

M.M.M. v County of Suffolk

2016 NY Slip Op 31920(U)

June 30, 2016

Supreme Court, Suffolk County

Docket Number: 04112/2012

Judge: William B. Rebolini

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Short Form Order

SUPREME COURT - STATE OF NEW YORK**I.A.S. PART 7 - SUFFOLK COUNTY****PRESENT:****WILLIAM B. REBOLINI**
Justice

M.M.M. and K.P.M., infants, by their father and
natural guardian, James P. Malone,

Plaintiffs,

-against-

County of Suffolk, Richard Dormer,
former Commissioner of the Suffolk County
Police Department, Haven Drugs, Inc.,
Vinoda Kudchadkar, as Owner, Chairman and/or
Chief Executive Officer, Stan Xuhui Li, MD,
and certain doctors who prescribed narcotics to
David Laffer, currently unknown but identified
as John Does 1-5, Abbott Laboratories and
John Does 6 - 10, manufacturers and distributors
of prescription narcotics, including hydrocodone,
and Ralph Taccetta,

Defendants.

Motion Sequence No.: 007; MGMotion Date: 3/29/16Submitted: 4/6/16Index No.: 04112/2012Attorneys/Parties [See Rider Annexed]

Upon the following papers numbered 1 to 12 read upon this motion for summary judgment:
Notice of Motion and supporting papers, 1 - 8; Answering Affidavits and supporting papers, 9 - 10;
Replying Affidavits and supporting papers, 11 - 12; it is

ORDERED that this motion by defendants, Haven Drugs, Inc., and Vinoda Kudchadkar, for
an order awarding summary judgment in their favor dismissing the complaint against them is
granted.

This action arises out of the horrific murders which occurred on June 19, 2011, when David
Laffer shot and killed four people while robbing the Haven Drugs pharmacy in Medford, New York.

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Laffer was ultimately convicted on his plea of guilty to murder in the first degree and he is currently serving four consecutive life sentences in prison. One of the victims was plaintiffs' decedent, Jamie Taccetta, who was a customer of the pharmacy. Plaintiffs commenced this action for recovery of damages for the alleged conscious pain and suffering and wrongful death of Taccetta. It is alleged in the verified amended complaint that "the reason for the murders was that David Laffer was attempting to steal thousands of prescription narcotics" because he was a drug abuser "who regularly used prescription narcotics, including hydrocodone, in an unauthorized manner." By order of this Court dated November 26, 2012, the action was dismissed against defendants Abbott Laboratories, County of Suffolk, and Richard Dormer, former Commissioner of the Suffolk County Police Department. By order of the Appellate Division, Second Department, an application by defendant Stan Xuhui Li to dismiss the complaint against him was granted (*see Malone v County of Suffolk*, 128 AD3d 651, 8 NYS3d 408 [2d Dept 2015]). As against the defendants Haven Drugs and Kudchadkar, it is alleged that they operated the pharmacy at the crime scene and that they failed to take reasonable steps to safeguard the pharmacy, its employees and customers. Said defendants now move for an order awarding summary judgment in their favor and dismissing the complaint against them. Plaintiffs have opposed the motion.

Defendant Kudchadkar testified at a deposition that he was the "sole owner" of Haven Drugs since 1981. He testified at length about procedures that were followed to maintain the inventory of prescription medicines, and about the pharmacy's policy of not filling prescriptions for drug addicts or for customers who seek to have multiple prescriptions filled from different doctors. It was his testimony that there had been only one robbery of the pharmacy, which occurred in December 2009 when someone wearing a mask demanded and was given money by the cashier. Following that incident, the store was equipped with a video system with outside cameras in the front and back and one camera at the entrance to see the cars in front of the store. There were also four cameras within the store with audio and a video screen by the pharmacist. That video system was in place on the day of the murders. There had also been an unsuccessful attempt to pry open the back door to the pharmacy in 2011, but Kudchadkar could not recall if that occurred before or after the murders. Following that attempt, a steel gate was installed to reinforce the back door to the pharmacy. After the murders, Kudchadkar checked his records and determined that defendant Laffer had been to the pharmacy twice in 2001, once in January and again in June.

