

**Greenberg v Equinox Health Club**

2020 NY Slip Op 35725(U)

May 13, 2020

Supreme Court, New York County

Docket Number: Index No. 100555/2018

Judge: James Edward d'Auguste

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JAMES EDWARD D'AUGUSTE PART IAS MOTION 55EFM

Justice

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ELLEN GREENBERG

Plaintiff,

- v -

EQUINOX HEALTH CLUB,

Defendant.

-----X

INDEX NO. 100555/2018

MOTION DATE 12/09/2019

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, the defendant's motion for summary judgment pursuant to CPLR 3212 is granted.

On April 27, 2015, plaintiff Ellen Linda Greenberg allegedly slipped and fell on a staircase of a health club owned by defendant Equinox Holdings, located at 203 East 85th Street, New York. She seeks damages for the bodily injuries she sustained.

On the right side of the staircase in question is a wall-mounted metal handrail that spans the entire length of the flight. NYSCEF Doc. No. 39, at 3. On the left side, a banister spans approximately three-quarters of the length of the flight; a solid wall adjoins the remaining steps. Id. The steps measure forty inches wide. Id. Since defendant took possession of the building in 1995, it conducted no renovations on the subject staircase except the metal handrail. Id., at 2.

Plaintiff alleged she fell because of "a dangerous and defective nuisance and trap" caused solely by the defendant's "carelessness, recklessness and negligence." NYSCEF Doc. No. 33, at 2. In her deposition, plaintiff maintained that when she tried to slow her fall by grabbing the

banister on the left, it was too wide for her to grip. NYSCEF Doc. No. 36, at 42. However, plaintiff could not recall exactly where she slipped or identify the cause of her fall. *Id.* at 38, 57. Lastly, neither the plaintiff nor the Spa Manager who arrived immediately after the accident noticed any debris or wetness on the staircase. *Id.*; NYSCEF Doc. No. 37, at 34.

Defendant moves for summary judgment, contending that plaintiff cannot establish the staircase was dangerous or defective, or that defendant had actual or constructive notice of a dangerous or defective condition. NYSCEF Doc. No. 48, at 6. In support of its motion, defendant submitted the affidavit of Scott Cameron, a licensed architect who inspected the staircase on September 24, 2019. NYSCEF Doc. No. 39, at 1–2. In his affidavit, Cameron concludes that both the handrail and banister were “safe, firmly attached . . . graspable,” and compliant with the Administrative Code of the City of New York (“Administrative Code”) Section 27-375. *Id.* at 3.

In a slip-and-fall case, a defendant who moves for summary judgment has a prima facie burden of showing that “it did not create the hazardous condition which 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.” *Ceron v. Yeshiva Univ.*, 126 A.D.3d 630, 632, 7 N.Y.S.3d 66 (1st Dep’t 2015). Only after the defendant establishes its prima facie entitlement, does the burden shift to the plaintiff to produce enough evidence to raise a triable issue of fact. *Id.*

Defendant satisfied its prima facie burden by introducing evidence demonstrating it maintained the staircase in a reasonably safe condition. For example, the staircase was cleaned at least three times a day. NYSCEF Doc. No. 37, at 22. From December 2010 to October 2019, no other reported injury occurred on the subject staircase. NYSCEF Doc. No. 43, at 1-2. No foreign substance that could cause plaintiff’s fall was identified at the scene of the accident. Additionally, the specifications of the banister and the handrail are in accordance with the Administrative Code.

To rebut a defendant's prima facie showing, a plaintiff must identify the cause of her fall so that a trier of fact may find proximate cause based on a reasonable inference. *See, Cherry v Daytop Vil., Inc.*, 41 A.D.3d 130 (1st Dep't 2007). When a plaintiff's identification is based on speculation, however, summary judgment is appropriate. *Id.* Here, plaintiff advanced various theories to explain her fall: (1) "the lack of a handrail on [plaintiff's] side of the staircase," and (2) "the inherent slippery condition of the marble steps which was without any slip resistant materials." Plaintiff also asserts that defendant must, but failed to comply with the New York City Building Codes of 2008/2014 ("Building Code") after it changed the handrail in 2011.

This Court reviewed plaintiff's argument that defendant violated the 2008/2014 Building Codes and finds it without merit. Constructed in 1905, the building in question has obtained grandfather status. NYSCEF Doc. No. 39, at 3. It is a well-established principle that owners have no duty to update structures that "met the relevant design standards in effect at the time of its construction." *Schwartz v. N.Y. State Thruway Auth.*, 61 N.Y.2d 955, 956 (1984). Section 28-101.4.3 of the Administrative Code further acknowledges that renovations on prior code buildings can be performed in accordance with prior codes, unless an exception applies; and changing a handrail on one side does not fall within "replacement of an entire stair enclosure including the stairs."

Regarding the two alleged defects - the lack of a handrail and the inherently slippery nature of marble staircases without slip resistant coverings - the Court finds neither assertion to be persuasive. It is axiomatic that the defect identified by a plaintiff in support of her slip and fall case must indicate a breach of a duty of care, as well as be causally connected to plaintiff's fall. Plaintiff's conclusory assertion that she "would not have fallen had the staircase been equipped with handrails" is insufficient to impute liability. *Birman v. Birman*, 8 A.D.3d 219, 220 (2nd Dep't

2004). Additionally, the existence of a marble staircase does not automatically create an actionable defect. *Richards v. Kahn's Realty Corp.*, 114 A.D.3d 475, 475 (1st Dep't 2014). Further, defendant had no duty to install slip-resistant materials to comply with the 2008/2014 Building Codes.

As plaintiff did not raise any observation beyond the "inherent slippery condition of the marble steps" and was unable to precisely describe a defect at the scene of the accident, she failed to defeat defendant's showing of an entitlement to summary judgment. *See Issing v. Madison Sq. Garden Ctr., Inc.*, 116 A.D.3d 595, 595 (1st Dep't 2014) (dismissing the case when plaintiff did not observe the specific condition causing him to fall); *Goldfischer v. Great Atl. & Pac. Tea Co.*, 63 A.D.3d 575, 575 (1st Dep't 2009) (dismissing the case when plaintiff "merely surmised that [the fall] was caused by the bump").

Accordingly, defendant's motion for summary judgement is granted. The Clerk is directed to enter judgment in favor of plaintiff without costs.

This is the decision and order of the Court.

5/13/2020

DATE

JAMES EDWARD D'AUGUSTE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE