SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART IA-12

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ANTHONY LONG,

Plaintiff,

Index №.: 32906/2019E

-against-

Hon. Kim Adair Wilson

SOTHEBY'S, INC. and 1334 YORK, LLC,

Defendants.

Justice of the Supreme Court

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The following papers were read on this motion (**Seq. No. 3**) for **summary judgment**.

Notice of Motion – Affirmation in Support, Memorandum of Law and Exhibits	NYSCEF Doc. # 42 — 51
Affirmation in Opposition	NYSCEF Doc. # 59
Affirmation in Reply	NYSCEF Doc. # 60

Defendants, Sotheby's, Inc and 1334 York, LLC move pursuant to CPLR 3212 for summary judgment and dismissal of plaintiff's complaint. For the reasons set forth below, defendants' motion is granted in part and denied in part.

Background

This action arises from a premises liability incident that occurred on December 14, 2018, at 1334 York Avenue, Manhattan, New York (the premises). Plaintiff alleges that he injured his hand while attempting to fix a broken breakroom doorknob, he cut his hand on an exposed metal shank. He alleges that defendants were negligent in maintaining the premises.

At plaintiff's deposition, plaintiff testified that he was a security guard employed by SOS Security and was assigned to defendants' premises (Pl. EBT at 22-25). The premises had a breakroom for security guards, which plaintiff used when he went to work (*id.* at 45-46). The breakroom had one door to enter and exit, which opened into the breakroom (*id.* at 46-47). The breakroom door was made of steel and required a key code to access (*id.*). Plaintiff testified that the door handle inside the breakroom would jam and required an extra pull to open it (*id.* at 53-54). He noticed that the door handle would do this every time but he never made a complaint to defendants (*id.* at 55-56).

On December 14, 2018, plaintiff was in the breakroom with a coworker, Roberto Celenza (Celenza) (*id.* at 64). Plaintiff testified that when Celenza tried to exit the breakroom, Celenza used force to open the door, but the door handle fell off and exposed a protruding metal shank (*id.* at 65-69). Plaintiff attempted to reattach the handle by applying "some pressure" using his body weight to place the door handle back on (*id.* at 74). As plaintiff tried to reattach the handle, he cut his hand on the metal shank (*id.* at 74).

James McNeil (McNeil), assistant vice president of security at Sotheby's, testified that he oversees Sotheby's security vendor contracts and security systems, and handles emergency responses at Sotheby's (McNeil EBT at 12-14). McNeil testified that Sotheby's facilities department was responsible for any repairs and maintenance on the premises (*id.* at 20-21). McNeil stated that if any complaint were submitted, a ticket would have been received by the facilities department (*id.* at 21-22). The facilities department conducted a search of its maintenance records regarding the breakroom door and found no prior complaints or repairs relating to the door (*id.*).

Defendants now move for summary judgment and dismissal of plaintiff's complaint. Defendants argue that they neither created the faulty doorknob nor had notice of its condition.

In opposition, plaintiff argues that defendants failed to establish their prima facie burden that defendants lacked constructive notice. Plaintiff also contends that res ipsa loquitur applies to this case.

Legal Standard

A party who moves for summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering evidence sufficient to eliminate any material issues of fact from the case (*Winegrad v NY Unvi. Med. Ctr.*, 64 NY2d 851, 853 [1985]). Failure to make a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Alvarez v Prospect Hosp.,* 68 NY2d 320, 324 [1986]). Once a movant meets the initial burden, the burden shifts to the opponent, who must then produce sufficient evidence, in admissible form, to establish the existence of a triable issues of fact (*see Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

Premises Liability

Defendants argue they lacked actual notice because there is no evidence of complaints or prior incidents regarding the door in the breakroom. Defendants further argue that they lacked constructive notice because the alleged dangerous condition was not visible until Celenza broke the door handle. Defendants also contend that Celenza created the condition by breaking the door handle.

In opposition, plaintiff argues that defendants failed to present evidence of when the doorknob was last inspected, and that defendants failed to maintain the door in a reasonably safe manner.

In reply papers, defendants contend that they cannot be charged with constructive notice of a latent defect.

