

**Bressingham v Jamaica Hospital Medical Center**

2003 NY Slip Op 30035(U)

October 17, 2003

Supreme Court, Queens County

Docket Number: 0018362/8362

Judge: Peter O'Donoghue

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE PETER J. O'DONOGHUE IA PART 5  
Justice

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RAYMOND BRESSINGHAM, et al. Index  
Number 18362 2001

- against - Motion  
Date August 26, 2003

JAMAICA HOSPITAL MEDICAL CENTER, Motion  
et al. Cal. No. 6

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The following papers numbered 1 to 5 read on this motion by defendant Pyrosignal & Suppression, Inc. for summary judgment dismissing the complaint and all of the cross claims against it and on this cross motion by defendant Jamaica Hospital Medical Center for summary judgment dismissing the complaint and all of the cross claims against it.

	<u>Papers Numbered</u>
Notice of Motion - Affidavits - Exhibits .....	1
Notice of Cross Motion - Affidavits - Exhibits ...	2
Answering Affidavits - Exhibits .....	3
Reply Affidavits .....	4-5

Upon the foregoing papers it is ordered that the motion and the cross motion are granted. (See the accompanying memorandum.)

Dated: October 17, 2003

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J.S.C.

## M E M O R A N D U M

SUPREME COURT : QUEENS COUNTY  
 IA PART 5

	X	INDEX NO. 18362/01
RAYMOND BRESSINGHAM, et al.		BY: O'DONOGHUE, J.
- against -		DATED: October 17, 2003
JAMAICA HOSPITAL MEDICAL CENTER, et al.	X	

Defendant Pyrosignal & Suppression, Inc. has moved for summary judgment dismissing the complaint and all of the cross claims against it. Defendant Jamaica Hospital Medical Center has cross-moved for summary judgment dismissing the complaint and all of the cross claims against it.

On July 16, 1998, plaintiff Raymond Bressingham, employed by the New York City Fire Department, responded to a fire alarm at Jamaica Hospital. As the plaintiff walked toward a fire alarm panel located on the first floor of the hospital near the lobby, he observed a toolbox on the floor in his way. The plaintiff stepped over the toolbox, and his left foot landed on a screwdriver on the floor near the toolbox. The plaintiff allegedly sustained a torn medial meniscus and ACL of the left knee. The plaintiff alleges that after his accident, he received a radio report from another fireman informing him that there had been a false alarm. The plaintiff alleges that false alarms were a recurring problem at Jamaica Hospital. Indeed, the hospital had been cited for

violations of the New York City Building Code because of unnecessary or unwarranted alarms in violation of New York City Building Code section 27-127 and Fire Department Rule 17-06. On the other hand, after the alarm on July 16, 1998, Carmen Altieri, a security supervisor, filled out a report which stated in relevant part that an engineer and a security officer had gone to Room 535-B and had smelled smoke. At her deposition, Altieri testified that she believed that a patient had been smoking. Greg Montgomery, a fire protection engineer and the President of defendant Pyrosignal, a company engaged in the sales and maintenance of fire protection systems, testified at his deposition that if smoke sets off a fire detector, that is not a false alarm. He further testified that a smoke detector has not malfunctioned where a patient smokes in a hospital room and sets it off.

Defendant Pyrosignal first began to service the fire alarm system at Jamaica Hospital in March, 1998. Defendant Pyrosignal last serviced the fire alarm system on June 17, 1998, approximately one month before the plaintiff's accident. At the relevant time, defendant Pyrosignal had approximately thirteen technicians who carried around their own set of tools in a shoulder wrap. None of them used a toolbox. Defendant Pyrosignal did not have a service contract with Jamaica Hospital at the relevant time, and the company performed its work on an "as-called" basis.

General Municipal Law § 205-a, "Additional right of action to certain injured or representatives of certain deceased firefighters," provides in substance that in the event of an accident which causes injury or death to a firefighter and which "occurs directly or indirectly as a result of any neglect, omission, willful or culpable negligence of any person or persons in failing to comply with the requirements of any of the statutes, ordinances, rules, orders and requirements of the federal, state, county, village, town or city governments or of any and all their departments \*\*\* the person or persons guilty of said neglect, omission, willful or culpable negligence at the time of such injury or death shall be liable" for damages. (See, Nelson v Donahue, 248 AD2d 329; McCullagh v McJunkin, 240 AD2d 713.) In order to establish the requisite culpability under General Municipal Law § 205-a, the plaintiff must establish, inter alia, that the defendant either created the defective condition or had notice of it. (See, Nelson v Donahue, supra; McCullagh v McJunkin, supra.) The plaintiff must establish that the defendant created or had notice of a condition constituting a violation of a statute, rule or ordinance and that such a violation directly or indirectly caused the plaintiff's harm. (See, Nelson v Donahue, supra.)

Turning first to the cross motion by defendant Jamaica Hospital, the court notes that summary judgment is warranted where there is no issue of fact which must be tried. (See, Alvarez v

Prospect Hospital, 68 NY2d 320.) In the case at bar, the plaintiff failed to produce evidence sufficient to create triable issues of fact concerning whether an agent of the defendant hospital left the screwdriver on the floor or whether the defendant hospital had notice of the screwdriver on the floor. The court notes that Altieri testified at her deposition that she had never seen hospital employees use a toolbox prior to the plaintiff's accident. Plaintiff Bressingham did not establish that an agent of the defendant hospital created a defective condition by leaving the screwdriver on the floor or that the defendant hospital had notice that the screwdriver was on the floor. (See, Nelson v Donahue, supra; McCullagh v McJunkin, supra.) The plaintiff also failed to produce evidence sufficient to create a triable issue of fact concerning whether the hospital's allegedly defective alarm system directly or indirectly caused his injury. Although there is evidence in the record that the system had previously caused false alarms, the plaintiff failed to rebut the defendant's evidentiary showing that a genuine alarm had sounded on the relevant occasion. The document prepared by Altieri recorded that two hospital employees had gone to Room 535-B and had smelled smoke. Greg Montgomery, a fire protection engineer and the President of defendant Pyrosignal, testified at this deposition that a smoke detector has not malfunctioned where a patient smokes in a hospital room and sets it off. The plaintiff failed to submit an affidavit

from an expert showing that cigarette smoke should not cause a fire alarm system to sound, and the conclusory assertion of the plaintiff's attorney in that regard has no probative force on this motion for summary judgment. The plaintiff failed to submit evidence sufficient to create a triable issue of fact concerning whether, under the circumstances of this case, a defect in the fire alarm system directly or indirectly caused the plaintiff's harm. (See, Nelson v Donahue, supra.)

Accordingly, the cross motion by defendant Jamaica Hospital Medical Center for summary judgment dismissing the complaint and all of the cross claims against it is granted.

Turning to the motion by defendant Pyrosignal, the plaintiff failed to submit evidence sufficient to create triable issues of fact concerning whether the company left the screwdriver on the floor or whether the company, which at the relevant time had no service contract with the hospital, was responsible for the allegedly defective condition of the fire alarm system. There are no genuine issues of fact regarding whether the company created or had notice of a condition constituting a violation of a statute, rule or ordinance and whether such a violation directly or indirectly caused the plaintiff's harm. (See, Nelson v Donahue, supra.)

Accordingly, the motion by defendant PyroSignal & Suppression, Inc. for summary judgment dismissing the complaint and all of the cross claims against it is granted.

Short form order signed herewith.

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J.S.C.

Accordingly, the motion by defendant PyroSignal & Suppression, Inc. for summary judgment dismissing the complaint and all of the cross claims against it is granted.

Short form order signed herewith.

  
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J.S.C.