The law is well-established that summary judgment is a drastic remedy to be granted only when there is clearly no genuine issue of fact to be presented at trial (*see Andre v Pomeroy*, 35 NY2d 361, 362 NYS2d 131, 320 NE2d 853 [1974]; *Benincasa v Garrubo*, 141 AD2d 636, 529 NYS2d 797 [2d Dept 1988]). The function of the court in determining a motion for summary judgment is issue finding, not issue determination (*Pantote Big Alpha Foods, Inc. v Schefman*, 121 AD2d 295, 503 NYS2d 58 [1st Dept 1986]). The courts have repeatedly held that in order to obtain summary judgment, movant must establish its claims or defenses sufficiently to warrant a court's directing judgment in its favor as a matter of law (*see Gilbert Frank Corp. v Federal Insurance Co.*, 70 NY2d 966, 525 NYS2d 793, 520 NE2d 512 [1988], citing *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595, 404 NE2d 718 [1980]; *Friends of Animals v. Associated Fur Mfrs.*, 46 NY2d 1065, 416 NYS2d 790, 390 NE2d 298 [1979]). The party opposing the motion, on the

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other hand, must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which the opposing claim rests (see *Gilbert Frank Corp. v Federal Insurance Co., supra*). Furthermore, the evidence submitted in connection with a motion for summary judgment should be viewed in the light most favorable to the party opposing the motion (*Robinson v Strong Memorial Hospital*, 98 AD2d 976, 470 NYS2d 239 [4th Dept 1983]).

It has been said that “[T]he threshold question in any negligence action is: does defendant owe a legally recognized duty of care to plaintiff?” (*Hamilton v Beretta U.S.A. Corp.*, 96 NY2d 222, 232, 750 NE2d 1055, 727 NYS2d 7 [2001]). In the absence of duty, there is no breach and without a breach there is no liability (*Pulka v Edelman*, 40 NY2d 781, 782, 358 NE2d 1019, 390 NYS2d 393 [1976], citing *Kimbar v Estis*, 1 NY2d 399, 405). A defendant “generally has no duty to control the conduct of third persons so as to prevent them from harming others, even where as a practical matter defendant can exercise such control” (*Hamilton v Beretta U.S.A. Corp., supra* at 96 NY2d 233, quoting *D’Amico v Christie*, 71 NY2d 76, 88, 518 NE2d 896, 524 NYS2d 1 [1987]). Under ordinary circumstances, therefore, a party is under no duty to anticipate and prevent criminal conduct by others.

A possessor of real property is under a duty to maintain reasonable security measures to protect those lawfully on the premises from reasonably foreseeable criminal acts of third parties (*Deinzer v Middle Country Public Library*, 120 AD3d 1292, 1293, 992 NYS2d 557 [2d Dept 2014]). “Although a property owner must act in a reasonable manner to prevent harm to those on its premises, an owner’s duty to control the conduct of persons on its premises arises only when it has the opportunity to control such conduct, and is reasonably aware of the need for such control” (*Walfall v Bartini’s Pierre, Inc.*, 128 AD3d 685, 686, 9 NYS3d 108 [2d Dept 2015], quoting *Giambruno v Crazy Donkey Bar & Grill*, 65 AD3d 1190, 1192, 885 NYS2d 724 [2009]). A property owner cannot be held to a duty to take protective measures unless it is shown that he either knows or has reason to know from past experience “that there is a likelihood of conduct on the part of third persons . . . which is likely to endanger the safety of the visitor” (*Jean v Wright*, 82 AD3d 1163, 1163, 919 NYS2d 377 [2d Dept 2011], quoting *Nallan v Helmsley-Spear, Inc.*, 50 NY2d 507, 519, 407 NE2d 451, 429 NYS2d 606 [1980]). However, a property owner is not the insurer of a visitor’s safety, and it has no duty to protect visitors against unforeseeable and unexpected assaults (*Scharff v L.A. Fitness Int’l, LLC*, ___ AD3d ___, 2016 NY Slip Op 03867 [2d Dept 2016]).

Here, defendants have shown that there was no history at Haven Drugs of an assailant robbing the pharmacy to steal drugs, and there was only one prior incident in December 2009 of the pharmacy having been robbed for money. The undisputed facts before this Court demonstrate that the defendants owed no duty to plaintiffs’ decedent to protect her from the unforeseeable and unanticipated criminal conduct of Laffer. Furthermore, defendants established that the video and audio surveillance were reasonable security measures under the circumstances, and plaintiffs have offered no evidence to show that such security was inadequate. In addition, defendants demonstrated that policies were in place to prevent the pharmacy from being a source of prescription medication for substance abusers. Thus, even if it were found that the defendants owed a duty to the plaintiffs’ decedent, there is no evidence that the defendants breached that duty.

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Here, defendants Haven Drugs and Kudchadkar demonstrated their *prima facie* entitlement to judgment as a matter of law based on evidence that the tragic murders were committed suddenly and without warning. In opposition, plaintiffs failed to raise a triable issue of fact. The tragic quadruple murders committed by Laffer and his accomplice, non-party Melinda Brady, could not reasonably have been anticipated or prevented by the moving defendants. Accordingly, the motion is granted.

Dated:

June 30, 2016

William B. Rebolini
HON. WILLIAM B. REBOLINI, J.S.C.

_____ FINAL DISPOSITION X NON-FINAL DISPOSITION

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Clerk of the Court