

Hamilton v 9302 Realty LLC

2025 NY Slip Op 32222(U)

May 22, 2025

Supreme Court, Kings County

Docket Number: Index No. 534603/2022

Judge: Wavny Toussaint

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At an IAS Term, Part 70 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 22nd day of May, 2025.

P R E S E N T :

HON. WAVNY TOUSSAINT,
Justice.

-----X
STEPHANIE HAMILTON,

Plaintiff,
-against -

9302 REALTY LLC, and WM REALTY MGMT I LLC,

Defendants.
-----X

Index No.: 534603/2022

DECISION AND ORDER

The following papers numbered 1 to read herein
Notice of Motion/Order to Show Cause/
and Affidavits (Affirmations) Annexed
Cross Motion and Affidavits (Affirmation) Annexed
Answers/Opposing Affidavits (Affirmations)
Reply Affidavits (Affirmations)
Affidavit (Affirmation)
Other Papers

Papers Numbered
37-49
53-57
60-63

Upon the foregoing papers, defendants 9302 Realty LLC and WM Realty MGMT I LLC (defendants) move (Seq. 02) for an order, pursuant to CPLR § 3212, granting summary judgment dismissing the complaint. Plaintiff opposes.

BACKGROUND

Plaintiff Stephanie Hamilton alleges that on June 9, 2021, she visited her sister who resided in a second-floor apartment at the building located at 9302 Kings Highway, in the

County of Kings, City and State of New York (the “subject building”).¹ While waiting for some period of time for an elevator, she instead decided to walk up the stairwell one flight to the second floor. Plaintiff was carrying her four to five-month-old baby. When plaintiff ascended the interior stairwell on her way to the second floor, she allegedly observed “some uneven steps”.² Plaintiff visited with her sister “about 30 minutes to an hour”.³ When plaintiff left her sister’s apartment, she again descended the same interior stairwell, carrying her baby in her left arm and holding the hand railing with the other hand. When she reached the second step from the top of the stairwell, her right foot slipped on the uneven step which, allegedly, was now wet with water, causing her to slip and fall down the rest of the steps.⁴ After the fall, plaintiff observed water on the stairs.⁵ Plaintiff alleges she saw a plastic Poland Spring water bottle above the top of the stairs without a cap, which she had not seen when she initially ascended the stairwell to visit her sister.⁶

On November 29, 2022, plaintiff commenced this premises liability action against defendants, owners of the subject building, to recover damages for personal injuries plaintiff alleged she sustained as a result of the accident.

THE PARTIES’ CONTENTIONS

On December 30, 2024, defendants moved for summary judgment dismissing the complaint arguing they neither created nor had notice of the alleged wet condition or

¹ See NYSCEF Doc. No. 42, ps. 28; 48-49

² *Id.* at ps. 52-54.

³ *Id.* at ps. 38; 61-62.

⁴ *Id.* at ps. 66; 72.

⁵ *Id.* at p. 116.

⁶ *Id.* at ps. 116-117; 125.

unevenness of the subject stairwell stairs, prior to the date of plaintiff's accident. Defendants argue plaintiff did not indicate her fall was caused by wet steps according to treatment records or as initially stated in her deposition. Further, defendants argue the deposition testimony of the building superintendent confirms he inspected the subject stairway before and after the incident and found no slippery conditions; and that their expert who, after slip resistance testing of the tread surface, concluded no grooves were found on the tread surfaces of the steps, which also were structurally sound and well maintained.

Plaintiff opposed, contending there was evidence of an empty water bottle at the top of the stairs, which had not been present when she ascended the stairway approximately thirty minutes to an hour earlier. Plaintiff contends defendants admit to having actual, or at least constructive notice, of the uneven stairs based on the deposition testimony of superintendent Brooks, who testified that there was a "dip" in the second step from the top of the stairwell and that he had been aware of the "dip" for nearly 14 years. Plaintiff also argues her testimony that she slipped and fell is uncontroverted, even if what caused her to fall is subject to dispute. Finally, plaintiff contends the expert's opinion should be ignored since, among other things, the assessment of the stairwell was conducted three years after the accident.

In reply, defendants argue they did not have notice of the alleged wet water condition of the stairs with sufficient time to have remedied the issue and that in any event, the expert demonstrated that the subject stairwell stairs were not hazardous, having existed

with the “dip” for some 14 years, without complaint or incident. Further, defendants point out that plaintiff did not submit an expert report to contradict that of their expert.

DISCUSSION

Burden of Proof

“A defendant moving for summary judgment in a slip-and-fall case has the burden of demonstrating, prima facie, that it did not create the alleged dangerous condition or have actual or constructive notice of its existence for a sufficient length of time to discover and remedy it” (*Carmenati v. Sea Park E., L.P.*, 229 AD3d 757, 758 [2d Dept 2024] [citation omitted]). “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 the defendant's employees to discover and remedy it” (*Arbit v. Costco Wholesale Corp.*, 230 AD3d 1089, 1090 [2d Dept 2024] [internal quotation marks omitted]; see also *Lisker v Vue Catering, Inc.*, 2025 WL 1119177, *1 [2d Dept 2025]).

In order to meet its prima facie burden “on the issue of lack of constructive notice, 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” (*Arbit*, 230 AD3d at 1090 [internal quotation marks omitted]; *Lamour v Decimus*, 118 AD3d 851, 852 [2d Dept 2014]). “Reference to general cleaning practices is insufficient to establish a lack of constructive notice in the absence of evidence regarding specific cleaning or inspection of the area in question” (*Rodriguez v. New York City Hous. Auth.*, 169 AD 3d 947, 948 [2d Dept 2019] [internal quotation marks omitted]).

