Solis v 192 Rockaway LLC
2026 NY Slip Op 30287(U)
January 15, 2026
Supreme Court, Kings County
Docket Number: Index No. 505124/2022
Judge: Lisa S. Ottley
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS – PART 24

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RAULDEL SOLIS,

Plaintiff,

-against-

192 ROCKAWAY LLC and 192 ROCKAWAY JV LLC,

Defendants.

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Mot. Seq. # 5

Index # 505124/2022

Decision and Order

HON. LISA S. OTTLEY

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this Notice of Motion for Summary Judgment submitted on April 28, 2025.

Papers	Numbered
Notice of Motion and Affirmation	1 & 2 [Exh. A-N]
Affirmation/Affidavit in Opposition	4 [Exh. 1-17]
Reply Affirmations	6
Memoranda of Law	3; 5

Plaintiff commenced this action against the defendants, 192 Rockaway LLC and 192 Rockaway JV LLC, as a result of an accident which occurred on May 10, 2020, that resulted in alleged personal injuries when the plaintiff fell on the stairs at 192 Rockaway Avenue while he was traversing the steps in the apartment building plaintiff resides in. Defendant, 192 Rockaway LLC, moves for summary judgment pursuant to CPLR 3212 dismissing plaintiff's complaint in its entirety on the grounds that the plaintiff cannot identify what caused him to slip, trip and fall and cannot establish that defendant, 192 Rockaway LLC, had actual or constructive notice of the condition plaintiff alleges to have caused his accident. Plaintiff opposes defendant's motion on the grounds that there are issues of fact which preclude summary judgment from being granted.

Discussion

Ordinarily, a defendant moving for summary judgment in a trip and fall case has the burden of establishing that it did not create the hazardous condition that 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, *Rene v. Livingston Gardens, Inc.*, 241 A.D.3d 1487, 242 N.Y.S.3d 692 (2nd Dept., 2025). However, a defendant 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. See, *Bishop v. Pennsylvania Avenue Management, LLC*, 183 A.D.3d 685, 123 N.Y.S.3d 685 (2nd Dept., 2020).

In support of its motion for summary judgment, the defendant submitted the plaintiff's deposition testimony of September 21, 2023, and October 4, 2023, the medical records from Brookdale Hospital, blood alcohol laboratory test results of the plaintiff and the affidavit of Michael S. Simon, P.E. Defendant argues that plaintiff alleges that he was caused to slip, trip and fall due to a defective and dangerous condition on the stairway, stairs and steps between the third and second floors located at 192 Rockaway Avenue, Brooklyn, New York. The plaintiff has resided on the third floor of the subject building, a walk-up, where the accident occurred for approximately twenty-five (25) years, and has traversed the stairs where the accident happened for more than twenty years prior to the accident without any problems. In addition, he has never fallen on the stairs and did not know of anyone else having fallen on the stairs. Plaintiff has never made any complaints about the stairs. On the afternoon of the accident, plaintiff was planning to visit his daughter and was waiting for his son-in-law to pick him up. Plaintiff further testified that his son-in-law rang his bell to inform him that he was downstairs, so he left his apartment to head downstairs. He stated that when he left his apartment, he grabbed the banister with his right hand. He stated that while going down the steps he did not see anything on the steps. He testified that going down the steps he did not know what happened and did not know if one foot slipped, slipped away or tripped on something, but he fell and started to roll down the steps. Upon further questioning, the plaintiff testified that he did not know what happened, stating "I went down, I was rolling down the steps." He further stated that he did not know the origin, but when he looked up the steps, he saw a metal piece sticking out but cannot tell too much about it. He also testified that he did not know if the metal piece caused his accident and cannot say whether he slipped or tripped down the steps. Although he was shown several photographs of the stairs leading from his 3rd floor apartment to the 2nd floor landing, he did not identify the staircase as the location where the accident occurred.

