

McLean v Shanghai City Corp.

2025 NY Slip Op 30956(U)

March 20, 2025

Supreme Court, New York County

Docket Number: Index No. 155962/2021

Judge: Judy H. Kim

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JUDY H. KIM **PART** **04**

Justice

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ERIN HANLON MCLEAN,

Plaintiff,

- v -

SHANGHAI CITY CORP.,

Defendant.

-----X

INDEX NO. 155962/2021

MOTION DATE 05/09/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 47, 48

were read on this motion for SUMMARY JUDGMENT.

Upon the foregoing documents, defendant’s motion for summary judgment dismissing this action is denied.

In this action, plaintiff seeks to recover for personal injuries allegedly sustained on December 17, 2017, when she fell on the stairs in defendant’s premises. Defendant now moves for summary judgment dismissing the complaint, arguing that plaintiff relies entirely on impermissible speculation to establish the cause of her fall. Defendant points, specifically, to the following colloquy during plaintiff’s deposition:

Q As far as you’re concerned, did you slip on something, or trip on something, or something else?

A I must’ve. I -- I can’t imagine why I would fall if I hadn’t.

Q Do you know what caused you to fall?

A Just something slippery about my footing.

Q Okay. And when you were -- right before your accident, right before you slipped, were you closer to the right side of the stairs, the left side, or the middle?

A I believe the left side.

Q When you say it was something slippery, do you know what that slippery substance was, if anything?

A I can't be sure.

Q Did you ever when you -- when you landed on the landing, was any part of your shoe or clothes wet from that slippery substance?

A I can't recall that.

Q Did you ever notice when you -- after the accident, did you ever look back to see what the slippery substance was?

A No, I wasn't able to even stand up. I became unconscious.

Q Did you ever see what color that slippery substance was?

A I just remember the staircase being green. That's it.

Q Do you know how long that substance had been on that step?

A No.

Q Do you know what caused that substance to be on that step?

A No.

Q Do you know if anybody affiliated with the restaurant knew that the slippery substance was on that step?

A I don't know.

Q Did you see that substance at all before you slipped on it?

A I don't believe so.

(NYSCEF Doc No. 33, McLean EBT at 56-58).

Plaintiff opposes the motion, asserting that she identified the condition that caused her to fall with sufficient specificity. She also submits an affidavit stating, in pertinent part:

On December 17, 2017 I was involved in an incident where I slipped on the stairs and fell down the staircase of the defendant's premises, which was operating as a restaurant.

...

[W]hen I slipped, I slipped on a substance that was on the steps at the time. This slippery substance is what caused me to slip. Unfortunately I cannot identify with certainty what the substance was, but it was not in a solid form. I am not sure if it was water, sauce, grease, oil, or another substance. As I indicated in my deposition, after I fell I landed at the bottom of the stairs and I never went back up to the second floor, so I was not able to see the substance after my fall

(NYSCEF Doc No. 42, McLean Aff. at ¶¶2, 7).

DISCUSSION

“The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986] [internal citations omitted]).

Defendant's motion is denied. While it is well-settled that “a defendant moving for summary judgment in a trip-and-fall case ... can make its prima facie showing of entitlement to judgment as a matter of law by establishing that the plaintiff cannot identify the cause of his or her fall without engaging in speculation” (*Madden v 3240 Henry Hudson Parkway, LLC*, 192 AD3d 1095, 1095-96 [2d Dept 2021] [internal citations and quotations omitted]), this principle does not apply here. During her deposition, plaintiff identified the cause of her fall as a slippery condition on the subject stairs. As such, her “testimony cannot be dismissed as mere speculation regarding

causation” (*Signorelli v Great Atl. & Pac. Tea Co., Inc.*, 70 AD3d 439, 440 [1st Dept 2010]). 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” (*Burrus v Douglaston Realty Mgt. Corp.*, 175 AD3d 461, 462 [2d Dept 2019] [internal citations omitted]).

Accordingly, it is

ORDERED that defendant’s motion for summary judgment is denied; and it is further

ORDERED that plaintiff shall, within ten days of the date of this decision and order, serve a copy of same, with notice of entry, upon defendant as well as the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “Efiling” page on the court’s website).

This constitutes the decision and order of the Court.



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3/20/2025

DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE