Kasni v 30 Lincoln Plaza Condominium
2020 NY Slip Op 30671(U)
February 25, 2020
Supreme Court, New York County
Docket Number: 152307/2013
Judge: David Benjamin Cohen

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAVID BENJAMIN COHEN PART IAS MOTION 58EFM
Justice

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JANICE KASNI,

Plaintiff,

- v -

30 LINCOLN PLAZA CONDOMINIUM, S&P ASSOCIATES OF NEW YORK LLC,S&P ASSOCIATES INC.,MILSTEIN PROPERTIES LLC,MILSTEIN PROPERTIES CORP, MILFORD MANAGEMENT CORP,

Defendant.

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INDEX NO. 152307/2013

MOTION DATE 07/19/2019

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 91, 95, 96, 97, 98

were read on this motion to/for DISMISSAL.

Upon the foregoing documents:

On March 14, 2010, plaintiff resided at 30 Lincoln Plaza, located at 30 West 63rd Street, New York, New York (the "Premises"). The Premises is owned by defendant 30 Lincoln Plaza Condominium, sponsored by defendant S&P Associates of New York LLC and managed by Milford Management Corp. (together the "defendants"). Shortly after midnight, plaintiff was returning from an evening out, when she slipped and fell on the floor of the lobby of the Premises. It is undisputed that it had been raining for much of day before the accident and that defendants had placed long brown rugs from the doors to the lobby to the elevator bank. When plaintiff entered the building, she stepped onto the rug in front of the door and then headed left towards a couch that was near the entrance. Plaintiff stepped off the rug and slipped on the floor. At her deposition, plaintiff stated that she had taken up to two steps when both feet went out from under her and she fell backwards flat onto her back. Prior to stepping on to the floor,

plaintiff saw "the marble floor, that's all." She did not notice any water or wet spots. Only after coming in from the rain and after falling and lying on the floor, did plaintiff first notice water on the marble floor. The water that plaintiff notice was clear and was like a small puddle. Plaintiff was not able to provide dimensions of the puddle and did not know how long the puddle had been there.

Defendants moved for summary judgment and argued that there was a lack of notice, both actual and constructive. Further, by placing the mats through the lobby, they had fulfilled their duty during inclement weather. In support of the motion, defendant submitted the depositions of plaintiff, the building manager and the affidavit of a meteorologist.

Plaintiff argues that (1) the mats placed by defendants were not enough to fulfill the duty during inclement weather as they did not extend to the couches which were an "attractive nuisance" for people to go to; (2) since "New York City had been pelted by a torrential downpour of almost biblical proportions" defendants had constructive knowledge that the lobby would be wet from people and dogs coming in; and (3) defendants' failure to preserve the video footage of the lobby, prior to the plaintiff's accident, requires an adverse inference. Plaintiff submitted the deposition of plaintiff in opposition.

Summary judgment is a drastic remedy that should not be granted where there exists a triable issue of fact (*Integrated Logistics Consultants v Fidata Corp.*, 131 AD2d 338 [1st Dept 1987]; *Ratner v Elovitz*, 198 AD2d 184 [1st Dept 1993]). On a summary judgment motion, the court must view all evidence in a light most favorable to the non-moving party (*Rodriguez v Parkchester South Condominium Inc.*, 178 AD2d 231 [1st Dept 1991]). The moving party must show that as a matter of law it is entitled to judgment (*Alvarez v Prospect Hosp.*, 68 NY2d 320 324 [1986]). The proponent of a summary judgment motion must make a *prima facie* showing of

entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). After the moving party has demonstrated its *prima facie* entitlement to summary judgment, the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring a trial (*Zuckerman v City of New York*, 49 NY2d 557 [1980]).

For a property owner to be liable to an injured plaintiff as a result of an incident on their premises, the plaintiff must establish that a dangerous or defective condition existed at the time of the injury and that the property owner either created the condition or had actual or constructive notice of the alleged dangerous or defective condition and had time to remedy it (*Piacquadio v Recine Realty Corp.*, 84 NY2d 967, 969 [1994]; *Gordon v American Museum of Natural History*, 67 NY2d 836, 837-38 [1986]; *Zuk v Great Atlantic & Pacific Tea Co., Inc.*, 21 AD3d 275 [1st Dept 2005]; *Mejia v New York City Transit Auth.*, 291 AD2d 225, 226 [1st Dept 2002]; *Leo v Mt. St. Michael Academy*, 272 AD2d 145, 146 [1st Dept 2000]). A defendant seeking summary judgment has the initial burden of making a prima facie showing that it did not create the dangerous condition, nor had actual or constructive notice of its existence (*Sabalza v Salgado*, 85 AD3d 436 [1st Dept 2011]; *Garcia v Good Home Realty, Inc.*, 67 AD3d 424 [1st Dept 2009]). Here, plaintiff does not argue that defendant created the condition, nor do they argue that defendants had actual knowledge of a wet floor. Rather they argue that there remains a question of fact "whether or not the defendants exercised the level of care needed in this case in light of the unusual weather conditions" and that defendants had constructive knowledge of the wet conditions due to the "torrential downpour of almost biblical proportions" that New York had been "pelted" by.

