

**Darrow v Our Lady of Lourdes Memorial Hospital,
Inc.**

2004 NY Slip Op 30134(U)

April 19, 2004

Supreme Court, Broome County

Docket Number: 0023912/0011

Judge: Jeffrey A. Tait

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At a Motion Term of the Supreme Court of the State of New York, held in and for the Sixth Judicial District, at the Broome County Supreme Court, Binghamton, New York, on the 19th day of March, 2004

PRESENT: HON. JEFFREY A. TAIT
JUSTICE PRESIDING

STATE OF NEW YORK
SUPREME COURT : COUNTY OF BROOME

RODNEY M. DARROW and
DEVINA DARROW,

Plaintiff,

vs.

OUR LADY OF LOURDES MEMORIAL
HOSPITAL, INC.,

Defendant.

DECISION AND ORDER

Index No. 2001-2391
RJI No. 2004-0107-M

APPEARANCES:

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HON. JEFFREY A. TAIT, J.S.C.

Plaintiffs Rodney M. Darrow and his wife Devina Darrow commenced this action against defendant Our Lady of Lourdes Memorial Hospital, Inc. (“Lourdes”) alleging that Mr. Darrow was injured as a result of the negligence of Lourdes. Mr. Darrow, a regular patient of a physician located at a Lourdes facility, alleges that he was passing through a hallway near the waiting area when an elderly woman in a wheelchair abruptly moved in front of Mr. Darrow, causing him to fall and injure his knee. Mr. Darrow contends that the subject hallway is narrow and congested and that Lourdes was negligent in both constructing such a hallway and in permitting an elderly woman in a wheelchair to be placed in a congested area of said hallway.

Defendant Lourdes moves for summary judgment upon the grounds that there is no material question of fact at issue and the evidence is insufficient to permit a rational trier of fact to find that defendant Lourdes was negligent in the design or construction of the hallway or with regard to the elderly woman’s placement in the hallway.

In support of its motion, defendant Lourdes submits an attorney’s affirmation, the affidavit of Joseph D’Antuono, Director of Facilities Management at Lourdes, and the affidavit of Lee Bearsch, a Registered Architect with experience in architectural design, supervision, and project administration. In opposition, plaintiffs submit the affidavit of Mr. Darrow. Defendant Lourdes submits the reply affidavit of its attorney.

Defendant Lourdes argues that the hallway at issue complies with all applicable building codes and that there is simply no evidence that it was negligent either in designing or constructing the hallway or in permitting the elderly woman to be placed in the hallway.

It is well settled that a plaintiff claiming negligent design or construction of a structure must put forth evidence that the structure deviates from accepted industry standards (*Columbus v. Smith & Mahoney, P.C.*, 259 AD2d 857, 858 [3d Dept 1999]). In determining the applicable industry standards, Courts look to applicable building codes and expert testimony (*See id.* at 858-859).

The D'Antuono affidavit submitted in support of defendant's motion for summary judgment establishes that Mr. D'Antuono provided defendant's expert, Mr. Bearsch, with the architectural drawings of the 1992 redesign project that included the hallway in question. Mr. D'Antuono states that he is aware of the particular location of Mr. Darrow's fall based upon Mr. Darrow's prior deposition testimony and the mark Mr. Darrow made on an exhibit showing that particular location. Mr. D'Antuono further states that he met with Mr. Bearsch at the Lourdes facility and showed him both the subject hallway and the location where Mr. Darrow fell.

The Bearsch affidavit establishes that Mr. Bearsch has been a practicing architect for twenty-seven years and is familiar with the design of hallways in public buildings, particularly medical office buildings and hospitals. Mr. Bearsch states that he visited the site where Mr. Darrow allegedly fell, took measurements of the subject hallway, and found that the measurements exceed the minimum height and width required by applicable building codes. Mr. Bearsch further states that a review of the relevant architectural drawings and building codes confirms that the hallway at issue meets or exceeds all code requirements. Based upon the foregoing, Mr. Bearsch opines that the hallway in question was designed and constructed in accordance with good and accepted industry standards.

