., GEORGE HARDY ST. FRANCIS APARTMENTS, LLC, and THE WAVECREST MANAGEMENT, LTD.,

Defendants.

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Index №. 31196/2019E

Hon. **Elizabeth A. Taylor**,
Justice Supreme Court

The following papers numbered ____ to ___were read on this motion **(NYSCEF Seq. No. 1)** for noticed on _____and duly submitted as **Nos.** __ on the Motion Calendar of _____

Sequence No. 1	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	16-36
Answering Affidavit and Exhibits, Memorandum of Law	40-50
Reply Affidavit	51-54

Upon the foregoing papers, the defendants' motion for summary judgment is decided in accordance with the annexed decision and order.

Dated: OCT 08 2024

Hon. _____
Elizabeth A. Taylor, J.S.C.

1. CHECK ONE..... ☐ CASE DISPOSED IN ITS ENTIRETY X CASE STILL ACTIVE
2. MOTION IS..... ☐ GRANTED X DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE..... ☐ SETTLE ORDER ☐ SUBMIT ORDER

SUPREME COURT OF THE STATE OF NEW YORK
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NILDA MARTINEZ,

Plaintiff,

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SOUTH BRONX HOUSING DEVELOPMENT FUND COMPANY, INC., GEORGE HARDY ST. FRANCIS APARTMENTS, LLC, and THE WAVECREST MANAGEMENT, LTD.,

Defendants.

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DECISION and ORDER
Index No. 31196/2019E

Elizabeth A. Taylor, J.

Defendants move for summary judgment dismissing the complaint pursuant to CPLR 3212. Plaintiff opposes the motion.

FACTS

Plaintiff, then 84 years of age, tripped and fell at the defendant's property on May 25, 2019, at approximately 1:00 p.m., while en route to visit her sister's apartment. Plaintiff testified that she mistook the exterior entrance to the defendant's building as the entrance to the building where her sister resided. The entry to her sister's building was at ground level with the sidewalk. The front entrance to the defendant's building, on the other hand, is elevated one step above the sidewalk. The exterior landing is concrete, as is the sidewalk. There are no handrails, nor any yellow stripes or other demarcations to mark the landing. Looking straight ahead, the plaintiff did not observe the landing, and walked into it, falling and sustaining injury. Plaintiff testified, "I got confused, and I fell."

Defendant's expert engineer, Mark Marpet, PE, D-IBFES, states that the area of the accident was in excellent condition, complied with all building codes, and did not require a handrail.

William Marletta, Ph.D., CSP, plaintiff's safety consultant, opines that the single-step riser, top landing, and bottom landing are all, in fact, the same or similar color, making them difficult to perceive and distinguish from one another. First, he states that contrary to the opinion of defendant's expert, the single-step riser was a means of egress, and therefore had to comply with the requirements for an interior stair under the 1968 Building Code, which did not allow single step risers. He opines that steps with less than two (2) risers are not permitted under the Code, but instead, a ramp must be built in its place. He further states that a handrail is required under the Code.

ARGUMENT

Defendant argues that based upon the photographs of the location and plaintiff's own deposition testimony, there was no defect or dangerous condition at the location in question. Rather, defendant maintains, it is clear from the plaintiff's own testimony that plaintiff was confused and fell, and thus was the sole proximate cause of her own injuries.

Plaintiff argues that, based on the affidavit of her expert safety consultant, that the single step rise was not complaint with the code, as a ramp was required, and in addition, handrails were required. Further, plaintiff argues that the sameness of color and composition of the riser and the surrounding areas created visual confusion.

DISCUSSION

A landowner is under a duty to maintain its property in a reasonably safe condition under the existing circumstances, including the likelihood of injury to third parties, the potential that any such injury would be of a serious nature and the burden of avoiding the risk. In order to recover damages, a party must establish that the owner created or had actual or constructive notice of the

hazardous condition which precipitated the injury. (Piacquadio v Recine Realty Corp., 84 NY2d 967, 969, 646 NE2d 795, 622 NYS2d 493 [1994].) "To constitute constructive notice, a defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit defendant's employees to discover and remedy it." (Gordon v. American Museum of Natural History, 67 N.Y.2d 836, 837, 492 N.E.2d 774, 501 N.Y.S.2d 646 [1986]).

"A defendant who moves for summary judgment in a slip-and-fall action has the initial burden of making a prima facie demonstration that it neither created the hazardous condition, nor had actual or constructive notice of its existence" (Smith v Costco Wholesale Corp., 50 AD3d 499, 500, 856 N.Y.S.2d 573 [1st Dept 2008]). "To meet its burden on the issue of lack of constructive notice, the defendant must offer some evidence as to when the accident site was last cleaned or inspected prior to the plaintiff's fall." (Mei Xiao Guo v. Quong Big Realty Corp., 81 A.D.3d 610, 611, 916 N.Y.S.2d 155 [2d Dept. 2011] [citations omitted]; Quintana v. TCR, Tennis Club of Riverdale, Inc., 118 A.D.3d 455, 987 N.Y.S.2d 68 [1st Dept. 2014] [defendant failed to establish a lack of constructive notice of the wet condition on steps where the moving papers contained no indication of when the area was last inspected prior to the accident]; Qevani v 1957 Bronxdale Corp., 232 AD2d 284, 649 NYS2d 11 [1st Dept. 1996] [issue of fact as to whether existence of condition on steps for 90 minutes constituted constructive notice].)

This Court agrees with the plaintiff that the fact that plaintiff was confused as to which building she was entering does not indicate that the absence of yellow markings or other warnings, and the presence of a handrail, would not have avoided the accident. Indeed, had a ramp been provided, or had handrails been put in place, plaintiff may have become aware of the presence of the single step riser. There are numerous issues of fact, including whether the 1968 Code required a ramp and/or handrails, and whether the area constituted a hazard based on the potential of visual

confusion.

Based upon the foregoing, it is hereby

ORDERED that the defendants' motion is denied.

Dated: OCT 08 2024

ENTER:

Hon. Elizabeth A. Taylor, J.S.C.