

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

Rodriguez v. New York City Hous. Auth.

2022 NY Slip Op 03461 (App. Div. 2022) · No. 2021-04606 · Decided May 26, 2022

SUMMARY

The Appellate Division, First Department, reversed the denial of the New York City Housing Authority's motion for summary judgment in a premises-liability action involving a cardboard box near a walkway. The court held that the Authority established lack of notice and a reasonable cleaning routine, and that the plaintiff failed to show the routine was manifestly unreasonable or that the Authority had notice of the specific hazard.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Per Curiam; Kern, J.P.; Oing, J.; Singh, J.; Moulton, J.; Scarpulla, J.
JURISDICTION	New York
DECIDED	May 26, 2022
DOCKET	2021-04606
DISPOSITION	reversed
PROCEDURAL POSTURE	Defendant appealed from an order denying its motion for summary judgment dismissing a premises-liability complaint.
STANDARD OF REVIEW	The appellate court reviewed the denial of summary judgment on the law and determined whether defendant established entitlement to judgment as a matter of law and plaintiff raised a material issue concerning notice or the reasonableness of defendant's cleaning routine.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion; precedential within the First Department subject to later treatment.
PARTIES	New York City Housing Authority v. Eufemia Rodriguez

TOPICS

- premises liability
- negligence
- standard of care
- standard of review
- appellate procedure

PRACTICE AREAS

premises liability

negligence

municipal liability

appellate procedure

QUESTIONS PRESENTED

1. Whether defendant was entitled to summary judgment because it lacked actual or constructive notice of the cardboard box that allegedly caused plaintiff's fall.
2. Whether defendant's twice-daily cleaning routine was reasonable or manifestly unreasonable under the circumstances.

HOLDINGS

1. Defendant was entitled to summary judgment because it established that it lacked notice of the cardboard box before plaintiff's accident, and plaintiff failed to raise a triable issue of fact.
2. Defendant's twice-daily cleaning schedule was not shown to be manifestly unreasonable, and defendant was not required to patrol the area continuously.

FACTUAL BACKGROUND

Rodriguez fell near a walkway by a New York City Housing Authority building after encountering a cardboard box. She testified that she did not see the box when she left work at 4:00 p.m. the previous day, and the building caretaker testified that the box was not present when he left at 4:30 p.m. The caretaker also testified that he cleaned the area twice daily, first thing in the morning and last thing at night. Although tenants generally left garbage near the walkway, the record did not establish that defendant had actual or constructive notice of this particular box.

PROCEDURAL HISTORY

Supreme Court, New York County, denied the New York City Housing Authority's motion for summary judgment. The Appellate Division, First Department, unanimously reversed on the law, granted the motion, and directed entry of judgment for defendant.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The Clerk was directed to enter judgment for defendant.

CASES CITED

- Velocci v Stop & Shop, 188 AD3d 436, 439 [1st Dept 2020]
- Rivera v 2160 Realty Co., L.L.C., 4 NY3d 837, 838 [2005]
- Pagan v New York City Hous. Auth., 121 AD3d 622, 623 [1st Dept 2014]

- Beras v New York City Hous. Auth., 118 AD3d 584, 584 [1st Dept 2014]
- Vasquez v Nealco Towers LLC, 160 AD3d 496 [1st Dept 2018]

OPINION

PER CURIAM.

Rodriguez v New York City Hous. Auth. (2022 NY Slip Op 03461) Rodriguez v New York City Hous. Auth. 2022 NY Slip Op 03461 Decided on May 26, 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: May 26, 2022 Before: Kern, J.P., Oing, Singh, Moulton, Scarpulla, JJ. Index No. 151572/18 Appeal No. 16001 Case No. 2021-04606 [*1]Eufemia Rodriguez, Plaintiff-Respondent, vNew York City Housing Authority, Defendant-Appellant. Herzfeld & Rubin PC, New York (Miriam Skolnik of counsel), for appellant.

The Altman Law Firm, PLLC, Woodmere (Michael T. Altman of counsel), for respondent. Order, Supreme Court, New York County (Alexander M. Tisch, J.), entered October 22, 2021, which denied defendant's motion for summary judgment dismissing the complaint, unanimously reversed, on the law, without costs, and the motion granted.

The Clerk is directed to enter judgment accordingly. Defendant sustained its initial burden of showing that it lacked notice of the presence of the cardboard box near the walkway of its building before the accident and that it observed a reasonable cleaning routine (see Velocci v Stop & Shop, 188 AD3d 436, 439 [1st Dept 2020]). Plaintiff testified that she did not see the box when she left work at 4:00 p.m. on the day before her fall, and defendant's caretaker stated that it was not there when he left work at 4:30 p.m. on the same day.

The caretaker also testified that he cleaned the area twice a day, first thing in the morning and last thing at night. Thus, the box could have been deposited near the walkway a few minutes before plaintiff's accident(see Rivera v 2160 Realty Co., L.L.C., 4 NY3d 837, 838 [2005]). Defendant is not required to patrol the area 24 hours a day (Pagan v New York City Hous.

Auth., 121 AD3d 622, 623 [1st Dept 2014]), and plaintiff failed to show that the cleaning schedule described by the caretaker was "'manifestly unreasonable'" (see Beras v New York City Hous. Auth., 118 AD3d 584, 584 [1st Dept 2014]). Plaintiff's argument that the caretaker admitted that tenants regularly left garbage near the walkway and that it was a recurring problem is unavailing.

The caretaker's testimony shows that defendant was aware of the general problem, not that it was aware of the specific presence of the cardboard box at issue, and that it addressed the problem by having the caretaker clean the area twice a day (see Vasquez v Nealco Towers LLC, 160 AD3d 496

[1st Dept 2018]).THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: May 26, 2022

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