The defendant having established that the hallway at issue meets or exceeds building

code requirements, it is incumbent on plaintiffs to proffer evidence in admissible form to refute the defendant's expert opinion and raise a question of fact as to whether the hallway was negligently designed or constructed (*See id.*). However, the Darrow affidavit submitted in opposition to defendant's motion merely states, without additional evidentiary support, that there is a question of fact regarding defendant's negligence and reiterates the allegations found in the Verified Complaint. In this regard, plaintiffs' opposition to the instant motion, consisting of conclusory and speculative allegations of negligence and devoid of any evidentiary materials that raise questions of fact, is insufficient to defeat defendant's motion for summary judgment (*DiMarco v. Westinghouse Electric Corp.*, 170 AD2d 760, 761 [3d Dept 1991]). Plaintiffs have not established an issue of fact regarding their claim for negligent construction and design.

Likewise, plaintiffs have not established the existence of any issues of fact in connection with their claim that defendant was negligent in allowing the elderly woman in the wheelchair to be placed in the allegedly congested hallway. In support of the instant motion, defendant Lourdes cites to Mr. Darrow's deposition testimony, where he testified that: (1) he had been a patient at the Lourdes facility for five years, that the area had always been laid out the same, and that the hallway was often congested; (2) he could see the entire hallway from the moment he entered it; (3) he did not notice the elderly woman in the wheelchair until she moved, causing him to fall; and (4) he does not know how the woman in the wheelchair came to be placed in the hallway. While a landowner who holds property open to the public must maintain its property in a reasonably safe condition to prevent foreseeable injuries, there is generally no duty to warn of conditions that are easily observable with the normal use of one's senses (*see DeRossi v. Gloub Corp.*, 209 AD2d 911 [3d Dept 1994]; *Russell v. Archer Building Centers, Inc.*, 219

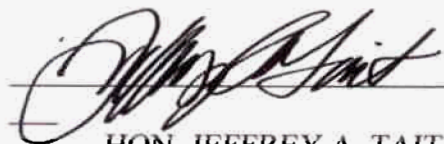
AD2d 772, 773 [3d Dept 1995]; *Blecher v. Holiday Health & Fitness Center of N.Y., Inc.*, 245 AD2d 687 [3d Dept 1997]).

Further, plaintiffs do not offer any evidentiary support for the contention that defendant Lourdes was negligent in permitting an elderly woman to be placed in an allegedly congested area of defendant's hallway or that the hallway area was not reasonably safe (*see MacDonald v. City of Schenectady*, 308 AD2d 125 [3d Dept 2003]). The plaintiffs have failed to introduce any evidence as to who placed the elderly woman in the hallway, how long she was in that location, or that her very placement in the hallway (as opposed to her own abrupt movement) was somehow unsafe and hazardous (*see DeRossi* at 912; *MacDonald* at 127). To the contrary, it appears that the cause of Mr. Darrow's fall was simply an unfortunate collision of two patients.

Accordingly, defendant's motion for summary judgment dismissing this action is granted.

This Decision shall also constitute the Order of the Court pursuant to rule 202.8(g) of the Uniform Rules for the New York State Trial Courts and it is deemed entered as of the date below. To commence the statutory time period for appeals as of right (CPLR 5513[a]), a copy of this Decision and Order, together with notice of entry, must be served upon all parties.

Dated: April 19, 2004
Binghamton, New York


HON. JEFFREY A. TAIT
Supreme Court Justice

The following documents were filed with the Clerk of the County of Broome:

- Notice of Motion for Summary Judgment dated February 2, 2004
- Affirmation of Casey Egan Doyle, Esq. dated February 2, 2004
- Affidavit of Joseph D'Antuono sworn to January 30, 2004
- Affidavit of Lee Bearsch sworn to January 29, 2004
- Affidavit in Opposition of Defendant's Motion for Summary Judgment dated February 18, 2004
- Reply Affidavit of Casey Egan Doyle sworn to March 17, 2004