Defendant also submitted the testimony of the superintendent for 192 Rockaway, LLC, Tedroy Franklin, from 2019 through 2022, including the date of the plaintiff's accident. Mr. Franklin testified that he was responsible for cleaning the building one to two times a week which included sweeping and mopping the interior staircases from the lobby up to the 4th floor. He also testified that he inspected the building and if he observed anything wrong, he would let the building owner know or take care of it himself. Mr. Franklin further testified that prior to the plaintiff's accident, he observed that the steps were level and even, and no problems existed. He also testified that he checked the nosing/threads of the steps to make sure they were not cracked, lifted or damaged in any way prior to the accident. Defendant also argues that although the plaintiff testified at his deposition that he did not consume any alcoholic beverages on the day of his accident, his hospital records have references to the

plaintiff being intoxicated and his alcohol intake for that day. The hospital and Dr. David E. Layman's report/affirmation indicates that the plaintiff's blood alcohol concentration was .183, the equivalent of consuming at least 8-11 alcoholic drinks. Dr. Layman attests that the plaintiff's blood level of alcohol would produce a confusional state and imbalance at the time of the subject accident, and that for someone of plaintiff's age and health issues such as diabetes, vascular disease and pre-existing brain changes, it would likely be worse than confusional.

In addition, defendant submitted the affirmation of its expert engineer, Michael C. Simon, P.E., who conducted a site inspection of the premises where plaintiff's accident took place, and his findings affirm that the area, to wit, the stairs, measurements and analysis are in compliance with the New York City Building Codes for 1968 and 2014. There was no evidence of tripping hazards and the brass-colored transition piece at the top of the stairs was noted as well secured to the floor.

In opposition to defendant's motion, the plaintiff argues that due to construction on plaintiff's floor, the nosing on the stairs, the metal on the steps being worn and the inadequacy of the handrail, plaintiff was caused to trip and fall. Plaintiff also argues that his testimony at the deposition, as to what caused him to fall and the response of "I don't know," could be construed from a language and cultural standpoint as a response to a confusing question which plaintiff did not understand how better to answer. He argues that when he looked up at the steps, he saw a metal piece sticking out but could not tell much about the piece because his mind "went away." Plaintiff also testified that there was construction going on at the building on his floor across from his apartment. In addition, plaintiff argues that due to him blacking out, that he could not have stated that he drank two beers on the day of the accident. Plaintiff also argues that his blood level was either a false positive from his prescription medication or a mix up from another patient at Brookdale Hospital, and that he would not have been medically cleared for surgery had there been a significant concentration of alcohol in his blood.

Plaintiff also submitted the affidavits of his daughter and son-in-law, who stated that when they spoke with plaintiff after the accident, that he told them he tripped over a piece of metal on the stairs. In further opposition to defendant's motion, plaintiff submitted the affidavits of Tremaine Mitchell and Jerome Willis who reside at the subject building. Ms. Mitchell stated that construction was going on at the building, the handrail had been painted and was slippery, low to reach and the steps were not properly secured. She also stated that the staircase was perilous to traverse. Mr. Willis testified that he heard a round of recurrent thump sounds originating from the internal staircase and when he stepped outside and went up to the second floor, he saw plaintiff laying on the staircase treads between the second and third floors in a semi-conscious state. He stated that plaintiff fell down the staircase due to deficient conditions in the stairwell, which were unbalanced, felt loose, wobbly, lacked metal

nosing/guards and were partially unattached. Mr. Willis also stated that there was construction going on at the building, lack of maintenance at the building and the handrail was painted and slippery. Plaintiff also submitted the professional opinion of William Marletta, the Safety Consultant who conducted an onsite inspection of the stairway located between the second and third floors at 192 Rockaway Avenue, that opined that the depths of the treads in the stairway are too narrow for safe use, departing from the New York City, Multiple Dwelling Law, good and accepted safe practice; the absence of properly designed handrails systems; and the conditions of the stairway being ripe for a trip, slip and fall occurrence.

In reply, defendant argues that the plaintiff's submissions fail to raise an issue of fact since he did not and cannot identify the alleged defective condition on or of the staircase that caused him to slip, trip and fall, nor can plaintiff demonstrate that the defendant had notice of any defective condition of the subject staircase. Defendant also argues that plaintiff's submissions are hearsay since neither the plaintiff's daughter, son-in-law, and neighbors were there to witness plaintiff's fall and do not have first-hand knowledge as to the plaintiff's fall. Defendant also argues that the plaintiff's professional's report is not in admissible form and should not be considered, since it is it unsworn.

