

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

Nieves v. BHV IV, LLC

2021 N.Y. Slip Op. 01205 (App. Div. 2021) · No. Appeal No. 13196; Case No. 2020-03466; Index No. 303997/14 · Decided February 25, 2021

SUMMARY

The Appellate Division, First Department, affirmed an order denying defendants' motion for summary judgment in a premises-liability action involving a plaintiff who slipped on water while descending interior stairs. The court held that defendants failed to establish when the stairs were last inspected, and conflicting testimony regarding a recurring rainwater condition and complaints to the superintendent created an issue of fact concerning notice.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Acosta, P.J.; Renwick, J.; Singh, J.; Mendez, J.
JURISDICTION	New York
DECIDED	February 25, 2021
DOCKET	Appeal No. 13196; Case No. 2020-03466; Index No. 303997/14
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of Supreme Court, Bronx County, denying defendants' motion for summary judgment dismissing the complaint against Wilder Realty, LLC and BNH IV, LLC.
STANDARD OF REVIEW	Summary judgment is proper only when the movant establishes prima facie entitlement to judgment as a matter of law; the burden then shifts to the opposing party to demonstrate a triable issue of fact.
PRECEDENTIAL VALUE	published appellate opinion
PARTIES	Wilder Realty, LLC, BNH IV, LLC v. Ilia A. Nieves

TOPICS

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

PRACTICE AREAS

premises liability negligence personal injury civil procedure

QUESTIONS PRESENTED

1. Whether defendants established prima facie entitlement to summary judgment in a premises-liability action arising from plaintiff's fall on rainwater on interior stairs.
2. Whether conflicting testimony concerning a recurring wet condition and defendants' notice created a triable issue of fact.

HOLDINGS

1. Defendants failed to establish their prima facie entitlement to judgment as a matter of law because they submitted no specific evidence showing when the steps had last been inspected by the superintendent.
2. The conflicting testimony about whether the stairwell window was stuck open, whether the stairs routinely became wet when it rained, and whether plaintiff complained to the superintendent presented an issue of fact as to whether defendants had notice of a recurring dangerous condition that was routinely left unaddressed.

KEY QUOTATIONS

“Defendants failed to establish their prima facie entitlement to judgment as a matter of law in this action where plaintiff was injured when she slipped and fell on water as she descended the interior stairs of defendants' building.” ([*1])

“Although the superintendent denied that such a condition ever existed or that he received any complaints, the conflicting testimony presents an issue of fact as to whether defendants had notice of a recurring dangerous condition of rain water on the stairs that was routinely left unaddressed” ([*1])

FACTUAL BACKGROUND

Ilia A. Nieves was injured when she slipped and fell on water while descending the interior stairs of defendants' building. Nieves testified that the stairwell landing became wet whenever it rained because a stairwell window was stuck open, and that she had complained to the superintendent. The superintendent denied that the condition existed and denied receiving complaints.

PROCEDURAL HISTORY

Plaintiff sued after slipping and falling on water while descending the interior stairs of defendants' building. Supreme Court, Bronx County, denied defendants' motion for summary judgment, and defendants appealed. The Appellate Division unanimously affirmed.

DISPOSITION

affirmed

CASES CITED

- Jackson v Manhattan Mall Eat LLC, 111 AD3d 519, 520 (1st Dept 2013)
- Gautier v 941 Intervale Realty LLC, 108 AD3d 481 (1st Dept 2013)
- Santana v 3410 Kingsbridge LLC, 110 AD3d 435 (1st Dept 2013)
- David v New York City Hous. Auth., 284 AD2d 169, 171 (1st Dept 2001)

OPINION

PER CURIAM.

Nieves v BHV IV, LLC (2021 NY Slip Op 01205) Nieves v BHV IV, LLC 2021 NY Slip Op 01205 Decided on February 25, 2021 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: February 25, 2021 Before: Acosta, P.J., Renwick, Singh, Mendez, JJ. Index No. 303997/14 Appeal No. 13196 Case No. 2020-03466 [*1]Ilia A. Nieves, Plaintiff-Respondent, vBHV IV, LLC, et al., Defendants-Appellants.

Havkins Rosenfeld & Ritzert, LLP, New York (Andrew J. Shaw of counsel), for appellants. Pollack Pollack Isaac & DeCicco, LLP, New York (Jillian Rosen of counsel), for respondent. Order, Supreme Court, Bronx County (Howard H. Sherman, J.), entered on or about April 1, 2019, which, inter alia, denied defendants' motion for summary judgment dismissing the complaint as against defendants Wilder Realty, LLC and BNH IV, LLC, unanimously affirmed, without costs.

Defendants failed to establish their prima facie entitlement to judgment as a matter of law in this action where plaintiff was injured when she slipped and fell on water as she descended the interior stairs of defendants' building. Defendants failed to submit any specific evidence as to when the steps had last been inspected by the superintendent (see Jackson v Manhattan Mall Eat LLC, 111 AD3d 519, 520 [1st Dept 2013]; Gautier v 941 Intervale Realty LLC, 108 AD3d 481 [1st Dept 2013]).

Moreover, plaintiff testified that the stairwell landing always became wet when it rained because the stairwell window was stuck open, and that she complained to the superintendent of this condition. Although the superintendent denied that such a condition ever existed or that he received any complaints, the conflicting testimony presents an issue of fact as to whether defendants had notice of a recurring dangerous condition of rain water on the stairs that was routinely left unaddressed (see Santana v 3410 Kingsbridge LLC, 110 AD3d 435 [1st Dept 2013]; David v New York City Hous.

Auth., 284 AD2d 169, 171 [1st Dept 2001]). THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: February 25, 2021

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