Property owners have a duty to maintain their property in a reasonably safe condition (*Peralta v Henriquez*, 100 NY2d 139, 144 [2003]). A defendant in possession of the premises can only be held liable for a third party's injuries on the premises if the defendant created the defective condition or had actual or constructive notice of the condition (*Gordon v American Museum of Natural History*, 67 NY2d 836, 837 [1986]). A defendant can establish lack of actual notice by showing lack of complaints or other accidents at the building (*Pagan v New York City Hous. Auth.,* 121 AD3d 622, 623 [1st Dept 2014]). A defendant may be charged with constructive notice of a defective condition when "the condition is visible, apparent, and exists for a sufficient length of

time prior to the occurrence of an accident to permit the defendant to discover and remedy the condition" (*Pintor v 122 Water Realty, LLC*, 90 AD3d 449, 451 [1st Dept 2011]). To establish that a condition did not exist for a sufficient length of time, a moving defendant must submit evidence of "when the site had last been inspected before the accident" (*Velocci v Stop & Shop*, 188 AD3d 436, 439 [1st Dept 2020]). The burden then shifts to plaintiff to raise triable issues of fact (*id.*).

Here, it is undisputed that defendants did not create or have actual notice of the alleged defect to the door handle at the time of plaintiff's accident. However, as to constructive notice, defendants fail to present evidence of the last time the door was inspected before plaintiff's accident. Moreover, to avoid constructive notice here, defendant must establish that the defect was indeed latent, i.e., that it was not visible or apparent and "would not be discoverable even upon a reasonable inspection" (*see Bean v Ruppert Towers Hous. Co.*, 274 AD2d 305 [1st Dept 2000] [internal citations omitted]); *Doherty v 730 Fifth Upper, LLC*, 227 AD3d 606, 608 [1st Dept 2024]). Defendants provide no proof that the alleged broken doorknob would not have been discoverable upon reasonable inspection. McNeil testified that its facilities department conducted a search of its maintenance records revealing no prior repairs or tickets reported about the door. However, defendants failed to establish any inspection procedure for the breakroom's door (*see e.g. Peters v Trammell Crow Co.,* 47 AD3d 419, 420 [1st Dept 2008] [summary judgment denied because despite acknowledged inspection procedure, defendant failed to conduct inspection of specific area that caused alleged accident to occur]).

Accordingly, defendants are not entitled to summary judgment on the issue of constructive notice.

Res Ipsa Loquitur

The doctrine of res ipsa loquitur provides an inference of negligence that may be drawn from the very occurrence of an accident and defendants' relation to it (*Pappalardo v New York Health & Racquet Club*, 279 AD2d 134, 142-43 [1st Dept 2000], citing *Rountree v Manhattan & Bronx Surface Tr. Operating Auth.,* 261 AD2d 324, 326 [1st Dept 1999]). Plaintiff must establish: (1) the accident must be of a kind that ordinarily does not occur in the absence of negligence; (2) the instrumentality or agency causing the accident must be in the exclusive control of the defendants; and (3) the accident must not be due to any voluntary action or contribution by plaintiff (*Dermatossian v New York City Tr. Auth.,* 67 NY2d 219, 226 [1986]).

Plaintiff argues that res ipsa loquitur applies because the alleged defect is not the type of incident that would occur in the absence of defendants' negligence; defendants were in exclusive possession and control of the breakroom door involved; and the third element should be left for the jury to determine plaintiff's actions.

However, plaintiff fails to prove the first and third elements to establish his burden. Plaintiff does not offer any evidence to permit a jury to infer that defendants were negligent. With respect to the third requirement, plaintiff voluntarily attempted to reattach the door handle after Celenza had dislodged it. Plaintiff's testimony does not rule out that his action directly contributed to the incident (*see Pacheco v Serviam Gardens Assoc., LP,* 161 AD3d 416, 417 [1st Dept 2018] [holding that plaintiff failed to rule out the possibility that her own voluntary actions resulted in her injuries]). Res ipsa loquitur is not applicable to this case.

Accordingly, it is hereby

ORDERED that defendants' motion for summary judgment on liability pursuant to a theory of res ipsa loquitur is **DENIED** in the entirety.

This constitutes the Decision and Order of the Court.

Dated: JUL 11 2025 **Hon.** _____
Kim Adair Wilson, J.S.C

1. CHECK ONE.....	☐ CASE DISPOSED IN ITS ENTIRETY ☒ CASE STILL ACTIVE
2. MOTION.....	
3. CHECK IF APPROPRIATE.....	☐ GRANTED ☒ DENIED ☐ GRANTED IN PART ☐ OTHER
	☐ SETTLE ORDER ☐ SUBMIT ORDER ☐ SCHEDULE APPEARANCE