Filed 2/14/17 Guyumdzhyan v. Nalbandyan CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

FLORA GUYUMDZHYAN, Plaintiff and Appellant, v. ARMEN NALBANDYAN et al., Defendants and Respondents.	B268048 (Los Angeles County Super. Ct. No. BC527831)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael J. Raphael, Judge. Reversed.

Law Offices of Armen M. Tashjian and Armen M. Tashjian, for Plaintiff and Appellant.

Mark R. Weiner & Associates and Kathryn Albarian, for Defendants and Respondents.

Appellant Flora Guyumdzhyan sued her landlords, respondents Armen Nalbandyan and Nune Zilfinyan, for negligence after she allegedly tripped on the metal "nosing" of a step and fell down a stairway in a common area of her apartment building. The trial court granted respondents' motion for summary judgment, finding they lacked actual or constructive notice of any dangerous condition on the property and therefore did not breach their duty to exercise ordinary care. We conclude the record contains triable issues of material fact regarding whether the stairway constituted a dangerous condition and whether respondents had actual or constructive knowledge of such condition. We accordingly reverse.

FACTUAL AND PROCEDURAL SUMMARY

Appellant filed a form complaint in November 2013, alleging general negligence and premises liability causes of action against respondents. Appellant alleged she tripped and fell on a stairway at respondents' property, "which was negligently managed, maintained, operated, designed and constructed." The complaint alleges respondents "failed to warn [appellant] about the dangerous condition and failed to make the subject condition safe for the public's use." Respondents answered the complaint and discovery commenced.

At her deposition, appellant testified that on the morning of November 25, 2011, she left her apartment and started to walk down the stairway leading out to the front of the apartment building. As appellant was stepping off the second or third step from the top of the stairway, her left foot caught on the metal strip or "nosing" at the edge of the step, causing her to fall and sustain injuries. Appellant had lived at the apartment building

for approximately three years prior to the accident, and never had any problems with the stairway before her fall. She had never complained nor was she aware of anyone else complaining about the stairway.

Respondents filed a motion for summary judgment, seeking judgment in their favor on two separate grounds: (1) there was no dangerous condition on respondents' property; and (2) respondents did not have prior notice of any dangerous condition on the property. Respondents provided several declarations in support of their motion. In their declarations, respondents stated they are co-owners of the apartment building, which they purchased in December 2004. Zilfinyan indicated she is a silent partner and not involved in the operation or maintenance of the apartment building, which is the responsibility of Nalbandyan and the on-site property manager, Garabet Soghomonian.

Nalbandyan stated that Soghomonian has been the resident manager since respondents purchased the property. His duties "include regularly inspecting the premises for any problems." If any tenant or guest has a problem regarding the premises, those problems are reported to Soghomonian and relayed to Nalbandyan. Prior to November 2011, Soghomonian had not advised Nalbandyan of any complaints regarding the metal nosing on the steps of the stairway. Nalbandyan did not receive any direct complaints about the nosing nor was he advised that there had been any falls on the stairway. He never saw anyone fall or have any difficulty using the stairs, nor did he ever observe any problem with the nosing. Nalbandyan also indicated that several tenants in the apartment building receive rent subsidies through the "Section 8" program. The Los Angeles County Housing Authority (Housing Authority) performs a

yearly inspection of the property for each Section 8 tenant based on the date each tenant moved into the building. These inspections by the Housing Authority include inspection of the stairways, and Nalbandyan is provided with a report following each inspection. The Housing Authority never reported a problem with the stairway.

In his declaration, Soghomonian stated that part of his responsibility as the on-site manager is "to make reasonable inspections of the premises." He "regularly walk[s] around the premises to make sure there are no problems with the apartment building including the stairways." Guests and tenants are supposed to report any problems to him or his mother, Anais Soghomonian, who also helps with management of the apartment building. Prior to November 2011, Soghomonian did not observe any problems with the nosing on the stairs; he did not see anyone fall or have any problems using the stairs; nor did anyone complain to him or his mother about the nosing.

Respondents also included the declaration of their safety expert, Peter Zande, who is certified by the Board of Certified Safety Professionals and personally inspected the stairway. He took measurements of the tread length and width of each step and examined the nosing. He also reviewed the building permit records, which indicated that a construction permit for the building was issued in December 1986, and therefore the applicable building code is the 1985 edition of the City of Los Angeles Building Code. Zande stated that the nosing "measured between 2/16 to 3/16 [of an inch] above the tread" and its purpose "is to provide a visual cue for each step and to create an anti-slip component on each step." He opined that the nosing "does not

violate any building codes" and "does not constitute a tripping hazard for an adult."

Appellant opposed the motion for summary judgment. She primarily argued that respondents should have known that the stairway was improperly constructed and therefore constituted a dangerous condition on the premises. Appellant maintained there were triable issues of material fact regarding respondents' failure to maintain the building in a reasonably safe condition.

In support of her opposition, appellant included the declaration of her safety expert, Brad Avrit, who is a licensed civil engineer and president of a construction, engineering and safety consulting firm. Based on his review of the building permit records, Avrit concluded the stairway was installed when the building was originally constructed in 1986 and therefore subject to the 1985 City of Los Angeles Building Code. He opined "based on a reasonable degree of engineering certainty, that the subject stairway . . . was not built to Code." Avrit indicated, based on measurements of the stairway taken by his firm, that most of the tread lengths are under 10 inches and that the riser heights and tread lengths vary by more than 3/8 of an inch, in violation of section 91.3306(c) of the Uniform Building Code. Avrit also opined that the type of metal nosing mounted on the stairs is supposed to be used on carpeted, not hard surfaces. He stated: "The protrusion creates an unsafe condition due to the uneven surface at the edge of the tread that protrudes up to 3/16" above the tread surface and can easily catch a stairway user's shoe. The leading edge is not beveled or sloped to prevent a shoe from catching. The combination of these factors resulted in the subject stairway presenting a substantial fall hazard."

The trial court granted respondents' motion for summary judgment, finding that respondents "met their burden of establishing, based on the undisputed evidence, that they did not have actual or constructive notice of a dangerous condition" on the property. Citing *Ortega v. Kmart Corp.* (2001) 26 Cal.4th 1200, 1206 (*Ortega*), the court reasoned that actual or constructive notice of the dangerous condition is "key" to establishing respondents' liability. The court found no evidence establishing a dispute as to whether respondents had notice of any circumstances that would place them on reasonable inquiry that the stairway was dangerous. The court noted that whether a dangerous condition existed on the property remains a triable issue of fact, but that issue was rendered moot by respondents' lack of actual or constructive notice.

The court entered judgment in favor of respondents, and this timely appeal followed.

DISCUSSION

The standard of review for summary judgment is well established. A trial court properly grants summary judgment "if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) "'The purpose of the law of summary judgment is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute.'" (*Mitchell v. United National Ins. Co.* (2005) 127 Cal.App.4th 457, 467, quoting *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.)

"'A defendant moving for summary judgment meets its burden of showing there is no merit to a cause of action if that party has shown that one or more elements of the cause of action cannot be established or that there is a complete defense to that cause of action. [Citation.] Once the defendant has made such a showing, the burden shifts to the plaintiff to show that a triable issue of one or more material facts exists as to that cause of action or as to a defense to the cause of action. [Citation.]' [Citation.] 'On appeal from a summary judgment, an appellate court makes "an independent assessment of the correctness of the trial court's ruling, applying the same legal standard as the trial court in determining whether there are any genuine issues of material fact or whether the moving party is entitled to judgment as a matter of law."' [Citations.]" (*DuBeck v. California Physicians' Service* (2015) 234 Cal.App.4th 1254, 1264.) "In performing our de novo review, we must view the evidence in a light favorable to plaintiff as the losing party [citation], liberally construing her evidentiary submission while strictly scrutinizing defendants' own showing, and resolving any evidentiary doubts or ambiguities in plaintiff's favor. [Citations.]" (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768-769.)

Appellant contends the trial court erred in granting summary judgment. Respondents' motion was based on two separate grounds: (1) there was no dangerous condition on respondents' property; and (2) respondents did not have prior notice of any dangerous condition on the property. The trial court found a triable issue of material fact as to whether the stairway constituted a dangerous condition, but concluded this issue was moot because the undisputed evidence indicated that respondents lacked actual or constructive notice of the condition. In order to

determine whether respondents' motion was properly granted, we first summarize the applicable standards governing premises liability.

"Premises liability is a form of negligence . . . ." (*Brooks v. Eugene Burger Management Corp.* (1989) 215 Cal.App.3d 1611, 1619 (*Brooks*).) "In order to state a cause of action for negligence, plaintiff must state facts showing that defendant had a duty to plaintiff, that the duty was breached by negligent conduct, and that the breach was the cause of damages to the plaintiff." (*Ibid.*; Rest.2d Torts § 281.) Landlords are held to the general statutory duty to use "ordinary care or skill in the management" of their property. (Civ. Code, § 1714, subd. (a); *Brooks,* at p. 1619.) A landlord who retains control over areas such as hallways or stairs for the common use of tenants has a duty to maintain those areas in a reasonably safe condition. (*Ritter & Ritter, Inc. Pension & Profit Plan v. The Churchill Condominium Assn.* (2008) 166 Cal.App.4th 103, 119; *Amos v. Alpha Property Management* (1999) 73 Cal.App.4th 895, 898; *Uccello v. Laudenslayer* (1975) 44 Cal.App.3d 504, 511.)

The duty to maintain common areas does not require that they be maintained in an "absolutely perfect condition." (*Kasparian v. AvalonBay Communities, Inc.* (2007) 156 Cal.App.4th 11, 26 (*Kasparian*).) A plaintiff must plead and prove that the alleged defect constitutes a "dangerous" condition rather than a minor, trivial, or insignificant defect. (*Id.* at p. 27; see also *Cadam v. Somerset Gardens Townhouse HOA* (2011) 200 Cal.App.4th 383, 387; *Caloroso v. Hathaway* (2004) 122 Cal.App.4th 922, 927.) "If the 'court determines . . . sufficient evidence has been presented so that reasonable minds may differ as to whether the defect is dangerous, the court may not

rule . . . the defect is not dangerous as a matter of law.' Conversely, where 'the only evidence available on the issue of dangerousness does not lead to the conclusion [that] . . . reasonable minds may differ, then it is proper for the court to find . . . the defect was trivial as a matter of law.'" (*Kasparian*, *supra*, at p. 28, fns. omitted.)

In this case, the trial court concluded a triable issue of fact remained as to whether a dangerous condition existed on the property. On appeal, respondents do not argue that the alleged stairway defects were trivial as a matter of law, but rather focus their arguments on the lack of actual or constructive notice. Viewing the evidence in the light most favorable to appellant, as we must in this procedural posture, we also conclude that whether the stairway constituted a dangerous condition remains a triable issue of material fact. Although there is no evidence of a prior accident on the steps, and respondents' safety expert concluded the metal nosing did not constitute a tripping hazard, appellant's safety expert opined that the nosing was improperly installed and created a substantial fall hazard. Appellant has put forward sufficient evidence such that reasonable minds may differ as to whether the stairway constituted a dangerous condition. This presents a triable issue of material fact precluding summary judgment.

Respondents' second argument for summary judgment, their alleged lack of actual or constructive notice of the dangerous condition, warrants further review of the applicable premises liability standards. Generally, "[t]he landowner's lack of knowledge of the dangerous condition is not a defense. He or she has an affirmative duty to exercise ordinary care to keep the premises in reasonably safe condition, and therefore must inspect

them or take other proper means to ascertain their condition. And if, by the exercise of reasonable care, the landowner would have discovered the dangerous condition, he or she is liable." (6 Witkin, Summary of Cal. Law (10th ed. 2005) Torts, § 1121, p. 453; see also *Portillo v. Aiassa* (1994) 27 Cal.App.4th 1128, 1134 (*Portillo*); *Swanberg v. O'Mectin* (1984) 157 Cal.App.3d 325, 330.) This duty of inspection charges landowners with matters that would have been disclosed by a "reasonable" inspection. (*Mora v. Baker Commodities, Inc.* (1989) 210 Cal.App.3d 771, 782 (*Mora*).) Whether an inspection by the landlord was reasonable under the circumstances is normally a question of fact. (*Ibid.* & fn. 9; see, e.g., *Lopez v. Superior Court* (1996) 45 Cal.App.4th 705, 717 (*Lopez*); *Brantley v. Pisaro* (1996) 42 Cal.App.4th 1591, 1606; *Portillo*, *supra*, at p. 1135.)

In finding that respondents could not be held liable because they lacked actual or constructive notice of the dangerous condition, the trial court relied on *Ortega*, *supra*, 26 Cal.4th at pages 1205-1207. In *Ortega*, the plaintiff was injured when he slipped on a puddle of milk on the floor of defendant's supermarket. (*Id.* at p. 1204.) The issue was whether "a store owner may be liable for injuries to a business invitee from a dangerous condition on its premises where the evidence fails to show how long the dangerous condition existed prior to the injury." (*Id.* at p. 1203.) Because store owners are not insurers of their patrons' safety, the court determined that liability cannot be imposed unless there is evidence that the owner had "actual or constructive knowledge" of the dangerous condition. (*Id.* at p. 1206.) The court concluded that where there is no direct evidence of the length of time a dangerous condition existed, a plaintiff can demonstrate the owner's constructive knowledge by

showing the location had not been inspected within a reasonable period of time. (*Id.* at pp. 1206-1207.)

Ortega has limited application to the instant case, which does not involve a temporary dangerous condition such as a liquid spill. *Ortega* relied on a prior California Supreme Court case, *Hatfield v. Levy Brothers* (1941) 18 Cal.2d 798, which states the broader rule: "Where the dangerous or defective condition . . . has been created by reason of the negligence of the owner . . . the owner of the property cannot be permitted to assert that he had no notice or knowledge of the defective or dangerous condition . . . . Under such circumstances knowledge thereof is imputed to him. [Citation.] Where the dangerous condition is brought about by natural wear and tear, or third persons, or acts of God . . . then to impose liability the owner must have either actual or constructive knowledge of the dangerous condition or have been able by the exercise of ordinary care to discover the condition, which if known to him, he should realize as involving an unreasonable risk to invitees on his premises." (*Id.* at p. 806.)

Appellant predicates her theory of liability on the defective construction and negligent maintenance of the stairway by respondents. She is not arguing that an otherwise safe area was made dangerous by natural wear and tear, third persons, or an act of God. Based on the evidence in the record, a reasonable inference can be drawn that the allegedly dangerous condition, the metal nosing on the stairs, was either created by respondents or remained under their exclusive control. Under these circumstances, knowledge of the dangerous condition may be imputed to defendants. (See, e.g., *Getchell v. Rogers Jewelry* (2012) 203 Cal.App.4th 381, 386 [knowledge of dangerous condition of cleaning solution on floor of store's back room

imputed to store owner in light of evidence from which it reasonably could be inferred that store's employees caused the dangerous condition; there was evidence that the room where the accident occurred and the cleaning solution which caused the accident were under the exclusive control of store and its employees]; *Neel v. Mannings, Inc.* (1942) 19 Cal.2d 647, 654-655 [in action for injuries sustained by business invitee on defendant's stairway, undisputed fact that construction of stairs remained unchanged during 10-year period of defendant's tenancy was sufficient to sustain jury's finding of constructive notice to defendant of dangerous condition].)

Even if we do not impute knowledge of the allegedly dangerous condition to respondents based on the inference that they retained control over the common-area stairway, we cannot conclude, as a matter of law, that respondents met their burden of showing they lacked constructive knowledge. Respondents emphasize the undisputed fact that appellant never had any prior difficulty on the stairway, nor did respondents receive any reports of prior accidents. However, the mere fact that a particular type of accident previously has not occurred does not show that such an accident is not reasonably foreseeable. (See *Lawrence v. La Jolla Beach & Tennis Club, Inc.* (2014) 231 Cal.App.4th 11, 31-32; see also *Lane v. City of Sacramento* (2010) 183 Cal.App.4th 1337, 1346 [absence of prior similar accidents is relevant to, but not dispositive of, the issue of whether a condition is dangerous].)

Respondents maintain "a tenant cannot reasonably expect that the landlord will have eliminated defects in a rented dwelling of which the landlord was unaware and which would not have been disclosed by a reasonable inspection." (See *Peterson v.*

Superior Court (1995) 10 Cal.4th 1185, 1206.) Respondents provided some evidence regarding inspections of the property. In his declaration, Soghomonian, the on-site property manager, stated that he conducted regular inspections of the premises and did not observe any problems with the nosing on the stairs. Nalbandyan also indicated that the Housing Authority performs yearly inspections for Section 8 tenants, which include inspection of the stairways, and did not report any problems.

However, viewing the evidence in the light most favorable to appellant as the nonmoving party, we cannot conclude that these inspections were reasonable as a matter of law. (See *Mora*, *supra*, 210 Cal.App.3d at p. 782 & fn. 9 [whether an owner's inspections of the premises are reasonable under the circumstances is generally a question of fact for the jury].) Appellant presented evidence, in the form of her safety expert's declaration, from which it reasonably can be inferred that the nosing on the stairs constituted a substantial tripping hazard that would have been discoverable by a reasonable inspection. Respondents, on the other hand, did not provide sufficient information about the nature and scope of the inspections by Soghomonian or the Housing Authority such that we can conclude, as a matter of law, that the inspections would not have disclosed the allegedly dangerous condition. (See, e.g., *Lopez*, *supra*, 45 Cal.App.4th at pp. 716-717 [trial court erred in granting summary judgment for property owner in slip-and-fall action by business invitee where defendant failed to provide sufficient information about nature or scope of its inspections of premises].)

In moving for summary judgment, respondents had an initial burden of showing that one or more elements of appellant's

cause of action cannot be established. We conclude that the record contains triable issues of material fact regarding both whether the stairway nosing constituted a dangerous condition and whether respondents had actual or constructive knowledge of this allegedly dangerous condition. We accordingly find that the trial court erred in granting summary judgment in respondents' favor.

DISPOSITION

The judgment is reversed. Appellant is to recover her costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.