

Samson v Malu Props., Inc.
2024 NY Slip Op 35721(U)
October 8, 2024
Supreme Court, Bronx County
Docket Number: Index No. 811035/2021E
Judge: Alison Y. Tuitt
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART:5

EDNA SAMSON,

Index No.: 811035/2021E

Plaintiff,

Present:

Hon. Alison Y. Tuitt

Justice

-against-

**MALU PROPERTIES, INC., CHANDAN SUBARNA
CORP., GASETERIA OIL, CORP., THIRD DUNKIN
DONUTS REALTY, INC. and STORY 1905, LLC d/b/a
DUNKIN DONUTS,**

Defendant.

HON. ALISON Y. TUITT

The following papers were considered on Defendants MALU PROPERTIES, INC., CHANDAN SUBARNA CORP., GASETERIA OIL, CORP. THIRD DUNKIN DONUTS REALTY, INC., and STORY 1905, LLC d/b/a DUNKIN DONUTS' motion for summary judgment:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion, Affirmation in Support and Exhibits, Statement of Material Facts, Memorandum of Law	No. 1
Affirmation in Opposition and Exhibits, Statement of Material Facts	No. 2
Affirmation in Reply and Exhibits	No. 3

Upon the foregoing papers, it is hereby ordered that the motion is denied:

Plaintiff, Edna Samson, commenced this personal injury action on August 13, 2021 to recover for personal injuries she alleges she sustained due to the negligence of the defendants. In that regard, she avers that she fell due to a dangerous condition in a parking lot owned and/or controlled by the Defendants. Defendants MALU PROPERTIES, INC., CHANDAN SUBARNA CORP., GASETERIA OIL, CORP., THIRD DUNKIN DONUTS REALTY, INC. and STORY 1905, LLC d/b/a DUNKIN DONUTS ("Defendants") now move for summary judgment.

BACKGROUND

Plaintiff alleges that on November 20, 2020, she was walking through the Dunkin Donuts parking lot located at 5501 Broadway, Bronx, New York 10463 ("Subject Parking Lot"). While walking through the parking lot, she fell on cement blocks that contained strips of steel coming from the front and back of the blocks. Defendants, in turn, argue that the Plaintiff has failed to adequately identify the cause of her fall and as a result the Defendants are entitled to judgment as a matter of law.

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]). Here, the Defendants do not allege that they lacked notice of the condition in the Subject Parking Lot. Instead, the Defendants argue that the Plaintiff does not know what caused her fall. Accordingly, the Defendants seek summary judgment on the basis that the Plaintiff failed to establish that the dangerous or defective condition caused her fall. (*Guiterrez v. Iannacci*, 43 A.D.3d 868, 841 N.Y.S.2d 377, 378 [2nd Dept. 2007]).

With regard to the fall at issue, Plaintiff testified accordingly at her deposition:

Q. ...is that where you claim you fell?

A. Yeah.

Q. Yes?

A. That's the other cement block, right? I fell on the cement block.

(Plaintiff's Exhibit "A" 52: 11-17).

Plaintiff further expounded on her fall in her affidavit submitted in opposition to the instant motion, "When I entered the Dunkin Donuts parking lot, I took one step off the sidewalk when my right foot came into contact with a cement parking block containing a raised metal object causing me to be violently thrown to the ground." (Plaintiff's Exhibit "B" at ¶ 3.)

The party opposing a motion for summary judgment is entitled to every favorable inference that may be drawn from the pleadings, affidavits and competing contentions of

the parties. (See *People v. Greenbere*, 95 AD3d 474, 484 (1st Dept. 2012); *Nicklas v. Tedlen Realty Corp.*, 305 AD2d 385 (2nd Dept. 2003). This is because summary judgment is a drastic remedy, the procedural equivalent of a trial; it should not be granted if there is any doubt about the issue. (See *Vee.a v. Restani Constr. Corp.*, 18 NY3d 499, 503 (2012); *Tadmor v. N.Y. Jiu Jitsu Inc.*, 109 AD3d 440, 443 (1st Dept. 2013). Accordingly, plaintiff is entitled to ever favorable inference in this matter as the nonmovant.

