

Stewart v 70 Rockaway Parkway, LLC

2025 NY Slip Op 31916(U)

May 23, 2025

Supreme Court, Kings County

Docket Number: Index No. 525036/2022

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73

Index No.: 525036/2022
Motion Date: 5-25-25
Mot. Seq. No.:1

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ANN MARIE STEWART,

Plaintiff,

-against-

DECISION/ORDER

70 ROCKAWAY PARKWAY, LLC and ICON
MANAGEMENT GROUP, LLC,

Defendants.
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The following papers, which are e-filed with NYCEF as Document Numbers 25-45, were read on this motion:

In this action to recover damages for personal injuries, the defendants, 70 ROCKAWAY PARKWAY, LLC and ICON MANAGEMENT GROUP, LLC (“Defendants”), move for an Order pursuant to CPLR §3212 awarding them summary judgment dismissing plaintiff’s complaint.

Plaintiff commenced this action alleging that on October 28, 2021, at approximately 5:00 p.m., she slipped and fell while descending the steps between the first and second floor of her apartment building located at 70 Rockaway Parkway, Brooklyn, New York. At the time of the accident, she was carrying a bag of garbage and was on her way to garbage chute. She claims that she was caused to slip due to the presence of a liquid substance on the steps. Approximately 15 minutes before the accident, she walked up the same stairway on her way home from work and did not notice any liquid substance on the steps. She was unable to identify the type of on the steps and maintained that she did not observe anything on the steps on her way down the stairway until after she fell.

After the accident, Sean Alexander, the building superintendent, met her in the area of the accident. Plaintiff claims to have taken photographs of the steps and video of Mr. Alexander wiping away the liquid substance on the steps prior to calling for an ambulance. The photographs and video disappeared from her phone.

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Plaintiff claims that the presence of the liquid substance on the stairway was a reoccurring condition and that she has made complaints of this to Mr. Alexander in the past. At here deposition, which was submitted in support of the motion, plaintiff testified as follows:

Q. How often would you [see] the wetness when it rains?

A. When it rains it gets wet.

Q. When it rains the staircase gets wet, is that what you are saying?

A. The platform gets wet, and sometimes when you're walking down you see it on the staircase.

Q. I'm asking you, when it rains, the staircase gets wet?

A. The platform gets wet.

Q. The platform and the staircase?

A. Yes.

Q. Every time it rains the platform, and the staircase gets wet?

A. I don't know about every time.

. . . .

Q. Every time you complained it was the same complaint?

A. Because it was wet.

Q. When you say it was wet, you are talking about water or some liquid, what are we talking about?

A. Some liquid.

Q. It could be anything?

A. Yes.

Q. Yes?

A. Liquid.

Q. Any kind of liquid?

A. I don't know what liquid.

Mr. Alexander also appeared for a deposition, which was also submitted in support of the motion. He testified that on the day the accident, he received a phone call from the main office and was told that the plaintiff had fallen. He immediately went to the scene of the accident and met with the plaintiff, who was standing on the steps when he arrived. He asked the plaintiff what happened, and she said that she slipped on liquid as she descending the stairs. She pointed to where she fell and Mr. Alexander confirmed that there were a few drops of water on the steps, which he proceeded to wipe away. According to Mr. Alexander, it had not rained on the day of the accident and denied receiving any prior complaints, from anyone, regarding the presence of water or liquid on the steps.

A defendant who moves for summary judgment in a slip-and-fall case has the initial burden of making a prima facie showing that it did not create the hazardous condition which allegedly caused the fall, and did not have actual or constructive notice of that condition for a sufficient length of time to discover and remedy it (*see Mehta v. Stop & Shop Supermarket Co., LLC*, 129 A.D.3d 1037, 1038, 12 N.Y.S.3d 269; *Sperling v. Wyckoff Hgts. Hosp.*, 129 A.D.3d 826, 827, 12 N.Y.S.3d 131; *Kiskiel v. Stone Edge Mgt., Inc.*, 129 A.D.3d 672, 673, 11 N.Y.S.3d 207). “A defendant has constructive notice of a hazardous condition on property when the condition is visible and apparent, and has existed for a length of time sufficient to afford the defendant a reasonable opportunity to discover and remedy it” (*Bravo v. 564 Seneca Ave. Corp.*, 83 A.D.3d 633, 634, 922 N.Y.S.2d 88; see also *Guzman v. Jewish Bd. of Fam. & Children's Servs., Inc.*, 103 A.D.3d 776, 777, 960 N.Y.S.2d 151, 152).

Here, the defendants demonstrated, prima facie, that they neither created nor had actual or constructive notice of the liquid substance on which plaintiff claims she slipped by submitting plaintiff's testimony that she did not see the liquid substance on the steps when she ascended the steps approximately 15 minutes before the accident and when she was descending the steps

before she fell and by submitting Mr. Alexander's testimony that he received no complaint about the alleged condition before the accident (*see Costanzo v. Woman's Christian Ass'n of Jamestown, New York*, 92 A.D.3d 1256, 1257, 938 N.Y.S.2d 404, 405; *Elassad v. Nastasi*, 165 A.D.3d 1040, 1041, 86 N.Y.S.3d 606, 607; *Haberman v. Meyer*, 120 A.D.3d 1301, 1302, 993 N.Y.S.2d 80, 82; *Simon v. PABR Assocs., LLC*, 61 A.D.3d at 664, 877 N.Y.S.2d 356).

In opposition, the plaintiff failed to raise a triable issue of fact. The court rejects plaintiff's argument that the plaintiff presented sufficient evidence to raise a triable issue of fact as to whether the liquid substance on the steps was a recurring condition. While it is true that a property owner who has actual knowledge of an ongoing and recurring dangerous condition can be charged with constructive notice of each specific reoccurrence of that condition (*Stevens v. St. Charles Hosp. & Rehabilitation Ctr.*, 165 A.D.3d 729, 730, 85 N.Y.S.3d 90, quoting *Hutchinson v. Medical Data Resources, Inc.*, 54 A.D.3d 362, 363, 865 N.Y.S.2d 221 [internal quotation marks omitted]; *see Pagan v. New York City Hous. Auth.*, 172 A.D.3d at 889, 101 N.Y.S.3d 168), and that a question of fact regarding a recurrent dangerous condition can be established by offering evidence that an ongoing and recurring dangerous condition existed in the area of the accident which was routinely left unaddressed (*Mauge v. Barrow St. Ale House*, 70 A.D.3d 1016, 1017, 895 N.Y.S.2d 499), here, plaintiff's deposition testimony was insufficient to demonstrate the existence of a recurrent dangerous condition, especially since Mr. Alexander testified that it did not rain on the day of the accident. Further, even if the plaintiff's testimony constituted sufficient proof that the defendants were aware of a general condition, her testimony was not sufficient to establish constructive notice of the particular condition which caused her to fall (*see, Piacquadio v. Recine Realty Corp.*, 84 N.Y.2d 967, 622 N.Y.S.2d 493, 646 N.E.2d 795; *Kraemer v. K-Mart Corp.*, *supra*; *McDuffie v. Fleet Fin. Grp., Inc.*, 269 A.D.2d 575, 575, 703 N.Y.S.2d 510, 510-11).

Accordingly, it is hereby

ORDRED that the motion is **GRANTED**, and plaintiff's complaint is **DISMISSED**.

This constitutes the decision and order of the Court.

Dated: May 23, 2025.

PPS

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020

KINGS COUNTY CLERK
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