SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU

Present: HON. ZELDA JONAS
Justice

TRIAL/IAS PART 25

ENIO PRENDA and AUDRA PRENDA,

Plaintiffs,

Index No. 8005/01

- against -

Sequence No. 1
Motion Date: December 12, 2002

LONG ISLAND RAILROAD,

Defendant.

Notice of Motion 1
Affirmation in Opposition 2
Reply Affidavit 3

Motion by defendant, Long Island Railroad, for an order pursuant to CPLR 3212 granting it summary judgment dismissing the complaint is denied.

This is an action to recover damages for personal injuries allegedly sustained by plaintiff on June 3, 2000 at approximately 2:10 p.m. Plaintiff claims to have slipped and fallen while walking down the south stairs at the LIRR Stewart Manor train station. Plaintiff claims, *inter alia*, that LIRR was negligent and careless in allowing construction debris to remain on the steps of said stairs and for failing to have the proper handrails available at the scene.

LIRR moves for summary judgment on the grounds that it did not affirmatively create or have actual or constructive notice of the allegedly dangerous condition at the Stewart Manor station.

In a slip-and-fall action, summary judgment may be granted to the defendant where there is no evidence that the defendant created or exacerbated the defective condition or had actual or constructive notice of it . (*See, Gordon v. Museum of Natural History*, 67 N.Y.2d 836; *Piazza v. Great Atlantic & Pacific Tea Co., Inc.*, __A.D.2d__, 2002 WL 31760939.) Constructive notice is established where the defect was visible and apparent for a sufficient period of time before the accident to permit defendant to discover and remedy it. (*See, Petty v. Harran Transp. Co., Inc.*, __A.D.2d__, 750 N.Y.S.2d 773.) Furthermore, a general awareness that a dangerous condition may be present is legally insufficient to constitute notice of a particular condition which allegedly caused plaintiff to fall. (*See, Piacquadio v. Recline Realty Corp.*, 84 N.Y.2d 967; *Andujar v. Benenson Inv. Co.*, 299 A.D.2d 503; *Gloria v. MGM Emerald Enterprises*, 298 A.D.2d 355.)

It is equally well settled that on a summary judgment motion the submissions of the opposing party's pleadings must be accepted as true. (*See, Glover v. City of New York*, 298 A.D.2d 428.)

Viewing the evidence in the light most favorable to the non-moving party (*see, Mosheyen v. Pileusky*, 283 A.D.2d 469), the Court finds that the evidence is sufficient for a trier of fact to rationally infer that LIRR should have had constructive notice of the alleged dangerous condition.

At his examination before trial, plaintiff testified that he saw debris on the stairs including nails, screws, plaster chunks, and dirt, as well as water, sitting on the stairs (*Prenda's* EBT, pages 41 & 42). Plaintiff further testified that his left foot stepped on something hard which moved like a nail or a wide piece of screw (*Prenda's* EBT, pages 50 & 51).

In addition to plaintiff's own testimony, plaintiff refers this Court to the transcripts of testimony of (a) Mr. Paul Lilly, a LIRR foreman, working in the Building & Bridges Department; and (b) Mr. Bill Marsden, another Building & Bridges foreman. Mr. Lilly testified that construction at Stewart Manor station began in August of 1999, and his crew was responsible for replacing the brick pavers leading the subject stairs and for completely chopping out and repouring the stairs leading to the underpass (Lilly's EBT, pages 8-11). Mr. Lilly also stated that his crew stopped working at Stewart Manor on April 6, 2000 (Lilly's EBT, page 40). Notably, Mr. Lilly testified that a complaint had been made "about the trucks and the material [LIRR] was using on the south side" about six months prior to plaintiff's accident. The sum and substance of the complaint was that "they are taking staircases down and putting staircases up and removing concrete and putting it back and there are trucks all over, it's a mess" (Lilly's EBT, page 46). At his examination before trial, Mr. Marsden testified that the first day his crew was assigned the work at the Stewart Manor train station was on July 21, 2000 (Marsden's EBT page 7). The scope of such work involved pouring a sidewalk and renovating the pedestrian tunnel (Marsden's EBT, page 9).

Mr. Marsden further testified that there was a crew assigned to Stewart Manor in the spring of 2000 (Marsden EBT, page 8). Mr. Marsden also noted that preparing the walls for the installation of panels required the use of threaded stainless steel pins approximately 3 3/4 inches long and the use of bolts approximately 2 inches long (Marsden EBT, pages 11 & 12).

Under the circumstances extant, this Court finds that an issue of fact has been raised as to whether LIRR had constructive notice of the condition. (*See, June v. Bill Zikakis Chevrolet Inc.* 199 A.D.2d 907.) Accordingly, LIRR's motion is denied.

Dated: 2/21/03

J.S.C.