

Jones v Presbyterian Hospital in City of New York

2002 NY Slip Op 30005(U)

September 17, 2002

Supreme Court, New York County

Docket Number: 3_30011/7466

Judge: Shirley W. Kornreich

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

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ROBERT JONES,

Plaintiff,

Index No.: 117466/00

-against-

**DECISION, ORDER and
JUDGMENT**

PRESBYTERIAN HOSPITAL IN THE CITY OF
NEW YORK, and TRUSTEES OF COLUMBIA
UNIVERSITY,

Defendants.

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KORNREICH, SHIRLEY WERNER, J.:

On November 6, 1999, plaintiff Robert Jones (dob 2/4/25) attended a continuing education course in the Alumni Auditorium located in the William Black Building of the Presbyterian Hospital in the City of New York (“Hospital”), which is owned and operated by defendant “Trustees of Columbia University” (“University”). Jones proceeded to the balcony section of the theater, mounted the stairs to the last row, and then ascended the two small steps that led up to the bank of seats constituting the last row. The theater was well illuminated; and the floor and the steps were covered with a uniform, mottled pink and gray-brown carpet. Jones seated himself in the first chair on the aisle, with the result that the two small steps he had been obliged to ascend were immediately to his right. After sitting down, Jones believes that he slid the briefcase he was carrying under his seat.

Jones remained in his seat for only a matter of minutes, as an intermission occurred shortly after he arrived. Intending to join the other participants in the lobby, where coffee was being

served, Jones “got up pretty quickly” and began to descend the two small steps leading down from the top bank of seats. During his deposition, Jones admitted that he began **his** descent without looking down, thinking that there was only one step instead of two. Although photographs show that there was a low wall behind plaintiff’s seat, a seat-back in front of **him**, and an arm to the chair in which he had just been sitting, plaintiff testified that he did not hold onto anything as he stepped off the platform. In mid-step, Jones looked down but was confused by the “busy” carpet, missed his footing, and fell. Jones suffered a fractured hip, which required surgery to repair. See plaintiff’s deposition transcript at pp. 31-47.

In or around January 2001, Jones commenced the instant lawsuit against defendants, charging them with causing his injuries through their negligent “ownership, operation, management, care and control” of the subject auditorium, and seeking \$5,000,000 in damages. In his bill of particulars, plaintiff contends that defendants were negligent in their maintenance of “certain dangerous conditions consisting of a set of stairs installed and allowed to remain in a location partially covered by seats; that the steps were covered with carpeting the same color and texture as the adjacent walk aisle and the seating platform; [and] that there were no markings, accent lighting or other aids to identify the location of the stairs.” Following assorted document disclosure and depositions, plaintiff filed a note of issue on March 25, 2002, representing that all discovery was complete.

Defendant University now moves for summary judgment dismissing the complaint, on the ground that it cannot be held liable for an “open and obvious” condition. Plaintiff opposes the motion and cross-moves for summary judgment, arguing, inter alia, that, according to **his** engineering expert, the University was “negligent per se” because the “two stair riser”

configuration on which plaintiff fell violates the New York State Building Code. In the alternative, plaintiff asks that the University's answer be stricken, inter alia because of its failure to provide disclosure regarding any prior accidents at the site of Jones's fall, as well as regarding any subsequent reconstructions or modifications of use of the "short flight stairway" leading to the last row of seats in defendants' auditorium. At the least, plaintiff submits, a trial is necessary to explore questions of fact raised by his engineer's report relative to the confusing carpet-pattern, the lack of accent lighting on the steps, and the partial obscuring of the top step of the subject "stair riser" by the aisle-seat in the "down" position.

It is well established that a landowner who holds property open to the public has a duty to maintain its premises in a reasonably safe condition to prevent foreseeable accidents. Doyle v. State of New York, 271 A.D.2d 394 (2nd Dept. 2000). However, no duty exists to prevent or warn of open and obvious conditions that are readily observable by a person making reasonable use of **his** senses. See, e.g., Meyer v. Turner, 273 A.D.2d 364 (2nd Dept. 2000) (defendant not liable where plaintiffs, who fell through unfinished attic floor, contended only that poor illumination and similarity of color between insulation and attic floor disguised dangerous condition); Dominitz v. The Food Emporium, 271 A.D.2d 640 (2nd Dept. 2000) (defendants entitled to summary judgment where plaintiff tripped on curb in parking lot, because curb "was readily observable by the reasonable use of one's senses"); Brown v. New York Medical College, 162 A.D.2d 139 (1st Dept. 1990) (defendant had no duty to warn patient that physician's stool had wheels, since plaintiff could and should have seen wheels on stool before sitting down on it).

Here, plaintiff admitted knowing that he had climbed up to his seat; yet he neglected to look down and to his right when he stood up preparatory to leaving **his** seat. Had he simply

looked down before descending what he vaguely thought ~~was~~ only one step, he would have seen, in the bright light of the auditorium, that there were in fact two steps. Contrary to plaintiff's suggestion, defendants' failure to lay a different carpet on its steps and/or to otherwise flag them does not rise to the level of "negligence," and does not render the defendants liable for an accident that the plaintiff himself could have prevented by the reasonable use of his senses. Meyer v. Turner, *supra*.

