

Vesce v Richmond Med. Ctr.
2024 NY Slip Op 35557(U)
February 26, 2024
Supreme Court, Richmond County
Docket Number: Index No. 151760/2021
Judge: Ronald Castorina Jr
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NYSCEF DOC. NO. 43
Vesce v RMC

RECEIVED NYSCEF: 02/26/2024

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Memorandum Decision and Order on Motion Sequence #001

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND PART IAS-7M**PRESENT: HON. RONALD CASTORINA, JR.,**
JUSTICE OF THE SUPREME COURT
_____XPETER VESCE and AUDREY VESCE,
Plaintiff,

Index No.: 151760/2021

MEMORANDUM DECISION
AND ORDER

-against-

Motion Seq: #001

RICHMOND MEDICAL CENTER D/B/A
RICHMOND UNIVERSTIY MEDICAL CENTER,
Defendant.
_____X**[CASTORINA, J.]**

The following e-filed documents listed on NYSCEF (Motion #001), to wit: numbered 28-42, were read on this motion.

Upon the foregoing documents, and after oral argument conducted on February 22, 2024, on Motion Sequence #001, Motion Sequence #001 is resolved and therefore, it is hereby,

ORDERED, that Defendant's request for summary judgment pursuant to *CPLR* § 3212 on the grounds that there is no genuine, material issues of fact which would warrant a trial of this matter and as it pertains to Plaintiffs' claims and all other theories that Plaintiff cannot establish the merit of on the grounds that there are no genuine, material issues of fact which would warrant a trial of this matter is **DENIED** with prejudice; and it is further,

ORDERED, that the Clerk of the Court shall enter judgment accordingly.

Memorandum Decision**I. Procedural History**

On or about September 20, 2021, Plaintiffs commenced this negligence action to recover for personal injuries allegedly sustained by Plaintiff, Peter Vesce, because of a fall that occurred within 800 Castleton Avenue, Staten Island, New York 10310. Defendant filed Motion Sequence #001 by Notice of Motion on November 22, 2023 seeking (a) summary judgment pursuant to *CPLR* § 3212 dismissing all claims against Defendant on the grounds that there is no genuine, material issues of fact which would warrant a trial of this matter and as it pertains to Plaintiffs' claims and all other theories that Plaintiff cannot establish the merit of on the grounds that there are no genuine, material issues of fact which would warrant a trial of this matter; and (b) for such other and further relief that this Court may deem just and proper.

Plaintiffs filed opposition on January 29, 2024. Defendant filed reply on February 12, 2024. Oral argument was completed on February 22, 2024.

II. Facts

On December 17, 2020, at approximately 9:00 AM, Plaintiff, Peter Vesce, was involved in a slip and fall on a staircase inside the lobby of the building owned by the Defendant, located at incident 800 Castleton Avenue, Staten Island, New York 10310. Plaintiff testified that there had been a blizzard that ended at approximately 6:00 AM that day and left behind approximately 17 inches of snow. On the day of the incident, Plaintiff was at the Defendant's building to pick-up medical waste as he had done so on eight previous occasions.

Plaintiff had traveled two steps down the staircase, when he alleges, he fell and lost consciousness. Plaintiff testified,

Q. At any point before walking down those two steps did you observe the stairs?

A. As I proceeded to descend the stairs, yes.

- Q. As you proceeded to descend those stairs, did you observe anything on the stairs?
- A. It was wet.
- Q. You observed the stairs as being wet just prior to falling?
- A. Yes, sir. (NY St Cts Filing [NYSCEF] Doc No. 34 at pages 66-67) Plaintiff further testified,
- Q. As you were descending the stairs, you mentioned you had observed the stairs being wet. Were all six stairs wet, or just one particular step or one particular area being wet, or something else?
- A. I am sorry, but as I fell, I was unconscious. So I don't remember after I slipped and fell. I didn't look at all six stairs down.
- Q. But as you were descending, you observed the stairs being wet?
- A. Yes.
- Q. What stairs?
- A. The first three.
- Q. When you say wet, how would you describe -- I know you didn't come to the deposition today, but if you could elaborate on wet, was it a puddle on each step, was it the same amount on each step, was it one spot, the entire step? Anything like that is what I'm looking for.
- A. It was spread out amongst the steps. More on the upper than on the lower. (*see id* at pages 67-68).

When Plaintiff regained consciousness, he was lying on his back with his left knee against the wall and his back, neck, and head on the stairs. Plaintiff contends that the water on the stairs contributed to his fall.

III. Summary Judgment on Liability

“Summary judgment is designed to expedite all civil cases by eliminating from the Trial Calendar claims which can properly be resolved as a matter of law. Since it deprives the litigant

of his day in court it is considered a drastic remedy which should only be employed when there is no doubt as to the absence of triable issues” (*see Andre v. Pomeroy*, 35 NY2d 361 [1974] *citing Millerton Agway Cooperative, Inc. v. Briarcliff Farms, Inc.*, 17 NY2d 57 [1966]).

