

**Hibbert v Mazza**

2024 NY Slip Op 34950(U)

November 29, 2024

Supreme Court, Bronx County

Docket Number: Index No. 27156/2020E

Judge: Elizabeth A. Taylor

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NEW YORK SUPREME COURT – COUNTY OF BRONX

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

-----X

TERRIAN HIBBERT,

Plaintiff,

Index No. 27156/2020E  
Hon. Elizabeth A. Taylor,  
Justice Supreme Court

-against-

ROSE MAZZA,

Defendant.


-----X

The following papers numbered \_\_\_\_ to \_\_\_\_ were read on this motion (NYSCEF Seq. No. 2)

	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	28-36
Answering Affidavit and Exhibits, Memorandum of Law	37-40
Reply Affidavit	42-43

Upon the foregoing papers, the defendant’s motion for summary judgment is decided in accordance with the annexed decision and order.

Dated: NOV 29 2024

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

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

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

-----X  
TERRIAN HIBBERT,

Plaintiff,

DECISION and ORDER  
Index No. 27156/2020E

-against-

ROSE MAZZA,

Defendants.

-----X  
Elizabeth A. Taylor, J.

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

FACTS AND ARGUMENT

This is an action for personal injuries arising from a slip and fall accident which took place on May 28, 2020, at approximately 9:30 AM, on an interior staircase at defendant’s home located at 565 North Suffolk Avenue in Massapequa, Nassau County. At that time, plaintiff, a home health aide, was working at the home, caring for the elderly defendant, who is in her 90s.

In plaintiff’s September 10, 2020 Verified Bill of Particulars, plaintiff alleged that plaintiff was “caused to slip, trip, stumble and fall and be precipitated to the ground as a result of a worn, shabby, ripped, torn, jagged, unsecured carpeting existing on the interior stairway therein.” Plaintiff, however, has abandoned any claim of a carpet defect. Instead, in her EBT, plaintiff stated that she tripped because the stairs were “not the same size,” and because the left handrail was “curved away from the stairs.” It is undisputed that the left handrail curves outward three inches to accommodate a change in the wall on the left side of the staircase as a person descends the steps.

Defendant's expert, Jeffrey M. Laux, P.E., opines that the subject interior stairway was properly maintained in accordance with Chapter 135 of the Code of Oyster Bay, entitled "Housing Standards," and the 2015 New York State Property Maintenance Code, was safe for its intended use, and violated no applicable code or standard. His inspection revealed a carpeted step with all elements of the stairway free of any broken or damaged sections. He concludes that the stairway did not present any dangerous condition or pose any danger or injury risk. He further states that the riser height and tread depth measurements of the stairwell was in conformity with the 1951 One- and Two-Family Building Code, the applicable code at the time of the dwelling's construction, as well as the 1961 One- and Two-Family Building Code. Only one handrail was required. Both handrails complied with both codes, and the curvature in the left side handrail did not violate any applicable code or standard – "turns" in continuous handrails, he stated, are common to accommodate changes in wall configurations.

Defendant argues that she is entitled to summary judgment as defendant did not cause or create any dangerous or defective condition; nor was defendant on actual or constructive notice of any dangerous or defective condition attributable to plaintiff's fall and alleged injuries. Firstly, there were handrails on both sides of the stairs. Additionally, the left side handrail is not in violation of any applicable code or standard. Turns in continuous handrails are common to accommodate changes in wall configurations. Moreover, as plaintiff acknowledged that she removed her left hand from the handrail as she was coming down the stairs, the left sided handrail cannot be said to be a proximate cause of plaintiff's fall.

