

Ridolfi v Williams

2007 NY Slip Op 31539(U)

June 4, 2007

Supreme Court, New York County

Docket Number: 0112174/2005

Judge: Shirley W. Kornreich

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: SHIRLEY WERNER KORNREICH
Justice **J.S.C.**

PART 54

Index Number : 112174/2005
RIDOLFI, JANE
vs
WILLIAMS, ANNE
Sequence Number : 003
SUMMARY JUDGMENT

INDEX NO. 112174/2005
MOTION DATE 4/19/07
MOTION SEQ. NO. 003
MOTION CAL. NO. _____

this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...
Answering Affidavits — Exhibits _____
Replying Affidavits _____

PAPERS NUMBERED

1, 2
3
4

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

FILED

JUN 08 2007

COUNTY CLERK'S OFFICE
NEW YORK

**MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM
DECISION AND ORDER.**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 6/4/07

SHIRLEY WERNER KORNREICH
J.S.C.
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

-----X
JANE RIDOLFI,

Plaintiff,

-against-

INDEX NO. 112174/2005
DECISION & ORDER

ANNE WILLIAMS and BRUCE WILLIAMS,

Defendants.

-----X
KORNREICH, SHIRLEY WERNER, J.:

This is an action to recover for personal injuries suffered when plaintiff slipped and fell on steps outside defendants' home while it was raining. Defendants now move for summary judgment.

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JUN 08 2007
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NEW YORK

I. *Facts*

A. *Defendants' Proof*

Defendants presented the following evidence from plaintiff's EBT. Plaintiff is a freelance chef, hired by defendants to cook for a party at their home in Sagaponack, NY on May 25, 2005. Plaintiff, a personal friend of defendants, arrived the day before and spent the night at the residence. She had stayed at the house several times over the previous few years, including a stay of over a week in 2004. She testified that the kitchen entrance was the primary means of entry and that the stairway leading to the kitchen had handrails.

It had started raining in mid-afternoon. Plaintiff was cooking part of the meal on an outdoor grill which was reached by exiting through the kitchen and descending the stairs.

Plaintiff had safely navigated the steps in the rain several times, as had other guests at the party. At around 8:30 p.m., plaintiff went to turn the steaks on the outdoor grill. She noticed nothing wrong with the last step, but as she stepped down on it, her left foot slipped and she fell forward to the ground. Plaintiff had been walking down the right side of the stairs, and did not use the handrail. Plaintiff claimed that a wet step caused her to fall, and did not remember having anything to grab onto as she fell forward.

Defendant Anne Williams testified to the following facts in her EBT. Defendants purchased the home in February 2003 and had all exterior stairs painted with non-slip paint due to her hip condition. Defendants had not modified or altered the stairway in any other way, and no one had ever slipped on the stairs during the time they owned the house.

Defendants presented plaintiff's engineering report from June 21, 2006. Plaintiff's expert found the stairway to be in "excellent condition" and the coefficient of friction for the stairs, in both wet and dry conditions, above the acceptable standard of 0.5. Defendants' expert further opined that the handrail was excepted from § 713 of New York State's Building Code ("NYSBC"), the section addressed to handrails, because the handrail predated the code and had not been structurally modified. Moreover, defendants argue that the handrail was not the proximate cause of plaintiff's accident.

B. Plaintiff's Proof

Plaintiff presented the following evidence. After defendants purchased the home, they undertook a series of renovations. They renovated two bedrooms, hung wallpaper, painted,

installed a fence surrounding the property, enclosed a sun room, installed slate floors, and re-did the pool. The handrail on the stairway was not modified.

Plaintiff testified that there was nothing to grab onto when she slipped and fell. Further, her expert opined that the handrail failed to conform to NYSBC § 713.1(f) in that it did not continue to the ground at the base of the stairway, and that this failure was a significant and proximate cause of plaintiff's accident.

II. Conclusions of Law

In order to prevail on a motion for summary judgment, the movant "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact." *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 324 (1986). Upon this showing, "the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action." *Id.*

A. Wet Stairs

Defendants have met their burden in regard to the wet stairs. Defendants had no actual or constructive notice that the stairs were in any way dangerous. No one had slipped on the stairs before, and no one had mentioned that they were slippery that night. Plaintiff's own expert testified that they were in excellent condition and had a coefficient of friction above 0.5, the standard. As a result, plaintiff has failed to raise a material issue of fact relating to the stairs.

B. Handrail

Since defendants' purchase of the subject house, the State of New York has adopted a new building code, effective July 3, 2002. *See* 19 NYCRR 1220.1; NYJUR Buildings § 8. Consequently, the legality of the handrail and whether it is exempt would fall under this new code, rather than the code cited by both sides in their papers. Under the new code, if renovations to a house exceed 50 percent of the total area of the dwelling unit, the work is considered an entire reconstruction and no code exception exists. *See* Residential Building Code of New York State § AJ501.3. The record is devoid of facts which would allow this court to reach a conclusion, as a matter of law, as to whether the handrails violate the State's Residential Building Code.

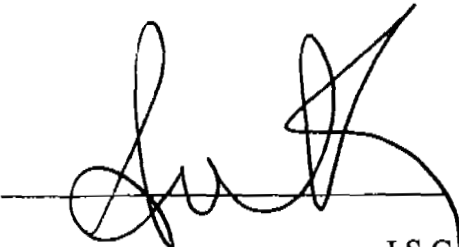
Nonetheless, summary judgment should be granted defendants because the handrails were not a proximate cause of her accident. Plaintiff testified that she slipped because of a wet step, and not because of an illegally constructed handrail. She was aware of a handrail on the stairs, but was not holding on to it as she descended. *Dooley v. Dixon*, 154 A.D.2d 331 (2d Dept. 1989) and *Hotzoglou v. Hotzoglou*, 221 A.D.2d 594 (2d Dept. 1995), the cases cited by plaintiff, do not change this result. In *Dooley* and *Hotzoglou*, there were no handrails on the stairs. The existence of two handrails here distinguishes this case.

It is sheer speculation that any type of handrail would have prevented plaintiff's fall. *See Bitterman v. Grotzohann*, 295 A.D.2d 383, 384 (2d Dept. 2002) ("a determination that these alleged defects, rather than a misstep or loss of balance, were a proximate cause of the plaintiff's accident would be based on sheer speculation"). Therefore, plaintiff's own testimony leads to the conclusion that the handrail was not the proximate cause of her accident. *See Sarmiento v. C*

& E Associates, 2007 NY Slip Op 4548 (1st Dept. 2007) (plaintiff's testimony eliminated any possibility that inadequate lighting played any causal role in the accident). Accordingly, it is

ORDERED that the motion of defendants Anne Williams and Bruce Williams for summary judgment dismissing the complaint, is granted.

Dated: June 4, 2007



J.S.C.

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