“[T]he elements of a cause of action sounding in negligence are: (1) the existence of a duty on the defendant's part as to the plaintiff; (2) a breach of this duty; and (3) an injury to the plaintiff as a result thereof” (*see Poon v Nisanov*, 162 AD3d 804 [2d Dept 2018] *quoting Stukas v Streiter*, 83 AD3d 18 [2d Dept 2011]).

“Accordingly, a defendant who moves for summary judgment dismissing a cause of action alleging negligence may sustain his or her initial burden by ‘establishing, prima facie, that he or she was not at fault in the happening of the subject accident’” (*see id quoting Boulos v. Lerner-Harrington*, 124 AD3d 709 [2d Dept 2015] *citing Goldstein v Kingston*, 153 A.D.3d 1235 [2d Dept 2017]; *Searless v Karczewski*, 153 AD3d 957 [2d Dept 2017]; *Victor v Daley*, 150 A.D.3d 1307 [2d Dept 2017]; *Faust v Gerde*, 150 AD3d 1204; *Faust v Gerde*, 150 AD3d 1204 [2d Dept 2017]).

“In order to impose liability upon a defendant in a slip and fall case, there must be evidence tending to show the existence of a dangerous or defective condition, and that the defendant either created the condition or had actual or constructive knowledge of it” (*see Sadowsky v 2175 Wantagh Ave. Corp.*, 281 AD2d 407 [2d Dept 2001] *citing Gordon v American Museum of Natural History*, 67 NY2d 836 [1986]; *King v New York City Transit Auth.*, 266 AD2d 354 [2d Dept 1999]; *Patrick v Cho's Fruit & Vegetables*, 671 NYS.2d 274 [2d Dept 1998]).

Defendant cites the Court having held that the presence of water on a surface is insufficient as a matter of law to establish the existence of a dangerous condition. (*see id; Grinberg v Luna Park Hous. Corp.*, 69 AD3d 793 [2d Dept 2010]; *Morgan v City of New York*, 59 AD3d 412 [2d Dept 2009]; *Richardson v Campanelli*, 748 NYS.2d 31 [2d Dept 2002]). These matters cited are distinct from this matter as all cited matters involve exterior wet surfaces, i.e., outdoor deck, exterior terrace, exterior steps, and a driveway.

“In a slip-and-fall case, a defendant moving for summary judgment has the initial burden of establishing, prima facie, that it neither created the dangerous condition nor had actual or constructive notice of its existence for a sufficient length of time to discover and remedy it” (*see Rogers v Bloomingdale's, Inc.*, 117 AD3d 933 [2d Dept 2014] *citing Sawicki v GameStop Corp.*,

106 AD3d 979 [2d Dept 2013]; *Armijos v Vrettos Realty Corp.*, 106 AD3d 847 [2d Dept 2013]; *Freiser v Stop & Shop Supermarket Co., LLC*, 84 AD3d 1307 [2d Dept 2011]).

While Defendant is correct that a “property owner is not obligated to cover all of its floors with mats or to continuously mop up all moisture resulting from tracked-in precipitation” (*see Curtis v Dayton Beach Park No. 1 Corp.*, 23 AD3d 511 [2d Dept 2005] *citing Miller v Gimbel Bros., Inc.*, 262 NY 107 [1933]; *Negron v St. Patrick's Nursing Home*, 248 AD2d 687 [2d Dept 1998]); however, “[w]ith respect to the issue of constructive notice, to meet its initial burden, ‘the defendant must offer some evidence as to when the area in question was last cleaned or inspected relative to the time when the plaintiff fell’” (*see Rogers v Bloomingdale's, Inc.*, 117 AD3d 933 [2d Dept 2014] *quoting Birnbaum v New York Racing Assn., Inc.*, 57 AD3d 598 [2d Dept 2008] *citing Herman v Lifeplex, LLC*, 106 AD3d 1050 [2d Dept 2013]). Defendant has provided no evidence to disprove that it created or had constructive notice of the wet condition.

Ms. Paula Caputo testified on behalf of the Defendant,

- Q. [W]hat was Star Environmental’s role with regard to 800 Castleton Avenue?
- A. They would provide cleaning services for us.
- Q. And what does that mean?
- A. That means they would empty [garbage], wipe down surfaces, sweep floors, things of that nature. General cleaning services. (NY St Cts Filing [NYSCEF] Doc No. 37 page 36, lines 8-17).
- Q. On or before December 17th of 2020, did Star Environmental have a dedicated staff at 800 Castleton or did they rotate staff?
- A. It varied. Sometimes it would be the same person. Sometimes staff would rotate.
- Q. How often were they there?
- A. Once a day, after hours.
- Q. By “After hours,” you mean more or less after 5:00 p.m.?
- A. Yes. (see *id* at page 37, lines 9-20).