In opposition, plaintiff submits the affidavit and report of Licensed Professional Engineer, Harold Krongelb, P.E. Krongelb, in which he states in his that:

- Based on available online records, the subject building was constructed circa 1952, and the

second floor was finished circa 1963;

- At the step where Terrian Hibbert tripped and fell, the handrail is curved to the left (as viewed by a pedestrian descending the stairway) by approximately 3 inches;
- The riser heights and tread depths of the individual stairs are not uniform or even;
- The left handrail (as viewed by a pedestrian descending the stairway) is 28 inches above the nosing of the first step down from the second floor and 30 inches above the nosing of the seventh step down from the second floor;
- The stairway violates New York Building Code §PM301.1, §PM301.2, §BC1001.3, §EBC604.1, §1031.1, §1031.2, A205-1, A205-2, A205-3, A205-6.

As to the dimensions of the steps, Krongelb found the following measurements:

- The first step down from the second floor: The riser height is approximately 8 inches. The tread depth is approximately 10 1/2 inches.
- The second step down from the second floor: The riser height is approximately 7 3/4 inches. The tread depth is approximately 10 3/8 inches.
- The third step down from the second floor: The riser height is approximately 7 3/4 inches. The tread depth is approximately 10 3/8 inches.
- The fourth step down from the second floor: The riser height is approximately 7 7/8 inches. The tread depth is approximately 10 3/8 inches.
- The fifth step down from the second floor: The riser height is approximately 7 7/8 inches. The tread depth is approximately 10 3/8 inches.
- The sixth step down from the second floor: The riser height is approximately 7 1/2 inches. The tread depth is approximately 10 1/2 inches.
- The seventh step down from the second floor, where Terrian Hibbert tripped and fell: The riser height is approximately 7 3/4 inches. The tread depth is approximately 10 1/2 inches.

Krongelb asserts that under the code, a variance of 1/8 inch is permissible, but that the instant staircase violates the code as the variances in height exceed 1/8 inch. Further, he contends that the left handrail is 28 inches above the nosing of the first step down from the second floor and 30 inches above the nosing of the seventh step down from the second floor and is thus not placed on the same angle as the steps as required by the applicable building code. It is his professional opinion, within a reasonable degree of engineering certainty, that a substantial factor in causing

plaintiff's trip and fall and subsequent injury was the non-uniform riser heights, the non-uniform tread depths, the handrail whose slope did not match the slope of the stairway, and the handrail that turned away from the pedestrian.

#### 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].)

Defendant presented a prima facie case of the absence of any defect. Plaintiff, on the other hand, has raised issues of fact through the submission of her expert affidavit. While the defendant suggests that plaintiff did not know why she fell, her testimony consistently attributes the fall to the uneven treads and curved handrail. To the extent the plaintiff was somewhat inarticulate in explaining why she fell, her testimony and the expert affidavit nevertheless raise issues of fact. “The affidavit by an expert engineer who inspected the subject stairs and found a variety of defects and building code violations, particularly at the top tread of the step before the landing, when read in combination with plaintiff’s testimony stating, through an interpreter, that “the staircase was bad” and identifying on a photograph the spot where he slipped as the top step of that stairway, was sufficient to raise triable issues as to whether defective conditions at the identified location caused plaintiff to fall.” (Rodriguez v. Leggett Holdings, LLC, 96 A.D.3d 555, 556, 947 N.Y.S.2d 429, 430 [1st Dept. 2012].)

The fact that the plaintiff was not holding the left handrail does not negate liability, as she testified that as she fell, she reached for it but was unable to grasp it due to the curvature in the railing. (DeSuero v 1386 Assoc., LLC, 165 A.D.3d 485, 485, 82 N.Y.S.3d 890, 890 430 [1st Dept. 2018] [plaintiff testified that when she began to slip, she reached for the stairs’ handrail, but it was loose, and she fell].)

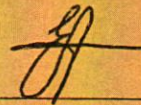
Any dispute as to the proper measurement of the stair treads raises issues of fact precluding summary judgment.

Based upon the foregoing, it is hereby

ORDERED that the defendant's motion is denied.

Dated: NOV 29 2024

ENTER:



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