

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

Castaldo v. Manhattan Mini Stor. LLC

2022 NY Slip Op 06863 (App. Div. 1st Dep't 2022) · No. Appeal No. 16762; Case No. 2022-02423; Index No. 159271/18 · Decided December 1, 2022

SUMMARY

The Appellate Division, First Department affirmed the denial of plaintiffs' summary judgment motion and the grant of defendants' summary judgment motion in a slip-and-fall action. The court held that defendants lacked actual or constructive notice of the slippery condition, did not create it, and that plaintiffs' expert evidence failed to raise a triable issue of fact.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Manzanet-Daniels, J.P.; Moulton, J.; González, J.; Rodriguez, J.; Higgitt, J.
JURISDICTION	New York
DECIDED	December 1, 2022
DOCKET	Appeal No. 16762; Case No. 2022-02423; Index No. 159271/18
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed an order denying their motion for summary judgment and granting defendants' motion for summary judgment dismissing the complaint in a premises-liability slip-and-fall action.
STANDARD OF REVIEW	Summary judgment is proper where the movant makes a prima facie showing of entitlement to judgment as a matter of law and the opposing party fails to raise a triable issue of fact.
PRECEDENTIAL VALUE	published appellate decision
PARTIES	Michael Castaldo et al. v. Manhattan Mini Storage LLC et al.

TOPICS

- premises liability
- summary judgment
- standard of care
- standard of review
- appellate procedure

PRACTICE AREAS

premises liability

negligence

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether defendants were entitled to summary judgment because they lacked actual or constructive notice of the allegedly dangerous condition.
2. Whether plaintiffs raised a triable issue of fact that defendants created the dangerous condition by painting the landing shortly before the accident.
3. Whether plaintiffs' expert evidence raised a triable issue concerning the slip resistance of the landing.

HOLDINGS

1. Defendants were entitled to summary judgment because the evidence showed that the dangerous condition existed for no more than 45 minutes to one hour, and possibly only minutes, which was insufficient time for defendants to discover and remedy it; plaintiffs failed to raise a triable issue concerning actual or constructive notice.
2. Plaintiffs failed to raise a triable issue that defendants created the dangerous condition because the record contained no evidence that the staircase was painted on the day of, or close to, the accident.
3. Plaintiffs' expert report failed to raise a triable issue of fact because it did not refute defendants' expert's slip-resistance testing, and plaintiffs' contention that testing was prevented by anti-slip treads was unsupported because the treads were not installed on the landing where Castaldo fell.

KEY QUOTATIONS

“Based on this record, the dangerous condition could have only existed for, at most, 45 minutes to an hour, and possibly only minutes before plaintiff's accident, which is not a sufficient period of time for defendants to have discovered and remedied the condition”

“Plaintiffs failed to raise an issue of fact as to actual or constructive notice of the dangerous condition.”

FACTUAL BACKGROUND

Michael Castaldo slipped and fell on a staircase landing at defendants' facility. He testified that the landing was dry and free of debris when he entered the building, that he remained inside for approximately 45 minutes to one hour, and that it was raining when he left; only after the fall did he observe slimy, muddy debris mixed with rainwater. The facility's general manager testified that no complaints had been made about the staircase and that a porter would have been notified immediately if one had been made. Defendants' expert found the landing's slip resistance to be within proper guidelines, while plaintiffs' expert did not refute that testing.

PROCEDURAL HISTORY

The Supreme Court, New York County, denied plaintiffs' motion for summary judgment and granted defendants' motion for summary judgment dismissing the complaint. The Appellate Division, First Department, unanimously affirmed the order without costs.

DISPOSITION

affirmed

CASES CITED

- Berger v ISK Manhattan, Inc., 10 AD3d 510, 512 [1st Dept 2004]
- Perez v River Park Bronx Apts., Inc., 168 AD3d 465, 466 [1st Dept 2019]

OPINION

PER CURIAM.

Castaldo v Manhattan Mini Stor. LLC (2022 NY Slip Op 06863) Castaldo v Manhattan Mini Stor. LLC 2022 NY Slip Op 06863 Decided on December 01, 2022 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided and Entered: December 01, 2022 Before: Manzanet-Daniels, J.P., Moulton, González, Rodriguez, Higgitt, JJ. Index No. 159271/18 Appeal No. 16762 Case No. 2022-02423 [*1]Michael Castaldo et al., Plaintiffs-Appellants, vManhattan Mini Storage LLC, et al., Defendants-Respondents. Mischel & Horn, New York (Scott T. Horn of counsel), for appellants. Cozen O'Connor, New York (Eric J. Berger of counsel), for respondents.

Order, Supreme Court, New York County (Lynn R. Kotler, J.), entered March 3, 2022, which denied plaintiffs' motion for summary judgment and granted defendants' motion for summary judgment dismissing the complaint, unanimously affirmed, without costs.

In this case of a slip and fall on a landing of a staircase, defendants made a prima facie showing of entitlement to judgment as a matter of law. Plaintiff Michael Castaldo testified that it was not raining when he first arrived at defendants' facility, and the landing platform was dry and free of debris, dirt, and mud. Plaintiff was inside the building for only 45 minutes to one hour.

When he left the building, it was raining, and only after his fall did he see "slimy, muddy debris with water from the rain." The facility's general manager testified that no one had made a complaint about the staircase, and had there been a complaint, a porter would have been immediately notified to clean the staircase. Based on this record, the dangerous condition could have only existed for, at most, 45 minutes to an hour, and possibly only minutes before plaintiff's accident, which is not a sufficient period of time for defendants to have discovered and remedied the condition (see Berger v ISK Manhattan, Inc., 10 AD3d 510, 512 [1st Dept 2004]; Perez v River Park Bronx Apts., Inc., 168 AD3d 465, 466 [1st Dept 2019]).

Plaintiffs failed to raise an issue of fact as to actual or constructive notice of the dangerous condition. Nor is there any evidence to suggest that defendants created the condition. Plaintiff

claims that defendants painted the landing platform shortly before the accident, relying solely on the general manager's testimony that the staircase was "always being painted," as part of defendants' regular maintenance.

However, there is no evidence that the staircase was painted that day, or at any other time close to plaintiff's accident. While defendants' expert tested the slip resistance of the landing, and found it to be within proper guidelines, in opposition, plaintiff's expert report failed to raise an issue of fact. Plaintiffs' expert failed to refute defendants' expert's slip resistant testing, and plaintiffs' contention that their expert could not perform such testing because defendants had installed anti-slip treads on the stairs, is unavailing.

Defendants did not install such treads on the landing where plaintiff allegedly slipped and fell. We have considered plaintiffs' remaining arguments and find them unavailing. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: December 1, 2022