SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LYNN R. KOTLER** **PART** **08**

Justice

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TRISHA DAVIS

Plaintiff,

- v -

NEW YORK CITY HOUSING AUTHORITY,

Defendant.

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INDEX NO. 160503/2020

MOTION DATE 04/08/2024

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56

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

Upon the foregoing documents, it is **ORDERED** that defendant New York City Housing Authority's (NYCHA) motion for summary judgment is granted for the reasons that follow.

This personal injury action arises from a slip and fall which occurred at approximately 2AM on December 14, 2019. NYCHA contends that it was unable to remedy the condition to prevent Plaintiff from slipping and falling on water from the storm in her building lobby because the heavy rain was ongoing and there were no employees on duty at the time of the occurrence. Thus, NYCHA relies on the storm in progress doctrine. Plaintiff opposes the motion, arguing that there was a recurrent water leak/flooding condition and that the storm in progress doctrine does not apply.

On a motion for summary judgment, the proponent bears the initial burden of setting forth evidentiary facts to prove a prima facie case that would entitle it to judgment in its favor, without the need for a trial (CPLR 3212; *Winegrad v. NYU Medical Center*, 64 NY2d 851 [1985]; *Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]). If the proponent fails to make out its prima facie case for summary judgment, however, then its motion must be denied,

regardless of the sufficiency of the opposing papers (*Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]; *Ayotte v. Gervasio*, 81 NY2d 1062 [1993]).

Granting a motion for summary judgment is the functional equivalent of a trial, therefore it is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue (*Rotuba Extruders v. Ceppos*, 46 NY2d 223 [1977]). The court's function on these motions is limited to "issue finding," not "issue determination" (*Sillman v. Twentieth Century Fox Film*, 3 NY2d 395 [1957]).

At her 50-h hearing, plaintiff testified that she and her husband left the building sometime between 1:30am and 1:45am on the date of the accident to go to a store located approximately 5 minutes away from the subject premises where plaintiff's accident occurred. When plaintiff left, she did not observe any water on the floor. Upon her return, plaintiff claims that there was now water on the floor which caused her to slip and fall three separate times. Plaintiff noted that the weather was "bad".

NYCHA has submitted a certified weather report showing that appxoimately .6 inches of rain fell between 1 and 2AM on the date of the accident. NYCHA produced an assistant superinetnedent for deposition who testified as to the janitorial schedule. According to NYCHA's witness, maintenance staff was not present at the building 24 hours a day but when staff was onsite, they would clean up any water condition near the building entrance caused after rainfall.

Based on the record before the court, including plaintiff's testimony, the testimony of NYCHA's assistant superintendent, the janitorial schedule and certified weather records, NYCHA has established that it did not have actual or constructive notice of the condition which caused plaintiff's accident. In turn, plaintiff has failed to raise a triable issue of fact. Contrary to

plaintiff's contention, NYCHA is not required to guarantee the building is free from any potentially dangerous condition by patrolling every inch of it 24 hours a day (*see Pfeuffer v. New York City Housing Authority*, 93 AD3d 470 [1st Dept 2012]). As NYCHA points out in reply, other water leaks at the premises were not related to the water which tracked into the area where plaintiff slipped and fell and thus do not transform the complained-of condition into a recurrent one.

Further, plaintiff has not shown that the water which caused her accident came from anything but the storm in progress at the time of her accident. Building owners cannot prevent some water being brought into an entranceway on a rainy day and are not responsible for injuries caused thereby unless it is shown that the entrance is inherently dangerous or that the owner failed to use care to remedy conditions which had become dangerous, after actual or constructive notice of such conditions (*Hilsman v. Sarwil Associates, L.P.*, 13 AD3d 692 [3d Dept 2004] citing *Miller v. Gimbel Bros.*, 262 NY 107 [1933]). For all these reasons, NYCHA's motion for summary judgment must be granted.

Accordingly, it is hereby **ORDERED** that NYCHA's motion for summary judgment is granted, plaintiff's complaint is dismissed and the Clerk is directed to enter judgment accordingly.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby denied and this constitutes the decision and order of the court.

10/11/2024
DATE

LYNN R. KOTLER, 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

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Motion No. 002