- Q. In December - - on or before December 17th of 2020, if someone were to, for instance, spill something on a staircase at 800 Castleton Avenue during business hours, was there anyone who was responsible for cleaning that up or was there some sort of a policy in place for how to request maintenance or something else?
- A. If it was noticed by a patient or a staff member. It depends on the size of the spill, really. If it's a small spill, a staff member might wipe it up. If it was a very large spill, then we might have to call Star; although, I don't ever recall that happening. (see *id* at page 38, lines 2-16).

“Mere reference to general cleaning practices, with no evidence regarding any specific cleaning or inspection of the area in question, is insufficient to establish a lack of constructive notice” (see *id* quoting *Herman v Lifeplex, LLC*, 106 AD3d 1050 [2013]).

Defendant further contends that there is no evidence to suggest that water accumulation on the stairs caused him to fall. Plaintiff testified that a blizzard had finished three hours before the incident, he observed water accumulated on the top three stairs of the staircase, that he slipped after reaching the second step, and that the back of his uniform was wet after he fell. (NY St Cts Filing [NYSCEF] Doc No. 34).

“On a motion for summary judgment, facts must be viewed ‘in the light most favorable to the non-moving party’” (see *Shabat v State of New York*, 177 AD3d 1009 [2d Dept, 2019] quoting *Vega v Restani Constr. Corp.*, 18 NY3d 499 [2012]; *Ortiz v. Varsity Holdings, LLC*, 18 NY3d 335 [2011]).

“In a trip-and-fall case, a defendant may establish its prima facie entitlement to judgment as a matter of law by submitting evidence that the plaintiff cannot identify the cause of his or her fall” (see *Davis v Sutton*, 136 AD3d 731 [2d Dept 2016] citing *Gotay v New York City Hous. Auth.*, 127 AD3d 693 [2d Dept 2015]; *Buglione v Spagnoletti*, 123 AD3d 867 [2d Dept 2014]).

“A plaintiff's inability to identify the cause of the fall is fatal to the cause of action, because a finding that the defendant's negligence, if any, proximately caused the plaintiff's injuries would be based on speculation” (see *id* citing *Rivera v J. Nazzaro Partnership, L.P.*, 122 AD3d 826 [2d Dept 2014]; *Kudrina v 82-04 Lefferts Tenants Corp.*, 110 AD3d 963 [2d Dept 2013]).

Here, viewing the evidence in the light most favorable to the Plaintiffs, as the nonmoving parties, the defendant failed to establish, *prima facie*, that the injured plaintiff did not know what had caused him to fall. The deposition testimony of the injured plaintiff, which was submitted in support of the motion, demonstrated the existence of a triable issue of fact as to whether the injured Plaintiff slipped and fell because of the wet steps and whether the Defendant had actual or constructive notice of the existence of the condition of the steps for a sufficient length of time to discover and remedy the situation.

Defendant has failed to establish, *prima facie*, that the subject staircase was not in a defective condition and that they did not create the alleged hazardous condition or have actual or constructive notice of such condition. (*see id citing Winegrad v N.Y. Univ. Med. Ctr.*, 64 NY2d 851 [1985]; *Maloney v Farris*, 117 AD3d 916 [2d Dept 2014]).

Plaintiff's choice of using the staircase in question when other options were available may be an issue of comparative fault. "The issue of comparative fault is generally a question for the jury to decide" (*Jimenez v Batista*, 123 A.D.3d 668 [2d Dept 2014]; *citing Berish v Vasquez*, 121 AD3d 634 [2d Dept 2014]; *Bullock v Calabretta*, 119 AD3d 884 [2d Dept 2014]; *Bonilla v Calabria*, 80 AD3d 720 [2d Dept 2011]).

Accordingly, the Defendant's request for summary judgment pursuant to *CPLR* § 3212 on the grounds that there is no genuine, material issues of fact which would warrant a trial of this matter and as it pertains to Plaintiffs' claims and all other theories that Plaintiff cannot establish the merit of on the grounds that there are no genuine, material issues of fact which would warrant a trial of this matter is **DENIED** with prejudice.

IV. Decretal Paragraphs

It is hereby **ORDERED**, that Defendant's request for summary judgment pursuant to *CPLR* § 3212 on the grounds that there is no genuine, material issues of fact which would warrant a trial of this matter and as it pertains to Plaintiffs' claims and all other theories that Plaintiff cannot establish the merit of on the grounds that there are no genuine, material issues of fact which would warrant a trial of this matter is **DENIED** with prejudice, and it is further;

ORDERED, that the Clerk of the Court shall enter judgment accordingly.

The foregoing shall constitute the Decision and Order of the Court.

Dated: February 26, 2024
Staten Island, New York

ENTER,

A large, stylized handwritten signature in black ink, appearing to read 'Ronald Castorina, Jr.', is written over a horizontal line.

HON. RONALD CASTORINA, JR.
JUSTICE OF THE SUPREME COURT

HON. RONALD CASTORINA, JR.
JUSTICE OF THE SUPREME COURT