While the issue of whether a dangerous condition is "open and obvious" is usually a question of fact for the jury, Courts have routinely held that where a plaintiff has prior "actual knowledge" of a hazard, the condition is "open and obvious" as a matter of law. Liriano v. Hobart Corp., 92 N.Y.2d 232, 242 (1998) (in product liability case, manufacturer's warning would be superfluous where injured party had actual knowledge of the specific hazard that caused his injury); Sandler v. Patel, 288 A.D.2d 459 (2nd Dept. 2001) (common law negligence liability inapplicable where plaintiff was actually aware of open and obvious defect on stairs); Patrie v. Gorton, 267 A.D.2d 582 (3rd Dept. 1999), leave denied 94 N.Y.2d 761 (2000) (condition of sidewalk was open and obvious, as plaintiff had safely traversed it on prior occasions); Wint v. Fulton Street Art Gallery, Inc., 263 A.D.2d 541 (2nd Dept. 1999) (defendant gallery-owner not liable to plaintiff who had safely negotiated step upon entering gallery, but who fell on it later). Under the circumstances, plaintiff's engineer's argument that the aisle seat in plaintiff's row, when in the "down" position, could partially obscure the top step will not suffice to defeat defendants' entitlement to summary judgment because, regardless of any potential obstacle presented by the seat, plaintiff was already familiar with the two-step "stair riser." In any event, plaintiff has never averred that he looked down. Rather, he testified that he did not look at the floor until he was

already in mid-descent. It further appears from plaintiff’s deposition testimony that he had actually been sitting in the aisle seat just before his fall. Accordingly, it is fair to conclude that the seat – whether it did or did not automatically retract when the plaintiff stood up – was already behind him when he turned to descend the two-step “riser.”

The Court concludes as a matter of law that the defendants herein owed no duty to plaintiff, in light of the open and obvious nature of the complained-of “defect,” as evidenced by the fact that plaintiff had safely negotiated the subject steps only minutes before he fell.

Plaintiff’s papers in opposition to defendant’s motion and in support of his cross-motion do not require a different result, do not establish his entitlement to summary judgment on a “negligence per se” theory, do not justify a striking of defendant’s answer, and do not create any issues of fact requiring a trial.

In support of plaintiff’s position, his engineer, Robert L. Schwartzberg, P.E., has submitted a certified report in which he opines, inter alia, that “short flight stairways” are violative of the New York State Building Code.’ However, even assuming that Mr. Schwartzberg’s conclusions are correct, a regulatory violation constitutes only “some evidence” of negligence, and does not provide a basis for absolute liability. See Elliott v. City of New York, 95 N.Y.2d 730 (2001); Major v. Waverly & Ogden, Inc., 7 N.Y.2d 332 (1960); DaBiere v. Craig, 268 A.D.2d 875 (3rd Dept. 2000). Rather, compounding the regulatory breach, there must be other

’State of New York Official Compilation of Codes, Rules and Regulations, Title 9 Executive Department, Volume B, Subtitle S Division of Housing and Community Renewal, Chapter I, State Uniform Fire Prevention and Building Code, Subchapter B Building Construction; Department of State, 162 Washington Avenue, Albany, New York 12231. The provisions cited recommend, inter alia, that builders avoid installing “short flight stairs” of fewer than three steps, “where possible,” and especially in “a required exit.”

evidence of negligence on a landowner's part before liability will attach. Id. The Court finds as a matter of law that this additional negligence is not supplied by defendant's failure to put different carpeting on its auditorium's steps, nor by its failure to post "distinguishing marks or warning devices" on stairs in a brightly lighted theater. The Court notes that such precautionary measures on defendants' part would have served no purpose, where plaintiff began his descent without looking down and without holding onto available supports.

Plaintiff has in addition failed to counter defendant's argument that the State Uniform Fire Prevention Code is inapplicable to the William Black Building, both because it is a New York City building subject to the different regulatory provisions of the New York City Administrative Code (see e.g., New York City Administrative Code Section 27-103), and because it was constructed prior to the promulgation of both the State and City Codes.

Finally, plaintiff is not entitled to further pretrial discovery, inter alia because plaintiff himself certified that all disclosure was complete when he filed his note of issue in March 2002. See Gray v. Crouse-Irving Memorial Hospital, Inc., 107 A.D.2d 1038 (4th Dept., 1985).

The foregoing discussion requires that the complaint be dismissed in its entirety, even though defendant Hospital did not move for such relief. CPLR 3212(b).

Accordingly, it is

ORDERED that defendant University's motion for summary judgment is granted, and the complaint is dismissed as against defendant University, with costs and disbursements to defendant University as taxed by the Clerk of the Court upon the submission of an appropriate bill of costs; and it is further


ORDERED that, upon searching the record, the Court hereby dismisses the complaint

insofar as asserted against non-movant defendant Hospital as well; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

The foregoing constitutes the Decision, Order and Judgment of the Court.

Date: September 17, 2002
New York, New York



SHIRLEY WERNER KORNREICH