Contrary to the defendants' contention, viewing the evidence in the light most favorable to the plaintiff as the nonmovant (see *Bravo v. Vargas*, 113 A.D.3d 579, 582, 978 N.Y.S.2d 307; *Green v. Quincy Amusements, Inc.*, 108 A.D.3d 591, 592, 969 N.Y.S.2d 489; *Stukas v. Streiter*, 83 A.D.3d 18, 22, 918 N.Y.S.2d 176), the evidence relied upon by the defendants in support of their motion herein, which included a transcript of the plaintiff's deposition, failed to establish the defendants' prima facie entitlement to judgment as a matter of law dismissing the complaint on the ground that the plaintiff was unable to identify the cause of her fall without speculation (see *Flanagan v. Town of Huntington*, 155 A.D.3d 1000, 1001, 64 N.Y.S.3d 590; *Pajovic v. 94-06 34th Rd. Realty Co., LLC*, 152 A.D.3d 781, 781, 59 N.Y.S.3d 138; *Chilinski v. LMJ Contr., Inc.*, 137 A.D.3d 1185, 1188-1189, 28 N.Y.S.3d 390; *Drouillard v. Smarr*, 136 A.D.3d 973, 973-974, 25 N.Y.S.3d 609; *Severin v. T Burger, LLC*, 127 A.D.3d 726, 726, 4 N.Y.S.3d 540; *Martino v. Patmar Props., Inc.*, 123 A.D.3d 890, 891, 999 N.Y.S.2d 449). The Plaintiff testified at her deposition that the source of her fall was the cement blocks located in the Dunkin Donuts Parking Lot. Further, the Plaintiff averred in her sworn affidavit, "When I entered the Dunkin Donuts parking lot, I took one step off

the sidewalk when my right foot came into contact with a cement parking block containing a raised metal object causing me to be violently thrown to the ground.” (Plaintiff’s Exhibit “B” at ¶ 3.). Further, the photograph of the cement blocks at issue show they contain raised metal objects.

Similarly, on the issue of causation, the court held in (*Burrus v. Douglaston Realty Mgmt. Corp.*):

The plaintiff’s deposition testimony identified the cause of her fall as a wet substance on the stairs. The plaintiff’s mere inability to identify the precise nature of the wet substance upon which she allegedly slipped and fell cannot be equated with a failure to identify the cause of her fall (*see Stancarone v. Sullivan*, 167 A.D.3d 676, 678, 89 N.Y.S.3d 325; *Kurtz v. Supercuts, Inc.*, 127 A.D.3d 546, 8 N.Y.S.3d 60; *Gotay v. New York City Hous. Auth.*, 127 A.D.3d 693, 694–695, 7 N.Y.S.3d 311; *Pol v. Gjonbalaj*, 125 A.D.3d 955, 955–956, 5 N.Y.S.3d 186; *Giuffrida v. Metro N. Commuter R.R. Co.*, 279 A.D.2d 403, 404, 720 N.Y.S.2d 41).

Burrus v. Douglaston Realty Mgmt. Corp., 175 A.D.3d 461, 461–62(2nd Dep’t 2019).

Similarly here, the Plaintiff has identified the defective cement blocks as the source of her fall. Accordingly, the Defendants argument that the Plaintiff has failed to adequately identify the cause of her fall is unavailing based upon established legal precedent. (*see Flanagan v. Town of Huntington*, 155 A.D.3d 1000 at 1001; *Pajovic v. 94–06 34th Rd. Realty Co., LLC*, 152 A.D.3d 781, 781; *Chilinski v. LMJ Contr., Inc.*, 137 A.D.3d 1185, 1188–1189, 28 N.Y.S.3d 390). Plaintiff has identified the cause of her fall with as much specificity as required by law. (*See Burrus v. Douglaston Realty Mgmt. Corp.*, 175 A.D.3d 461 at 461–62 (2nd Dep’t 2019). Defendants have failed to meet their

burden establishing their entitlement to judgement as a matter of law. (*Flanagan v. Town of Huntington*, 155 A.D.3d 1000 at 1001; *Pajovic v. 94-06 34th Rd. Realty Co., LLC*, 152 A.D.3d 781, 781; *Chilinski v. LMJ Contr., Inc.*, 137 A.D.3d 1185, 1188–1189, 28 N.Y.S.3d 390).

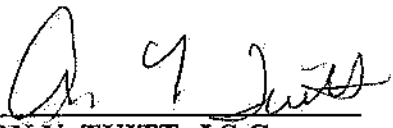
Accordingly, it is:

ORDERED that the Defendants' motion is denied in its entirety,

This constitutes the Decision and Order of the court.

Dated: October 8, 2024

Hon.


ALISON Y. TUITT, J.S.C.