

Harris v Jericho Anthony Ave. Hous. Dev. Fund Corp.

2024 NY Slip Op 34958(U)

August 22, 2024

Supreme Court, Bronx County

Docket Number: Index No. 23740/2020E

Judge: Alison Y. Tuitt

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
COUNTY OF BRONX, PART IA 5

-----X

HELKI HARRIS,

Index No. 23740/2020E

Plaintiff(s),

-against-

Hon. ALISON Y. TUITT

Justice of the Supreme Court

JERICHO ANTHONY AVENUE HOUSING
DEVELOPMENT FUND CORPORATION,
JERICHO ANTHONY AVENUE
DEVELOPMENT CORP., THE JERICHO
PROJECT and THE JERICHO HOUSING
PROJECT, INC.,

Defendant(s).

The following papers were read on this motion (Seq No.1) for **SUMMARY JUDGMENT** submitted on **October 16, 2023**

Notice of Motion – Affirmation and Exhibits	NYSCEF Doc. # 19-29
Affirmation in Opposition and Exhibits	NYSCEF Doc. # 37-45
Affirmation in Reply	NYSCEF Doc. # 46

Upon the foregoing papers, the plaintiff Helki Harris (“Plaintiff”) moves for an order granting partial summary judgment as to liability against the Jericho Anthony Avenue Fund Corporation and The Jericho Housing Project and The Jericho Housing Project (collectively “Defendants”). Defendants oppose the motion.

This action stems from a slip and fall on the interior steps of her apartment building located at 1846 Anthony Avenue, Bronx, New York on February 5, 2019.

Plaintiff contends that she was walking up the stairs in her apartment building when the nosing of the fifth step from the top of the landing collapsed and caused her to lose her balance and fall down the staircase. In support, Plaintiff submits her own deposition testimony in which she stated that as she was going up the staircase with her brother-in-law, who was approximately 2 feet ahead, her right foot stepped on to a step. “I pressed my foot onto the step it was weak, rotted, and spongy; like my foot went through the duct tape that was covering, I guess the staircase was rotted” (Harris tr. at 32,33). She also stated that although she was holding onto the rail, she lost her grip and balance. Her body twisted to the right, and she fell down the stairs on her buttocks past the first step onto the concrete floor. Plaintiff also testified that prior to the accident she complained to Defendants’ employees, “at least ten times”, about the defective staircase; Specifically, she complained to Case Manager, Chloe Allen, who told Plaintiff that she too had fallen on the staircase six months prior in July 2018 (*id.* at 68,69). In addition, Plaintiff testified that she complained verbally to Gail Thomas, Case Manager Director in the building

as well as Project Managers Doreen Stricker and Mr. Bernstein, off-site Project Managers. (*id.* at 68,69,70; line,7,8).

In further support, Plaintiff submits photographs of the staircase which were marked as exhibits during the Plaintiff's deposition. Additionally, Plaintiff testified, during the deposition, that the photographs depicted the staircase at 1846 Anthony Avenue at the time of her accident. She also stated that the photographs show a "picture of stairs with duct tape on them". During the deposition defense counsel, by way of a cursor, had Plaintiff identify on the photograph whether she fell on the sixth or fifth step from the top of the landing. The photographs submitted show a wooden staircase with several of the steps covered at the nose of the step with grey duct tape. (*id.* at 71-73).

Plaintiff also submits the deposition testimony of Mark Palmer ("Palmer"), the House Manager/Security Guard, who was working at the time of her accident. Palmer testified that he was working in his office to the left of the staircase. His office had a window to see residents enter. He stated that as Plaintiff was going up the stairs, he called her for the ID of her visitor (Palmer tr. at 36-39). He then "took his eye off and when he looked up again saw Plaintiff in motion coming back." He stated he did not see the cause of the fall. He stated that Plaintiff fell "no further than the third step" because "he would have known if she had advanced and gone beyond the point where I sat." Palmer further stated that after the accident, "I looked at the step and they seemed to be okay with him; cause that's the same step I use to walk and do my rounds" (*id.* at 39). Palmer testified that he does not recall duct tape on the stairs, nor did he ever notice a problem with the stairs. (*id.* at 44). Plaintiff argues that Palmer's testimony denying that he never noticed the duct tape on the staircase must be rejected as "incredible as a matter of law" as it is contradicted by the photographs and her testimony.

Plaintiff also submits the Incident Report prepared by Palmer which states that as Plaintiff was walking up the steps with her visitor, he asked her to present the visitor's ID. "Plaintiff turned back and began walking down the steps holding the rail, she slipped and fell briefly to the bottom of the stairs."

Plaintiff alleges, amongst other things, that Defendants, as owner of the apartment building, are liable because they had a non-delegable duty to maintain the premises in a reasonably safe condition. Further Plaintiff alleges Defendants had actual notice of a hazardous condition for at least six months before the accident and failed to remedy.

In opposition to the motion, Defendants argues that Plaintiff is not entitled to summary judgement since there exists questions of fact exist as to the manner in which Plaintiff alleges the accident occurred. Defendants assert that Plaintiff gave several accounts as to which step was allegedly defective and whether she was walking up or down the steps. Defendants further assert that Plaintiff cannot prove actual or constructive notice of the

alleged condition. In support, Defendants refer to Plaintiff's deposition testimony where she could not identify the exact step where she fell. Plaintiff testified, throughout her deposition, that she fell on several steps including the 5th, 6th, 7th, 8th and 11th. In further support of their contentions, Defendants submit the FDNY Ambulance Call Report which states, "Patient states she was walking upstairs when someone called her, and she slipped." Plaintiff stated, "she caught herself and grabbed the handrail." "Patient denies falling or hitting the floor. Patient denies any injury and states she does not need any EMS at all." Defendants argue that Plaintiff's claim that she made prior complaints to the building, and her credibility on that issue, are issues of fact, as is Palmer's denial of any problems with the steps.

