

Bradley v 202 Beach 30th Corp.

2007 NY Slip Op 31648(U)

June 8, 2007

Supreme Court, Queens County

Docket Number: 0001442/2005

Judge: David Elliot

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DAVID ELLIOT IAS PART 14
Justice

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WILLIAM BRADLEY,	No. 1442/05
Plaintiff,	Motion
-against-	Date March 27, 2007
202 BEACH 30 TH CORPORATION AND	Motion
PLAZA CONTRACTING CO.,	Cal. No. 8&9
Defendants.	Motion
-----	Seq. No. 3&4

PAPERS
NUMBERED

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This decision and order disposes of two motions, numbered 8 and 9, motion sequence numbers 3 and 4 on the Part 14 motion calendar of March 27, 2007.

Plaintiff commenced this action to recover damages for personal injuries alleged to have been sustained on May 30, 2004 due to a fall down a four step exterior staircase of premises located at 204 Beach 30th Street, Far Rockaway, in the County of Queens, City and State of New York.

Defendant Plaza Contracting Co. a/k/a Plaza Construction (Plaza) moves for an order pursuant to CPLR 3212 granting summary judgment in its favor and dismissing the complaint and any and all cross-claims as against it. Defendant 202 Beach 30th Corporation (Beach) moves for the same relief.

Contentions of the Parties

Defendant Plaza asserts that the subject premises is owned by defendant Beach. At his deposition, plaintiff

testified that, at about 10:00 pm on May 30, 2004, he visited his friend's house. He could see the steps and had no prior problems with the steps or the handrail. However, he had not used the handrail in the past. He claims to have fallen due to a rickety handrail.

Defendant Plaza submits the deposition testimony of Lawrence Schlau, defendant Beach's Manager in May 2004. He testified that he conducted visual inspections of the premises to make sure that it was clean and that nothing was broken. The handrail on the exterior staircase was in good condition and he had not received any complaints regarding it. In 2003, the staircase had been repaired by Willie Campbell of KC Air Conditioning which repaired the steps and refastened the railing. In April 2004, defendant Plaza repaired three loose bricks on the second step from the top. None of the loose bricks were in the vicinity of the support rods coming down from the handrail into the base. The remaining steps were in good condition.

Defendant Plaza also submits the deposition testimony of Mohammad Muzahir, its vice-president. He testified that his company did not perform any work in relation to the handrail. It only repaired three loose bricks on the second step of the staircase and they were not in the vicinity of the handrail. Defendant Plaza argues that there is no evidence that it had notice of the alleged defective condition and owed no duty to plaintiff as it was hired merely to conduct minor repair work. There is no evidence that defendant Plaza created or caused the alleged condition of the handrail.

Defendant Beach asserts that plaintiff's bill of particulars alleges that the handrail to the subject staircase shook as he attempted to hold it causing him to fall down the stairs. Defendant Beach submits the plaintiff's deposition testimony. Plaintiff testified that he did not seek immediate medical attention but called from his apartment for an ambulance on the next day. The ambulance call report, dated June 1, 2004, states that the patient stated that "last night after a few drinks, stepped of [sic] the edge of the curb and twisted his ankle." The EMT who wrote the report, Christopher Lipkin, testified, as a non-party witness, that he wrote down exactly what the patient told him.

Defendant Beach argues that it cannot be held liable as it did not have actual or constructive notice of the

condition nor did it cause or create it. There is no evidence that the repair work in 2003 was done in a negligent manner. The repair work in 2004 was not, in any way, related to the handrail. There is only a conclusory allegation as to how long the condition existed.

Plaintiff opposes the motion and cross-motion. He asserts that Mr. Muzahir, on behalf of defendant Plaza, also testified that he noticed that the five steps on the outside front of the staircase needed to be repaired. A proposal, therefor, dated April 10, 2004, was submitted to Belle Solomon, the manager and former principal of defendant Beach. It was for removal of all existing steps from the front facade, rebuilding the steps with matching bricks and providing new limestone on the steps. A second proposal for the minor repair was prepared as defendant Beach did not want to do all of the work in the first proposal. Only three bricks were then repaired. He did not do any work in the area below the two rods which suspended the railing.

Plaintiff also relies upon the deposition of defendant Beach's witness, Mr. Schlau, who testified as to his responsibilities as managing agent. He would drive around the properties, visually check the outside of the buildings for cleanliness and, if anything was broken, he would tell Ms. Solomon and get someone to repair it. It was possible that on the occasions he was at the premises that he would actually inspect them and that would include walking up the subject staircase. He didn't recall using the handrail. He did not conduct any searches with respect to the condition of the staircase around the time of the accident. His drive by inspection would take less than a minute. He did not recall if he exited his vehicle and made a more detailed inspection from January 2004 to May 2004.