Defendants' Motion Seq. 02

In support of the motion, defendants submitted, *inter alia*, plaintiff's Verified Bill of Particulars and deposition transcript; the deposition transcript of defendants' building superintendent, Joel Henry Adams Brooks (Brooks); a photo of the subject stairwell; and an affidavit from defendants' injury biomechanics expert, Dr. Vasiliki Kefala (Dr. Kefala).

As an initial matter, the Court finds that defendants failed to establish a specific cleaning and inspection practice as it relates to the subject stairwell. Brooks testified that he "clean[s] up the building twice a day Monday through Friday" and that as part of his morning routine, starting at 7am, he walks down the stairs beginning at the sixth floor and checks every floor to see "the condition, [of] every floor [and] If there's anything damaged or dangerous, [he] takes[s] care of that right away".⁷ This is a process he repeats at 12:30pm after his lunch break.⁸ Brooks testified that the foregoing schedule constituted his normal routine.⁹ However, when asked whether he remembered the date of plaintiff's accident, he replied "not really."¹⁰ Further, Brooks confirmed that he did not keep records concerning his time schedule or any time cards concerning his work in the building, and further suggested he may have sometimes engaged in side jobs outside the building. Based on the submitted proof, the Court finds Brooks' testimony insufficient to establish the requisite specificity needed to meet the standard set forth by the Second Department in *Rodriguez, supra*.

⁷ See NYSCEF Doc. No. 43, ps. 21-22.

⁸ *Id.* at p. 30.

⁹ *Id.* at ps. 16-17. Here, the date of the accident, June 9, 2021, was a Wednesday.

¹⁰ *Id.* at p. 38.

Defendants' proof also failed to establish that defendants lacked actual or constructive notice of the alleged wet condition of the stairwell steps which allegedly contributed to plaintiff's accident. The testimony of plaintiff established that the wet condition developed sometime within thirty minutes to an hour from the time she walked up the stairwell until she descended the stairwell after visiting her sister. Without more, the Court cannot determine whether this was sufficient time for defendants to have discovered and remedied the wet condition. Brooks himself testified to a heightened vigilance due to children in the building, which bears on whether the wet condition should have been discovered within the alleged time frame. When asked about his procedures during "non-mopping days, he stated:

"Like I said, we got kids in the 8 building. If they running around with water or soda or something like that I see that, I got to clean that right away, ma'am. I have to clean it right away no matter what. Leave whatever I'm doing and take care of that right away."¹¹

The foregoing raises a question of fact regarding whether there was sufficient time for defendants to have discovered, and remedied, the wet condition.

Additionally, defendants' proof consisting of the photograph and testimony of Brooks, failed to establish that defendants lacked actual or constructive notice of the alleged uneven stairwell steps. Defendants offered the photograph of the subject stairwell steps in support of the motion. It was taken by plaintiff's sister the same day of the accident and was marked as defendants' "A" for identification at plaintiff's deposition.¹² When shown the

¹¹ *Id.* at p. 28.

¹² See NYSCEF Doc. No. 42, ps. 70-71.

photograph, plaintiff testified that the photograph was a fair and accurate representation of the stairwell steps on the day of the accident.¹³ Upon the Court's review of the photograph, the uneven condition of the stairs, particularly the second stair from the top, is readily apparent. Defendants' witness, Brooks, testified regarding the condition of the stairs, referring to a "dip in the stair".¹⁴ Though he testified he was not aware of any complaints or reports of falls due to the "dip", he acknowledged the stairs had been in this same condition for the past "13, 14 years", the entire time he has worked as a superintendent in the building.¹⁵

The affidavit of plaintiff's expert Dr. Kefala only further supports a finding that an issue of fact is raised regarding whether defendants had actual or constructive notice of the unevenness or "dip" in the stairs and whether same created a hazardous condition known to defendants. The Court finds Dr. Kefala conclusion that: "The lack of other incidents (for 14 years) and the lack of complaints and violations is empirical evidence that the stair was reasonably safe as designed and maintained for someone exercising a reasonable degree of caution" [par. 22], very problematic.¹⁶ Simply because an accident may not have occurred in the face of a defective condition for some period of time, it not a basis for asserting that the condition therefore is deemed safe.

Defendants proof failed to establish, *prima facie*, that the unevenness or "dip" in the stairs of the stairwell, as it has existed for the past 13 to 14 years, did not constitute a

¹³ *Id.* at p. 85.

¹⁴ See NYSCEF Doc. No. 43, p. 37.

¹⁵ *Id.* at ps. 37-38.

¹⁶ See NYSCEF Doc. No. 39, p. 22.

hazardous condition for which they had actual or constructive notice. Material issues of fact regarding whether defendants had actual or constructive notice of the unevenness or “dip” in the steps of the stairwell, and whether the same constituted a hazardous condition, raise questions of fact for a jury to decide (*Lamour*, 118 AD3d at 852; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Having failed to carry their burden, the Court need not consider the sufficiency of plaintiff’s papers in opposition (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

CONCLUSION

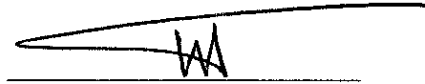
Accordingly, it is hereby

ORDERED, that defendants’ motion (Seq. 02) for an order, pursuant to CPLR § 3212, granting summary judgment dismissing the complaint, is denied.

The parties’ remaining contentions, to the extent not expressly set forth herein, have been considered by the Court and are denied.

This constitutes the decision and order of the Court.

E N T E R



J.S.C.

**HON. WAVNY TOUSSAINT
J. S. C.**

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KINGS COUNTY CLERK
FILED