Standard of Review

The proponent of a summary judgment motion has the burden of submitting evidence in admissible form demonstrating the absence of any triable issues of fact and establishing entitlement to judgment as a matter of law (*Giuffrida v Citibank Corp.*, 100 NY2d 72 [2003].; *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Winegrad v New York University Medical Center*, 64 NY2d 851 [1985]). The failure to make prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*Winegrad*, 64 NY2d at 853). Once a movant meets the initial burden, the burden shifts to the opponent, who must produce sufficient evidence, also in admissible form, to establish the existence of a triable issue of fact. (*Zuckerman v City of New York*, 49 NY2d 557 [1980]). Lastly, because summary judgment is such a drastic remedy, it should never be granted when there is any doubt as to the existence of a triable issue of fact. (*Rotuba Extruders v Ceppos*, 46 NY 2d 223 [1978]). When the existence of an issue of fact is even debatable, summary judgment should be denied. (*Stone v Goodson*, 8 NY2d 8 [1960]).

Applicable Law and Analysis

A property owner is subject to liability for a defective condition on its premises if a plaintiff demonstrates that the owner either created the alleged defect or had actual or constructive notice of it (*Gordon v American Museum of Natural History*, 67 NY2d 836 [1986]). Actual notice may be found where the defendant created the condition or was in fact aware of its existence prior to the accident (*Singh v United Cerebral Palsy of NY City, Inc.*, 72 AD3d 272,275, 258 AD3d 634[2nd Dept 1999]). Constructive notice may be established by showing that the alleged defect was "visible and apparent for a sufficient length of time prior to the accident to permit defendant's employees to discovery and remedy it." (*Dunn v 6-8 St Nicolas Realty Corp.*, 204 AD3d 466, 441[1st Dept 2022]). A plaintiff establishes their prima facie cause of action in a "trip and fall" accident against a landowner by demonstrating the existence of a dangerous or defective condition on the premises that caused her accident (*M.O. by and through Lopez v City of New York*, 211 AD3d 509, 510 [1st Dept 2022]; *Powell v Centers FC Realty, LLC*, 182 AD3d 495 [1st Dept 2010]; *Craig v Meadowbrook Pointe Homeowner's Association, Inc.*,

158 AD3d 601, 603 [2nd Dept 2018]; *Riley v Lake Condominiums*, 47 AD3d 697, 698 [2nd Dept]), and defendants either created the condition or had constructive knowledge of it (*Lemonda v Sutton*, 268 AD2d 383, 384 [1st Dept 2000]). To obtain partial summary judgement on the issue of a defendant's liability in this context, a plaintiff need only demonstrate that the defendant's negligence was a proximate cause of his or her accident and need not eliminate issues of fact as to her own comparative fault (*Benny v Concord Partners 46th LLC*, 192 AD3d 531, 531-32 [1st Dept 2021]).

In this case, Plaintiff failed to demonstrate the absence of triable issues of fact establishing entitlement to judgement as a matter of law. Issues of fact remain as to the exact step Plaintiff fell on. Plaintiff's deposition testimony regarding the exact step in which she alleges collapsed because it was "weak and rotted" is vague and unclear. Even when Plaintiff was pressed at her deposition with the photograph of the staircase and use of a cursor, she did not give a precise answer. Palmer's testimony that Plaintiff fell at the third step contradicts Plaintiff's claim to have fallen 5 steps from the top of the landing.

Plaintiff also failed to eliminate triable issues of fact as to whether a dangerous condition existed on the staircase that caused her accident. Plaintiff testified that a step on the staircase was "spongy and/or rotted" and collapsed beneath her foot, causing her to fall. Palmer, on the other hand, witnessed the accident and inspected the stairs after Plaintiff fell. He testified that the step seemed to be "okay" because it was "the same steps [he] used to walk and do [his] rounds". The submitted photographs depict the stairs with duct tape but do not reveal the existence of a rotten, spongy, or collapsed condition. Moreover, there is no testimony or evidence explaining why the duct tape was present on some of the steps]. Importantly, before even reaching the issue of notice, plaintiff must establish that a dangerous or defective condition actually existed in order for a landowner to be held liable for the injuries arising out of the condition (*Riley*, 47 AD3d at 698; see also *McKevitt v True North Urgent Care LLC*, 224 AD3d 741, 742 [2nd Dept 2024]). Here, Plaintiff has failed to eliminate questions of fact as to this issue thus, her motion must be is denied without determination the sufficiency of the opposition papers (*Winegrad*, 64 NY2d 851).

Moreover, Plaintiff's testimony that she had made several complaints to employees of defendant including Project Managers and two Case managers in the building, may be considered on the issue of notice, however, there is no indication that her complaints were communicated to building management. Also, the photographs which depicted the stairs at the time of the accident are inclusive since the area complained of by Plaintiff is covered with duct tape and there is no testimony or affidavit as to why the duct tape was placed on the nose of the stairs. Lastly, Palmer's testimony that he looked at the step after Plaintiff fell and "they seemed okay" as well as his testimony that he frequented the stairs to do his rounds and did not recall the duct tape or noticed a problem

