Bonner v J.W. Realty Corp.

2025 NY Slip Op 34551(U)

January 27, 2025

Supreme Court, Bronx County

Docket Number: Index No. 28321/2019E

Judge: Laura G. Douglas

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Index No. 28321/2019E

WENDY BONNER,

Plaintiff,

-against-

J. W. REALTY CORP.,

Defendant.

DECISION/ORDER

Present:
Hon. Laura G. Douglas
J. S. C.

Part 6

Recitation, as required by Rule 2219(a) of the C.P.L.R., of the papers considered in the review of this motion for summary judgment (seq. no. 2):

Papers	**Numbered**
Defendant's Notice of Motion, Statement of Material Facts by Maria Scalici, Esq. dated July 5, 2023, Memorandum of Law by Maria Scalici, Esq. dated July 5, 2023 in Support of Motion, Affirmation of Maria Scalici, Esq. dated July 5, 2023 in Support of Motion, and Exhibits ("A" through "G")..........	**1**
Affirmation of Beth S. Gereg, Esq. dated October 3, 2023 in Opposition to Motion and Response to Statement of Material Facts by Beth S. Gereg, Esq. dated October 3, 2023..........	**2**
Reply Affirmation of Maria Scalici, Esq. dated October 20, 2023 and Exhibit ("A")..........	**3**

Upon the foregoing papers and after due deliberation, the Decision/Order on this motion is as follows:

The defendant ("JW Realty") seeks summary judgment pursuant to CPLR 3212 dismissing the plaintiff's complaint in its entirety. The motion is denied.

The plaintiff ("Bonner") seeks monetary damages for personal injuries purportedly sustained on April 22, 2019 when she slipped and fell due to a broken and/or defective toilet seat in her apartment. Bonner alleges that her accident was caused by JW Realty's negligence in its ownership, operation, management, maintenance, and/or control of the premises.

In support of its motion, JW Realty relies on Bonner's own deposition testimony. In pertinent part, she testified that she sat on the toilet seat and fell off onto her buttocks and hand. She believes that

she then "blacked out" because she only remembers that her home attendant was trying to help her up. Bonner stated that the toilet seat was cracked in two places. She allegedly reported this condition to "Sookie." After several complaints, Bonner was told that building management was not responsible for repairing a broken toilet seat. She eventually purchased a new toilet seat after her accident.

JW Realty also submits the deposition testimony of Bhemeedo Ramnarase ("Ramnarase"), a property manager employed by a non-party management company retained by JW Realty to manage the subject building. Ramnarase testified that tenants have referred to him as "Mr. Sookie." His duties included taking tenant complaints and arranging repairs. He would visit Bonner's building some four times per week. Emergency complaints made by a tenant would be logged into a management system. A complaint regarding a cracked toilet seat would not be logged into the system. Ramnarase did not recall any complaints regarding Bonner's toilet seat not working properly. He also was unaware of any violations concerning Bonner's bathroom as of April 2019 or for the two to three prior years. He noted that Bonner's apartment was part of the Section 8 program, which required annual inspections.

JW Realty also submits what purports to be a copy of the building's Registration Summary Report, which does not list any violations concerning a broken toilet or toilet seat.

JW Realty contends that this evidence demonstrates that there was no defective condition that caused Bonner's injuries and that, in any event, JW Realty did not have a duty to repair a broken toilet seat. JW Realty maintains that Bonner's admission that she was told that the building owner was not responsible for the condition of her toilet seat and her own replacement of the toilet seat indicate that JW Realty was not obligated to remedy any hazard posed by a broken toilet seat. Absent any such duty, JW Realty cannot be liable for Bonner's injuries.

Even if there was a duty of care, JW Realty argues that there is no evidence that it breached this duty by causing the toilet seat to become broken or failing to remedy the risk posed after having received actual or constructive notice of same. JW Realty notes that Bonner has not identified any act by JW Realty that could be a proximate cause of her injuries. The testimony is simply that Bonner sat on the toilet seat and fell.

In opposition, Bonner argues that JW Realty failed to establish an entitlement to summary judgment because it provided no support, factual or legal, that it had no duty to fix the broken toilet seat, especially since it failed to submit a copy of Bonner's lease. The lease would outline JW Realty's duties and responsibilities with respect to the apartment. In addition, Bonner notes the absence of any

testimony establishing that the lease did not obligate JW Realty to furnish a properly working toilet to its tenants.

Bonner notes Ramnarase's testimony that a working toilet is provided for all new tenants. The toilet comes equipped with a toilet seat that is in good working order. Moreover, Ramnarase acknowledged that he had a duty to ensure that potential hazards are addressed before they result in injuries to tenants (*see* Ramnarase deposition testimony, p. 22, ll. 5-10).

Bonner highlights her own testimony that she called her landlord on multiple occasions in the months prior to her accident to advise of a problem with her toilet seat, specifically that it was cracked in two places. She first called sometime in January of 2019 and made over eight to ten calls in total. She called Sookie and spoke with his secretary. She claims to have been told repeatedly that they would look into it and call her back, but they never did. In addition, Bonner testified that she made the same complaint to "Jose", the building superintendent. Jose directed her to speak with Mr. Sookie. After several months, Bonner admits that the landlord claimed that it was not their responsibility.

While Bonner does not dispute that she eventually purchased a new toilet seat on her own, she maintains that she did so only after the landlord refused to make the repair and that Jose actually installed the new toilet seat for her. Bonner paid him twenty dollars. Bonner notes that this raises a question of fact as to JW Realty's duty, since Ramnarase testified that the superintendent was only supposed to install and/or repair items that were the landlord's responsibility (*see* Ramnarase deposition transcript, p. 37, ll. 24-25 and p. 38, ll. 2-4).