Plaintiff argues that summary judgment should be denied. Defendant Beach owned and managed the premises and was bound to exercise reasonable care in maintaining them in a reasonably safe condition. Plaintiff's engineering expert, Nicholas Bellizzi, P.E., states in his affidavit that: "The outer brick wall that supports the outside perimeter of the stairway was in an advanced state of disrepair. The outer brick wall, or facade, had become separated from the rest of the stairway at its upper segment. Prior attempts of a repair with cement were evident at the damaged and separated upper segment. This upper segment was cracked, separated, uneven, irregular, non-uniform and unstable. When weight or pressure was place

[sic] on the metal fence guard and handrail, the metal fence guard and handrail was found to move both outwardly and vertically, i.e., side to side and up and down." He further stated that the staircase, inter alia, violated certain New York City Building Code requirements for handrails, uniform riser dimensions and proper maintenance and that the handrail's effectiveness was compromised due to its being unstable, defective and its having a damaged brick support base. Plaintiff also submits photographs showing the condition of the subject staircase.

In reply, defendant Plaza argues that plaintiff did not submit any evidence to refute its position that it owed no duty to the plaintiff, that it did not have notice of the alleged condition and that it did not cause or create the alleged condition. The premises were owned by defendant Beach and defendant Plaza merely did minor repair work with respect to three loose bricks which were not near the handrail. There is no showing of any notice of the condition as to defendant Plaza. Plaintiff testified that he had never had any problems with the stairs or the handrail on his prior visits to the premises. Defendant Beach's witness testified that it was not on notice of any problems with respect thereto. There is no evidence that the stairs or the steps caused the accident but rather that it was the handrail. Plaintiff's expert does not state that the repairs made by defendant Plaza were improper.

Defendant Beach replies that there is no evidence to show that it knew of the alleged condition before the accident for a period of time that would have allowed it to remedy the condition. Plaintiff never saw the condition until his accident and does not contest that defendant Beach did not create the condition or have actual notice of it.

Decision of the Court

The motion by defendant Plaza is granted. The complaint is hereby dismissed as against defendant Plaza Contracting Co. The motion by defendant Beach is denied.

"A party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, producing sufficient evidence to demonstrate the absence of any material issue of fact. Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish

the existence of material issues of fact that require a trial for resolution." Giuffrida v. Citibank, 100 NY2d 72 at 81.

In the instant case, defendant Plaza has established its entitlement to judgment as a matter of law. The testimony of its witness and defendant Beach's witness shows that defendant Plaza merely repaired three loose bricks on the second step of the staircase. That step did not contain either of the two rods of the handrail which supported it. Plaintiff's expert does not indicate that said repair in any way contributed to the instability of the handrail.

With respect to defendant Beach, the owner of the premises, its evidence established that the staircase was in good condition. However, in opposition to its motion, plaintiff submits his expert's affidavit which asserts several violations of the New York City Building Code with respect to handrails and staircases. He states that the staircase was in an advanced of disrepair. Further, prior attempts of a repair with cement were evident in the area where the outer brick wall separated from the rest of the staircase. The defective damaged and unstable brick support base, in his opinion, compromised the effectiveness of the handrail. Photographs of the area where the support rods for the handrail are inserted into the brick base and on the sidewalk show a substantial amount of concrete in the repaired area. However, the concrete in both areas is cracked. The area by the top step appears to be falling away from the staircase. Testimony by defendant Beach's witness, indicated that prior repairs had been done on its behalf with respect to the staircase and handrail. It is also noted that the first proposal submitted by defendant Plaza to defendant Beach recommended replacement of all of the steps of the staircase. Defendant Plaza's witness testified that such invoice was faxed to Ms. Solomon, defendant Beach's manager, and that she told him to just do the minor repair. Questions of fact are raised as to defendant Beach including, but not limited to, whether it had actual or constructive notice of or created the alleged defective condition. Plaintiff, therefore, has submitted sufficient evidence to warrant denial of defendant Beach's motion.

Accordingly, the motion by defendant Plaza is granted. The complaint is hereby dismissed as against defendant Plaza Contracting Co. The motion by defendant Beach is denied.

Dated: June 8, 2007

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HON. DAVID ELLIOT