Defendants have established their *prima facie* burden that they employed reasonable maintenance measures to address the wet conditions, by laying out mats from the front door until the elevator bank (*see Polanco v Newmark & Co. Real Estate, Inc.*, 172 AD3d 602 [1st Dept 2019] *citing O'Sullivan v. 7–Eleven, Inc.*, 151 AD3d 658 [1st Dept 2017]; *Guntur v. Jetblue Airways Corp.*, 103 AD3d 485 [1st Dept 2013]). Moreover, defendant was not required to provide a constant ongoing remedy for an alleged slippery condition caused by moisture tracked indoors during the storm (*Richardson v. S.I.K. Assoc., L.P.*, 102 AD3d 554 [1st Dept 2013]). Plaintiff's argument that they should have placed a mat in front of the couch is also without merit as defendant was not required to cover all of its floors with mats, or continuously mop up all moisture from the storm (*Gonzalez-Jarrin v New York City Dept. of Educ.*, 50 AD3d 334 [1st Dept 2008]; *Solazzo v New York City Tr. Auth.*, 21 AD3d 735 [1st Dept 2005], *affd*, 6 NY3d 734 [2005]; *Kovelsky v City Univ. of New York*, 221 AD2d 234 [1st Dept 1995]; *see also Toner v Natl. R.R. Passenger Corp.*, 71 AD3d 454 [1st Dept 2010] ["Plaintiff's contention that the mats were placed approximately three feet from the bottom of the staircase is insufficient to rebut this showing. The law imposes only the obligation to take reasonable measures to remedy a hazardous condition, and the failure to take any particular precaution which transcends that standard, even if customary, cannot serve as a basis [for] liability."]).

A general awareness of dangerous condition that may be present in the general area is not necessarily legally sufficient to charge defendant with constructive notice of the actual spot where a plaintiff falls (*Gordon v American Museum of Natural History,* 67 NY2d 836 [1986]). More specifically, the fact that it was raining and water was being tracked in does not constitute notice of a dangerous situation (*O'Sullivan v. 7–Eleven, Inc.*, 151 AD3d 658 [1st Dept 2017]; *Garcia v Delgado Travel Agency Inc.*, 4 AD3d 204 [1st Dept 2004]). As defendant has

established its *prima facie* entitlement to summary judgment that it placed the mats, the burden has shifted plaintiff to raise a genuine issue of fact. However, as stated above, plaintiff did not know why or what caused her to fall. She was looking down and did not see any condition on the floor, including water (*see Siegel v City of New York*, 86 AD3d 452 [1st Dept 2011] [It is well settled that a defendant is entitled to summary judgment as a matter of law when a plaintiff provides testimony that he or she is unable to identify the defect that caused his or her injury] *citing see Rudner v New York Presbyt. Hosp.*, 42 AD3d 357 [2007]; *Reed v Piran Realty Corp.*, 30 AD3d 319 [2006], *lv denied* 8 NY3d 801 [2007]; *Fishman v Westminster House Owners, Inc.*, 24 AD3d 394 [2005]).

As stated in *Garcia* "there was neither active notice, in the form of complaints received, nor constructive notice of a hazard sufficiently visible as to permit discovery and remedy by defendants . . . In the absence of proof as to how long a condition existed, no inference can be drawn that defendants had constructive notice of a dangerously wet floor" (*Garcia*, 4 AD3d at 204. *See also Gunzburg v Quality Bldg. Services Corp.*, 137 AD3d 424 [1st Dept 2016] ["Plaintiff's own testimony established that the water on which she slipped was not visible and apparent and therefore could not provide constructive notice . . . Plaintiff testified that, despite looking at the floor where she was walking, it was not until after she fell that she was able to discern the wet spots on the floor, which she described as clear droplets in a small area"]). Here, "the record also shows that defendants met their prima facie burden of showing lack of notice through, inter alia, plaintiff's testimony that she did not see the water before she fell. Therefore, it was not visible and apparent (*Polanco*, 172 Ad3d at 602). For the above reasons it is hereby

ORDERED that defendants' motion for summary judgment is granted in all respects and this action is dismissed, Clerk to enter judgment accordingly.

This constitutes the decision and order of the Court

2/25/2020
DATE

DAVID BENJAMIN COHEN, J.S.C.
HON. DAVID B. COHEN
J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[X]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE