

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
MAYRA MORAN,

Plaintiff,

-against-

JERRY LEVIN and CAROL LEVIN,

Defendants.
-----X

Index No.: 151444/2016

***Order With
Notice of Entry***

PLEASE TAKE NOTICE that the within is a true copy of an order dated September 12, 2018 by Judge David B. Cohen J.S.C, and duly entered in the office of the clerk of the within named court on September 12, 2018. Accompanying this Notice is a true certified copy of the record referenced within the Order.

Dated: New York, New York
September 20, 2018

WADE CLARK MULCAHY LLP



Dana Purcaro

Attorneys for Defendants
Jerry Levin and Carol Levin
180 Maiden Lane, Suite 901
New York, New York 10038
(212) 267-1900
Our File No.: 150.9796.1DP

TO: (See Affidavit attached)

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

HON. DAVID B. COHEN
J.S.C.

PRESENT: _____
Justice

PART 58

Index Number : 151444/2016
MORAN, MAYRA
vs
LEVIN, JERRY
Sequence Number : 002
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits No(s). _____
Answering Affidavits — Exhibits No(s). _____
Replying Affidavits No(s). _____

Upon the foregoing papers, it is ordered that this motion is GRANTED FOR THE REASONS STATED
ON THE RECORD AND THIS ACTION IS DISMISSED.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 9-12-2018

[Signature] J.S.C.
HON. DAVID B. COHEN
J.S.C.

- 1. CHECK ONE: ... [X] CASE DISPOSED [] NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: ... MOTION IS: [X] GRANTED [] DENIED [] GRANTED IN PART [] OTHER
3. CHECK IF APPROPRIATE: ... [] SETTLE ORDER [] SUBMIT ORDER
[] DO NOT POST [] FIDUCIARY APPOINTMENT [] REFERENCE

2 SUPREME COURT OF THE STATE OF NEW YORK
3 COUNTY OF NEW YORK: CIVIL TERM : PART 58

4 -----X
MAYRA MORAN,

5 Plaintiff,

6 -against-

Index No.
151444/2016

7 JERRY LEVIN AND CAROL LEVIN,

8 Defendants.

9 -----X
Transcript of Motion Proceedings

New York Supreme Court
111 Centre Street
New York, New York 10007
September 12, 2018

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12 B E F O R E:

13 HON. DAVID B. COHEN, Justice of the Supreme Court

14
15 A P P E A R A N C E S:

16 PARKER & WAICHMAN LLP
Attorneys for the Plaintiff
6 Harbor Park Drive
17 Port Washington, New York 11050
BY: CHARLES SILVERSTEIN, ESQ.

18
19 WADE CLARK MULCAHY, ESQS.
Attorneys for the Defendant
20 180 Maiden Lane, Suite 901
New York, New York 10038
21 BY: DANA PURCARO, ESQ.

22
23 * * * * *

24 LAURA L. LUDOVICO
Senior Court Reporter
25 60 Centre Street - Room 420
New York, New York 10007
26

Proceedings

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2 THE COURT: Good afternoon. This is Mayra Moran
3 versus Jerry Levin and Carol Levin; 151444 of 2016.

4 Counsel, note your appearances, please. Who has
5 Plaintiff?

6 MR. SILVERSTEIN: Good afternoon, Your Honor.
7 Charles Silverstein; Parker Waichman for the
8 Plaintiff in opposition to the motion.

9 MS. PURCARO: Good afternoon, Your Honor.
10 Dana Purcaro from Wade Clark Mulcahy for the
11 Defendants.

12 THE COURT: Defendants' motion for summary
13 judgment.

14 Counsel, you may proceed.

15 MS. PURCARO: Okay. Your Honor, this is a slip
16 and fall down an exterior staircase that occurred in
17 October of 2014. The Plaintiff was working as a
18 housekeeper.

19 THE COURT: You can dispense with a factual
20 dissertation and get right into legal arguments.

21 MS. PURCARO: Okay. Your Honor, it's Defendants'
22 position that there is nothing wrong with the stairs at
23 issue, which is admitted by the Plaintiff. We had experts
24 on each side go and inspect the stairs, measure them.

25 Plaintiff's expert has also agreed that the
26 stairs are fully code compliant. The house was completed

Proceedings

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2 in 2008 in compliance with both the '03 and the '07
3 Residential Building Code. There is --

4 THE COURT: Is there a requirement for more than
5 one railing?

6 MS. PURCARO: There is not. There is a
7 requirement -- there's just one railing.

8 THE COURT: Is there a requirement that the
9 railing be somewhere close to the door?

10 MS. PURCARO: There is not, Your Honor.

11 THE COURT: How many steps are we talking about
12 here? Three steps, right --

13 MS. PURCARO: Yes.

14 THE COURT: -- up to the landing or four steps up
15 to the landing?

16 MS. PURCARO: I believe it's three or four, Your
17 Honor. I don't remember off the top of my head, but we do
18 have photographs as Exhibit I of my motion.

19 THE COURT: And Ms. Moran is leaving the house,
20 going down the steps?

21 MS. PURCARO: Correct.

22 THE COURT: Right?

23 MS. PURCARO: Yes.

24 THE COURT: And did she avail herself of the
25 handrail?

26 MS. PURCARO: No, she testified that she chose

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not to use it.

THE COURT: Okay. Let's talk about the rain.

MS. PURCARO: Yes.

THE COURT: Was it raining at the time?

MS. PURCARO: It was raining at the time.

THE COURT: Were the stairs wet?

MS. PURCARO: Ms. Moran testified that she did not notice the stairs to be wet until after she fell, but she did know that it was raining.

They are exterior steps, Your Honor, so it is likely that they were wet.

THE COURT: Covered by an awning or not covered by an awning?

MS. PURCARO: They are covered by an awning, yes.

THE COURT: So they may not get as wet as areas that are fully exposed, but they may very well have been wet?

MS. PURCARO: Correct. The Plaintiff's expert did a coefficient of friction test and found that the stairs were not excessively slippery in any way, wet or dry.

THE COURT: I think the finding was the opposite, right?

MS. PURCARO: No.

THE COURT: I don't believe that the terminology

Proceedings

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2 in his report was excessively slippery, I think it was even
3 better.

4 MS. PURCARO: No, that's what I'm saying, he
5 found that it was not slippery.

6 THE COURT: He actually found that it was a
7 higher -- pretty high ratio of friction on the steps.

8 MS. PURCARO: Yes.

9 THE COURT: Okay. But they point to other issues
10 that they claim should have existed on the step based upon
11 their expert's report. Do you want to address any of
12 those?

13 MS. PURCARO: I do, Your Honor.

14 Their expert points to a lot of secondary sources
15 after admitting that obviously, the stairs are code
16 compliant. Those secondary sources do not relate to stairs
17 like the stairs at issue in this case. Those sources refer
18 to stairs that are in high traffic areas, commercial
19 buildings, you know, high-rise residential apartment
20 buildings.

21 This is a private residence that's behind a gate.
22 They don't rent it, this is not a high traffic area --

23 THE COURT: Are you making reference to the
24 multiple handrailing issue?

25 MS. PURCARO: The multiple handrailing and then
26 secondarily --

Proceedings

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2 THE COURT: On residential premises only one
3 handrail is required, right?

4 MS. PURCARO: Correct, on either side.

5 THE COURT: But Defendants' expert contends that
6 there should have been a railing on both sides and one down
7 the middle also.

8 MS. PURCARO: The Plaintiff's --

9 MR. SILVERSTEIN: Plaintiff's expert.

10 THE COURT: Plaintiff's expert, right.

11 MS. PURCARO: -- expert contends that there
12 should have been one down the middle, yes.

13 THE COURT: Okay. So why should I not be
14 persuaded by that?

15 MS. PURCARO: Because these secondary sources
16 that are cited are not -- they don't refer to a residential
17 home. The whole point of the need for an intermediate
18 handrail is that more than three people or three or more
19 would be descending or ascending the stairs at the same
20 time, therefore, unable to use the one handrail on the
21 side.

22 There are holdings as recently as 2008 and 2016
23 where the First Department said unless it's exactly on
24 point, the secondary sources do not override a finding that
25 the stairs are code compliant.

26 THE COURT: Okay.

Proceedings

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2 MS. PURCARO: And then just lastly, something
3 that the Plaintiff's expert also mentioned was a design
4 defect with the placement of the door as it relates to the
5 stairwell. They did not actually cite to anything
6 secondary or not to support that position, so we just want
7 to point that out, Your Honor. There is no proof that
8 there is anything wrong with the design. The house was
9 found to be code compliant.

10 THE COURT: So there's no industry, convention or
11 anything like to that they point to on that?

12 MS. PURCARO: No, Your Honor.

13 THE COURT: There's certainly no code provision.

14 MS. PURCARO: There's no code provision. They do
15 not point to any industry standard or anything like that
16 for the design defect argument either.

17 And I would just like to also note that there is
18 a video of this accident that shows Ms. Moran effectively
19 running down the stairs.

20 THE COURT: Well, that might go to comparative
21 fault, but that wouldn't necessarily go to the legal
22 standard here, would it?

23 MS. PURCARO: No, but, Your Honor, it doesn't
24 need to. We -- you know, it is -- we -- our position is
25 that we have proven, you know, through all of this evidence
26 that there is no question of fact as to the condition of

Proceedings

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2 these stairs. They were maintained.

3 The photographs -- the still images of the video
4 that we put into our motion show there's no debris, nothing
5 like that, aside from obviously some rain water that might
6 have been on the steps. There is a live-in house
7 manager --

8 THE COURT: There's a what?

9 MS. PURCARO: A live-in house manager.

10 THE COURT: You got to slow down a little bit.

11 MS. PURCARO: I'm sorry.

12 A live-in house manager that maintains and
13 inspects the steps daily, lives there year-round. You
14 know, we have proven that there is no code violations with
15 the steps, there was a handrail, and as such, we believe we
16 are entitled to summary judgment, Your Honor.

17 And in opposition the Plaintiff has not cited to
18 a single case or anything to refute or show any question of
19 fact. The only cases that were cited refer to a
20 Defendant's duty to clean or warn of wet interior stairs,
21 which do not apply in this case, as this is an exterior
22 stairwell.

23 THE COURT: Thank you, counsel.

24 MS. PURCARO: Thank you.

25 THE COURT: Plaintiff?

26 MR. SILVERSTEIN: Yes. Good afternoon, Your

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Honor.

You asked my adversary to dispense with the factual recitation, but factual recitation is exactly why summary judgment should be denied here.

THE COURT: The reason I asked to dispense was because I read the papers, counsel.

MR. SILVERSTEIN: I know, I see that, Your Honor.

THE COURT: I'm familiar with the factual claims, I think.

MR. SILVERSTEIN: Yes, but among those --

THE COURT: But if there is something specifically you want to alert me to, I'm happy to hear you.

MR. SILVERSTEIN: Well, it's a compilation, Your Honor, of it being an exterior stairway, of it being a stone stairway, of it being 11 feet wide. What no one has mentioned so far is the fact that Defendants themselves, after having lived in the house for a number of years, having bought the house --

THE COURT: Why does stone matter?

MR. SILVERSTEIN: Stone matters.

THE COURT: Stone can --

MR. SILVERSTEIN: Hear my next point, Your Honor, and --

THE COURT: Stone can have a high coefficient of

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friction --

MR. SILVERSTEIN: It can.

THE COURT: -- or it can be polished and have a very low --

MR. SILVERSTEIN: That's true.

THE COURT: -- coefficient of friction, right?

MR. SILVERSTEIN: That is true.

THE COURT: And one can be very safe and the other could be very dangerous.

MR. SILVERSTEIN: That is all true, Your Honor, but for some reason, one year before this accident took place, the Defendants, who had lived in this house for a number of years, decided of their own accord to install that one handrail. Now, that happened in 2013, Your Honor. They had owned the house for a number of years, for some reason -- and it's our position that that's a tacit admission that there is some sort of hazard lurking there -- they chose to put in this handrail.

THE COURT: To do what, to address the hazard, right?

MR. SILVERSTEIN: Unfortunately, Your Honor, the handrail they put in is useless because the handrail they put in is not within reach of someone who exits the door. It's six feet --

THE COURT: I got to stop you there, counsel --

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MR. SILVERSTEIN: Yes.

THE COURT: -- because I can't agree with that characterization. A handrail is useful if you use it, it's useless if you don't. This handrail is not useless. This handrail is very useful if you walk down the right side of the stairway and you grab this handrail as you walk down, right?

MR. SILVERSTEIN: The handrail was placed oblivious to the flow of traffic, Your Honor. It was placed six feet east or west -- I don't know the layout of the place -- of where people enter and exit.

THE COURT: Your client had never been to this premises before?

MR. SILVERSTEIN: My client had, my client was working there.

THE COURT: Your client was unaware of the layout of the stairwell?

MR. SILVERSTEIN: Yes, Your Honor.

THE COURT: Your client didn't know where the handrail was?

MR. SILVERSTEIN: Yes, Your Honor.

THE COURT: Your client surely knew where the handrail was, right?

MR. SILVERSTEIN: Your Honor, these are all questions of fact, every single one of them, and they're

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fair questions of fact.

