Ynoa v PWP Equities Corp.
2020 NY Slip Op 33175(U)
August 28, 2020
Supreme Court, Bronx County
Docket Number: 21900/13E
Judge: Elizabeth A. Taylor
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, I.A.S. PART 2

EDNA YNOA, as Administrator of the Estate of MARIA ANTONIA PICHARDO REYNA a/k/a MARIA ANTONIA YNOA,

Plaintiff,

-against-

PWP EQUITIES CORP., ASSOCIATED FOOD STORES, LLC and ASSOCIATED FOOD STORES, INC.,

Defendants.

Index No. 21900/13E

DECISION/ORDER

Present:
HON. ELIZABETH A. TAYLOR

The following papers numbered 1 to ___ read on this motion, _____

No On Calendar of	PAPERS NUMBERED
Notice of Motion-Order to Show Cause - Exhibits and Affidavits Annexed	1-2
Answering Affidavit and Exhibits	3-4, 5-6
Replying Affidavit and Exhibits	
Affidavit	
Pleadings -- Exhibit	
Stipulation -- Referee's Report --Minutes	
Filed papers	

Upon the foregoing papers and due deliberation thereof, the Decision/Order on this motion is as follows:

Motion pursuant to CPLR 3212 for an order granting summary judgment and dismissing plaintiff's complaint and all cross-claims against defendants Associated Food Stores, LLC and Associated Food Stores, Inc., is granted.

The deceased plaintiff commenced this personal injury action for injuries allegedly sustained on July 9, 2011, as a result of a slip and fall on a "broken egg on the floor of the subject supermarket." The subject property is owned by former defendant Webster Holding Co., LLC ("Webster"), which has, at all relevant time periods, leased a portion of the premises to defendant PWP Equities Corp. ("PWP"); PWP operates the subject supermarket on its leased portion of the premises; and

pursuant to an agreement with defendants Associated Food Stores, LLC and Associated Food Stores, Inc. (collectively, "Associated"), PWP marketed the establishment under the "Associated Supermarket" banner until approximately 2015. Plaintiff maintains that Associated created the dangerous condition. Associated moves for summary judgment, on the ground that it did not "occupy, manage, maintain, control, repair, inspect, clean, perform any services at or have any other connection to the subject premises."

"To obtain summary judgment it is necessary that the movant establish his cause of action or defense 'sufficiently to warrant the court as a matter of law in directing judgment' in his favor (CPLR 3212, subd [b]) and he must do so by tender of evidentiary proof in admissible form. On the other hand, to defeat a motion for summary judgment the opposing party must 'show facts sufficient to require a trial of any issue of fact' (CPLR 3213, subd [b])" (*Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065, 1067-1068 [1979]).

In support of the motion, Associated submitted, *inter alia*, the deposition transcripts of the decedent, Dennis Stickley, and Nallely DeJesus. The decedent plaintiff testified that she was looking straight ahead while walking behind her daughter in the dairy aisle, when she suddenly slipped and fell. Once she was on the ground, the decedent saw that she had stepped onto an egg. The decedent did not see the egg on the floor before she stepped onto it, nor did she know how long it had been there. According to the decedent, her daughter neither noticed the egg on the floor before the

accident, nor did she see the decedent fall. Mr. Stickley, a vice-president of credit operations for non-party Associated Supermarket Group ("ASG"), testified that as ASG hired him in October 2014, he could not provide any information as to Associated's practices and procedures in effect in or before July 2011, including what products were delivered and whether someone from Associated ever visited a particular retailer during that period. Ms. DeJesus testified that she was in charge of supervising the entire store, which included monitoring employees, store operations, and the receipt of deliveries. She confirmed that PWP did business as "Associated Supermarket" on and before the July 9, 2011 accident date, and with the exception of permitting PWP to use the name for marketing purposes, the Associated defendants did not have anything to do with the store, such as cleaning it, or the provision and stocking of products. In particular, no one from Associated was present at the store on a daily basis, nor did anyone from Associated physically deliver any merchandise, including eggs, or stock any items within the store. Accordingly, movants meet their initial burden by demonstrating that Associated neither owned or maintained the subject store nor created the alleged dangerous condition.

In her opposition to the motion, plaintiff Maria Ynoa submitted an affidavit averring that "[a]fter [her] mother fell, [she] noticed a man at the end of the aisle, with a hand truck on which were a box of eggs." Ms. Ynoa attests that the man "was wearing overalls, like a delivery person," [and he] "was not dressed in the t-shirts the employees of the store who came to assist [her] mother . . . were wearing." Ms. Ynoa did not

identify the man as an employee of Associated. In Ellen v Lauer, the First Department held that

> [i]t is not enough that the party opposing summary judgment insinuate that there might be some question with respect to a material fact in the case. Rather, it is imperative that the party demonstrate, by evidence in admissible form, that an issue of fact exists or, in the alternative, supply the court with an acceptable excuse why such proof cannot be supplied at this stage of the proceedings (*Ellen*, 210 AD2d 87, 90 [1st Dept 1994]).

The affirmations in opposition to the motion fail to submit admissible evidence to create an issue of fact to deny the summary judgment motion. Further, the "argument that summary judgment is premature because the record is devoid of deposition testimony or 'other documentation . . . that might further illuminate the issues raised by the parties' affidavits' is unavailing (citations omitted)" (*Flores v City of New York*, 66 AD3d 599, 600 [1st Dept 2009]).

Accordingly, the Clerk is directed to dismiss the action against defendants Associated Food Stores, LLC and Associated Food Stores, Inc., and amend the caption to reflect such dismissal.

The foregoing shall constitute the decision and order of this court.

Dated: AUG 28 2020

J.S.C.

☒ Motion is granted
☒ Amend the caption to reflect that the action was dismissed against defendants Associated Food Stores, LLC and Associated Food Stores, Inc.
☒ Action is still active