To obtain summary judgment, JW Realty must demonstrate that there are no material issues of fact in dispute and that it is entitled to judgment as a matter of law under these undisputed facts (*see Winegrad v. New York University Medical Center*, 64 NY2d 851 [Ct App 1985] and *Flores v. City of New York*, 29 AD3d 356 [1st Dept 2006]). To defeat such a showing, Bonner must present facts in admissible form demonstrating that a genuine, triable issue(s) of fact exists precluding summary judgment (*see Zuckerman v. City of New York*, 49 NY2d 557 [Ct App 1980] and *Flores v. City of New York*, 29 AD3d 356 [1st Dept 2006]). The goal of a motion for summary judgment is issue finding, rather than issue determination, with the facts viewed in a light most favorable to the party opposing the motion (*see Sillman v. Twentieth Century–Fox Film Corp.*, 3 NY2d 395 [Ct App 1957]).

Liability for a hazardous condition on real property is predicated on ownership, occupancy, control, or special use of the property (*see Gibbs v. Port Authority of New York*, 170 AD3d 252 [1st Dept

2005]). A landlord is not generally liable to a tenant for dangerous conditions on the leased premises, unless a duty to repair the premises is imposed by statute, by regulation or by contract; however, every multiple dwelling shall be kept in good repair and the property owner shall be responsible for meeting that obligation (*see Isaacs v. W. 34th Apts. Corp.*, 36 AD3d 414 [1st Dept 2007]).

If such a duty exists, JW Realty must establish that it maintained its building in a reasonably safe manner and that it did not create a dangerous condition which posed a risk of foreseeable harm to persons expected to be present on the premises (*see Westbrook v. WR Activities-Cabrera Markets*, 5 AD3d 69 [1st Dept 2004]). In a slip and fall action, the defendant has the initial burden of establishing that it did not create the alleged hazardous condition and lacked actual or constructive notice of its existence *(see Rodriguez v. 705–7 E. 179th St. Hous. Dev. Fund Corp.*, 79 AD3d 518 [1st Dept 2010]). A lack of actual notice can be demonstrated by testimony that no complaints about the location were received before the accident, and that there were no prior incidents in that area prior to the plaintiff's fall (*see Frederick v. New York City Hous. Auth.*, 172 AD3d 545 [1st Dept 2019]). Constructive notice usually exists when the allegedly hazardous condition is visible, apparent, and exists on defendant's premises for a period sufficient to give the defendant an opportunity to discover and remedy it (*see Ross v. Betty G. Reader Revocable Trust*, 86 AD3d 419 [1st Dept 2011]). Constructive notice can also be established by evidence that a recurring dangerous condition existed in the area of the accident that the defendant routinely left unaddressed (*see Uhlich v. Canada Dry Bottling Co. of N.Y.*, 305 AD2d 107 [1st Dept 2003]). When a defendant fails to meet its initial burden to show that it did not cause, create, or have actual or constructive notice of the alleged condition, the burden does not shift to the plaintiff to raise a triable issue of fact (*see Hill v. Manhattan N. Mgt.*, 164 AD3d 1187 [1st Dept 2018]).

Here, it was JW Realty's burden to eliminate all material issues of fact and demonstrate an entitlement to judgment as a matter of law. As the party opposing summary judgment, Bonner did not have to establish that a duty existed, that notice was given, or that JW Realty was a proximate cause of her injuries. Arguing that Bonner would be unable to prove these elements is insufficient to warrant summary judgment (*see Vargas v. Riverbay Corp.*, 157 AD3d 642 [1st Dept 2018] (proponent of summary judgment cannot simply point to perceived gaps in plaintiff's case)).

JW Realty failed to establish that it did not owe Bonner a duty to keep the toilet seat in good repair. Since JW Realty did not submit the parties' lease, this Court cannot ascertain their various duties and responsibilities. While JW Realty submits what purports to be the lease as part of its reply papers,

such an omission cannot be cured in this manner (*see O"Connell v. Los Compadres Liquors and Wines*, 211 AD3d 963 [2nd Dept 2022] and *Poole v. MCPJF, Inc.*, 127 AD3d 949 [2nd Dept 2015]).

Moreover, the prolonged delay in responding to Bonner's complaints and the building superintendent's installation of the new toilet seat, if credited by a jury, raise an issue of fact as to whether JW Realty assumed responsibility for maintaining the toilet seat free of defects (*see Diaz v. Eminent Associates, LLC*, 31 AD3d 296 [1st Dept 2006] (evidence of subsequent repair by defendant raises a factual issue as to whether it assumed maintenance responsibility) and *Mesoraca v. Parking Services Plus, Inc.*, 231 AD3d 1145 [2nd Dept 2024] (since evidence of subsequent repairs is admissible in a negligence case where there is an issue of maintenance or control, maintenance supervisor's testimony that he performed a repair of the landing shortly after the plaintiff's accident raised a triable issue of fact as to whether the defendant was under a duty to maintain the garage in a reasonably safe condition)).

If such a duty did exist, then a question of fact regarding whether Bonner adequately advised JW Realty about the defective condition remains. Ramnarase's denial of complaints from Bonner simply creates issues of credibility, which are for the trier of fact to resolve.

The foregoing constitutes the Decision/Order of this Court.

DATED: January 27, 2025
Bronx, New York

HON. LAURA G. DOUGLAS
J.S.C.