THE COURT: How is that a question of fact?

MR. SILVERSTEIN: Well, comparative negligence, all of that. And all of it may go to weight rather than --

THE COURT: Well, you only get to comparative negligence if there was a duty that was breached, right?

MR. SILVERSTEIN: Yes, Your Honor.

THE COURT: If they complied with their duty to invitees, such as your client, right, then we never get to comparative fault?

MR. SILVERSTEIN: And they did so, Your Honor, to the extent that they were code compliant, but they did so in a way that was oblivious to traffic and useless. This is the Hamptons, Your Honor.

THE COURT: Well, you wanted me to draw some inference here. You wanted me to draw an inference when you were speaking before as to the fact that the individuals who own this property, who use it also, right, it's some sort of home in Quogue, right?

MR. SILVERSTEIN: Westhampton, Your Honor.

THE COURT: In Westhampton.

MR. SILVERSTEIN: Yes.

THE COURT: Who use this as a home or a second home, right, that they put in a handrail because they acknowledged that the stairs were slippery, right, and

Proceedings

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2 presumably, they did it for whom, they did it for
3 themselves --

4 MR. SILVERSTEIN: I don't know, Your Honor.

5 THE COURT: -- for others?

6 MR. SILVERSTEIN: Your Honor, this was a
7 part-time residence of theirs and something tells me it was
8 done when they were not living at the residence.

9 THE COURT: What was not done?

10 MR. SILVERSTEIN: That the handrail was put in on
11 the wrong side and in the wrong place because who would put
12 a handrail there?

13 Your Honor, our expert says that the National
14 Bureau of Standards, Series 120; Guidelines for Stairway
15 Safety were not adhered to and the Residential Code of
16 2003, Rule 315.1, which requires two or more handrails when
17 there are two risers or more, was applicable here, that
18 this was, in essence, the equivalent of either a commercial
19 building or a multiple dwelling. That's another question
20 of fact, Your Honor.

21 THE COURT: Wait a second. What does that mean?

22 MR. SILVERSTEIN: That means that a stairway this
23 wide was built this wide because three or more people may
24 be using it at the same time and an intermediate railway
25 would be required under those circumstances.

26 THE COURT: Really? It wasn't built that wide

Proceedings

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2 because they've got a big house and they wanted a wide
3 stairway up the front?

4 MR. SILVERSTEIN: Well, it's built to accommodate
5 that number of people, Your Honor.

6 THE COURT: So any stairway, whether in a
7 residential dwelling or in a commercial dwelling that's
8 wider than a certain width automatically requires multiple
9 handrails?

10 MR. SILVERSTEIN: Good practice would require an
11 intermediate handrail, Your Honor.

12 THE COURT: Good practice?

13 MR. SILVERSTEIN: Yes.

14 THE COURT: Okay. And I'm supposed to find that
15 there's an issue of fact as to breaching the duty because
16 of good practice?

17 MR. SILVERSTEIN: Yes, Your Honor.

18 THE COURT: Okay. What else, counsel, anything
19 else?

20 MR. SILVERSTEIN: No, Your Honor, other than the
21 fact that the purposes of handrails are to provide a
22 handhold, provide something to break someone's fall, and
23 also, as a visual queue to those who are using the
24 stairway. I don't think, Your Honor, that if this
25 accident --

26 THE COURT: Was your client running down the

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stairs?

MR. SILVERSTEIN: She was rushing it appears, but I think that stairways have to be safe for people that are rushing as well.

THE COURT: So what happens to visual queues when people are rushing?

MR. SILVERSTEIN: Well, visual queues --

THE COURT: They might miss them, right?

MR. SILVERSTEIN: They might or they might not, Your Honor.

Your Honor, I don't think that if this accident had happened in 2012, before they built this stair railway, handrail, that defense counsel could be saying, oh, they've got a perfectly good case, we are at fault here.

THE COURT: Well, you'd have a different argument then, right?

MR. SILVERSTEIN: It's a related argument, Your Honor.

THE COURT: You would have an argument that there was no handrail when one was required by the residential code.

MR. SILVERSTEIN: I have that argument.

THE COURT: That in and of itself would be enough to defeat summary judgment, wouldn't it?

MR. SILVERSTEIN: Oh, that would be.

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THE COURT: But you don't have that here.

MR. SILVERSTEIN: We don't have that, Your Honor, but we do have an expert witness who has stated in his affidavit that good practice was not adhered to here. It's a question of fact.

THE COURT: Thank you, counsel.

MR. SILVERSTEIN: Thank you.