It is well settled that to grant summary judgment, it must clearly appear that no material issue of fact has been presented. See, *Grassick v. Hicksville Union Free School District*, 231 A.D.2d 604, 647 N.Y.S.2d 973 (2nd Dept., 1996). "Where the moving party has demonstrated its entitlement to summary judgment, the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring the trial of the action or tender an acceptable excuse for his failure and submission of a hearsay affirmation by counsel alone does not satisfy this requirement." See, *Zuckerman v. City of New York*, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980).

After careful review of the moving papers, opposition thereto and reply, the court finds that the plaintiff's submissions in opposition to defendant's motion for summary judgment did not raise an issue of fact. First, as pointed out by the defendant, the plaintiff's professional's opinion is unsworn and therefore, not in admissible form to be considered by this court. See, *Mazzola v. City of New York*, 32 A.D.3d 906, 821 N.Y.S.2d 247 (2nd Dept., 2006). However, assuming arguendo, that the report was in admissible form, the expert's opinion was based on an inspection of the stairway that was conducted approximately two years after the plaintiff's accident. See, *Murphy v. New York City Transit Authority*, 73 A.D.3d 1143, 902 N.Y.S.2d 144 (2nd Dept., 2010), where the court held that summary judgment was properly granted dismissing the complaint and the report was speculative in the absence of evidence that the conditions noted during the expert's inspection existed at the time of the accident.

A defendant 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 speculations. See, *Goldberg v. Village of Munt Kisco*, 125 A.D.3d 929, 5 N.Y.S.3d

149 (2nd Dept., 2015). The plaintiff's inability in a premises liability case to identify the cause of the fall is fatal to the cause of action because a finding that the defendant's negligence, if any, proximately caused the plaintiff's injuries would be based on speculation. See, *Rene v. Livingston Gardens, Inc.*, 241 A.D.3d, 242 N.Y.S.3d 692 (2nd Dept., 2025).

Furthermore, the plaintiff's opposition does not raise an issue of fact as to the medical records submitted by defendant as to the blood alcohol content of the plaintiff, which would cause the plaintiff to be in a confusional state and imbalance. Plaintiff merely states, without documentary evidence and/or proof that there must be a mistake, to wit a false/positive due to his prescription medication. Where it is just as likely that some other factor, such as a misstep, or a loss of balance, could have caused a [slip] and fall accident, any determination by the trier of fact as to causation would be based on sheer speculations. See, *Rene v. Livingston*, *supra*.

Furthermore, the plaintiff testified that he traversed the staircase for years on a regular basis and on the very same day of the accident, without any complaints nor notice being given to the landlord about the condition of the staircase. Although the neighbors testified as to the construction going on at the building and a newly painted banister that as slippery, there is no indication nor testimony that these conditions were the cause of plaintiff's fall. See, *Clarke v. 90 South Park Owners, Inc.*, 228 A.D.3d 722, 213 N.Y.S.3d 159 (2nd Dept., 2024); *Goldberg v. Village of Mount Kisco*, 125 A.D.3d 929, 5 N.Y.S.3d 149 (2nd Dept., 2015). The court finds that the plaintiff's testimony and the affidavits in opposition present what appears to be a feigned issue of fact. See, *Augustine v. City of New York*, 188 A.D.3d 969, 136 N.Y.S.3d 457 (2nd Dept., 2020) where the court held that plaintiff's description of the crack as wide enough that part of his right foot was able to go into it, and that his right heel stepped on the crack, presented a feigned issue of fact.

Based upon the foregoing, the court finds that summary judgment is warranted in favor of the defendants, and it is hereby

ORDERED that defendants' motion for summary judgment is hereby granted and the complaint is dismissed in its entirety.

This constitutes the decision and order of this Court.

Dated: Brooklyn, New York
January 15, 2026

HON. LISA S. OTTLEY, J.S.C.

HON. LISA S. OTTLEY

KINGS COUNTY CLERK
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