THE COURT: I'll render my decision in ten minutes.

MS. PURCARO: Thank you, Your Honor.

(Brief recess taken.)

THE COURT: Okay. This is a recall of Moran versus Levin and Levin.

The Court, having reviewed the papers submitted on this motion for summary judgment and having heard oral argument on the record, is going to render its decision at this time.

At this time the Court finds that the Defendant has met its initial burden of establishing entitlement to judgment and as a matter of law, specifically, by demonstrating that there was no dangerous condition, either of the stairs or on the stairs, that the stairs were code compliant.

And I also find that the Plaintiff has failed to raise any genuine issue of material fact in this case

Proceedings

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2 warranting a trial, specifically, the unrefuted evidence is
3 that there was no debris on these steps, there was no
4 defect on the steps, that the coefficient of friction was
5 sufficient, that there was a single handrail, which is
6 sufficient on residential premises, and that it was
7 unrefuted that regular inspections were made and no such
8 conditions existed.

9 In addition, there is no genuine issue of
10 material fact, that there was no code violation and there
11 is no applicable industry standard which the Plaintiff can
12 specifically cite to that was violated, although
13 Plaintiff's expert attempts to demonstrate that these
14 steps, in what is clearly and unequivocally a residential
15 premises, should have adhered to a higher commercial
16 standard because of the width of the stairs.

17 I would find that unpersuasive. There was a
18 handrail down one side of the steps, which is sufficient
19 under the Residential Code, in addition, and therefore,
20 there is no issue of fact that would suggest that this was
21 a commercial dwelling or that it was required to adhere to
22 the standards of having multiple handrails, as the width
23 required, for a commercial location where multiple people
24 could be ascending and descending the stairs at any given
25 time. And in any event, in this circumstance, that wasn't
26 the case that there were multiple people ascending or

Proceedings

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2 descending the stairs. There was one individual ascending
3 the stairs who did not avail herself of the handrail.

4 Accordingly, for all of those reasons, I find
5 that summary judgment -- that Defendant is entitled to
6 judgment as a matter of law, that there's no genuine issue
7 of material facts and that this action must be dismissed.

8 Thank you, counsel.

9 MS. PURCARO: Thank you, Your Honor.

10 * * * * *

11 I, Laura L. Ludovico, a senior court reporter for
12 the State of New York, do hereby certify that the foregoing
13 is a true and accurate transcription of my original
14 stenographic notes.

15 

16 Laura L. Ludovico
17 Senior Court Reporter

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

Eileen McGlyn, being duly sworn, deposes and says:

That I am not a party to the within action, am over 18 years of age and reside in Staten Island, New York.

That on September 20, 2018, deponent served the within *Order With Notice of Entry* upon the attorneys and parties listed below by United States prepaid mail:

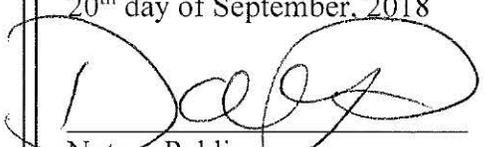
TO:

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(516) 466-6500
(516) 466-6665 – fax
File No. 4022724
Attorneys for Plaintiff



Eileen McGlyn

Sworn to before me this
20th day of September, 2018



Notary Public

DANA PURCARO
Notary Public, State of New York
No. 02PU6313717
Qualified in New York County, 2018
Commission Expires October 27, 2018

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MAYRA MORAN,

Plaintiff,

-against-

JERRY LEVIN and CAROL LEVIN,

Defendants.

ORDER WITH NOTICE OF ENTRY

**Wade Clark Mulcahy LLP
Attorneys for Defendants
Jerry Levin and Carol Levin
180 Maiden Lane, Suite 901
New York, New York 10038
(212) 267-1900
Our File No.: 150.9796.1**

To: ***

Attorney(s) for ***

Service of a copy of the within *** is hereby admitted.

Dated: ***

.....
Attorney(s) for ***

PLEASE TAKE NOTICE

that the within is a (certified) true copy of a ***
entered in the office of the clerk of the within named Court on ***

**NOTICE OF
ENTRY**

that an Order of which the within is a true copy will be presented for settlement to the Hon. ***
one of the judges of the within named Court, at ***, on ***, at ***

**NOTICE OF
SETTLEMENT**

Dated: ***

**Wade Clark Mulcahy LLP
Attorneys for Defendants
Jerry Levin and Carol Levin
180 Maiden Lane, Suite 901
New York, New York 10038**