

Espiel v Ropetmar Garage, Inc.
2007 NY Slip Op 31664(U)
June 15, 2007
Supreme Court, New York County
Docket Number: 0115835/2005
Judge: Jane S. Solomon
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JANE S. SOLOMO
Justice

PART 55

Index Number : 115835/2005
ESPRIEL, ROBERT
vs
ROPETMAR GARAGE
Sequence Number : 003
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE 4/26/07
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

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

1-3
4-3 10
~~2-7~~ 11

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed memorandum decision and order.

N.B. -- pre-trial conference is scheduled for July 23, 2007 at 2 PM.

FILED

JUN 18 2007
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 6-15-07

J.S.
JANE S. SOLOMO J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 55

-----X

ROBERT ESPIEL,

INDEX NO. 115835/05

Plaintiff,

DECISION AND ORDER

-against-

ROPETMAR GARAGE, INC. and SOUTHBRIDGE
TOWERS, INC.,

Defendants.

-----X

JANE S. SOLOMON, J.

Defendant Southbridge Towers, Inc. ("Southbridge") is the owner of a large apartment complex located at 100 Beekman Street in lower Manhattan. The complex includes a parking garage that is leased to defendant Ropetmar Garage, Inc. ("Garage"). A resident of the apartment complex, plaintiff Robert Espiel ("Espiel"), alleges that he tripped and fell in the garage while walking toward a ramp to retrieve his mother's car. He claims that he tripped over a two-inch discrepancy between two slabs of concrete.

Southbridge moves for summary judgment dismissing the complaint on the grounds that it had no duty to remedy defects of the sort Espiel fell over, and in any event, the alleged defect is de minimus and trivial. It also moves for summary judgment on its cross-claim for common-law indemnity against Garage. Garage opposes the motion on the cross-claim and cross-moves to dismiss the complaint against it, also on the ground that the alleged

defect is trivial. The motions are denied for the reasons below.

A. TRIVIAL DEFECT

A property owner may not be liable for injury arising from a trivial defect. Hecht v City of New York, 60 NY2d 57, 61 (1983). Whether a dangerous or defective condition existed is generally a question of fact for the jury. Trincere v County of Suffolk, 90 NY2d 976, 977 (1997). In the present case, plaintiff alleges that he tripped and fell over a two-inch mis-level between concrete slabs near the ramp. Defendants rely upon photographs of the defect which either bolster or challenge Espriel's description, depending upon the photographer's angle, but do not unequivocally refute. Accordingly, whether the alleged defect is so trivial such that there was no duty to repair it is a question of fact.

B. OWNER'S DUTY TO REPAIR

Southbridge also argues that, under the terms of its lease with Ropetmar, it had no duty to remedy the alleged defect. Paragraph 5 of the lease (Notice of Motion, Exhibit C) provides that the tenant will take good care of the premises and make repairs as needed to preserve them in good working condition, except that the tenant is not responsible for structural repairs unless occasioned by the tenant's negligence. Under paragraph 29 of the lease, Ropetmar is obligated to "make all repairs and replacements to the sidewalks and curbs adjacent to [the demised

premises] and to all ramps, platforms and courtyards adjacent thereto used as or in connection with entrances to or exits from the demised premises made necessary by Tenant's use or occupancy" Southbridge was an out of possession landlord, but it retained the right to re-enter to make repairs.

A Ropetmar employee testified regarding who is responsible for making repairs. He stated that "cracks" in the concrete would generally be repaired by Ropetmar, which kept bags of cement and tools for making small repairs on the premises. Before Espiel's accident, however, there was a dispute between Ropetmar and Southbridge regarding who was responsible for a repair to the garage's concrete floor. Ropetmar had contended that the requested repair was structural in nature. It is not clear from the testimony whether the condition Espiel claims caused his fall was a subject of this dispute.

Southbridge argues that the alleged defect was not structural, so it has no liability under the terms of the lease. Its witness testified at deposition that he viewed the alleged defect as nothing more than a seam that needed caulking. Southbridge's attorney opines that the caulking wore out as a result of cars constantly driving over it, and he claims that a failure to caulk is clearly not a structural defect. However, the attorney's opinion of the cause of the defect is not material, and the other testimony and the photograph of the

defect are not consistent with Southbridge's description of a crack that merely needs to be re-caulked. The photographs appear to depict two concrete slabs that are not level. Southbridge has not submitted evidence showing that this condition is not a structural defect as a matter of law, or, if the condition is a structural defect, that it was created by Ropetmar so it must indemnify Southbridge under paragraph 5 of the lease.

Finally, paragraph 29 of the lease requires Ropetmar to make repairs to ramps "used as or in connection with entrances and exits from the demised premises." Espiel fell in a flat area just before the ramp began. It is not clear that paragraph 29 addresses interior ramps necessary to get from one parking level to another, as opposed to a ramp used to enter or exit the premises. Also, this section does not appear to relieve Southbridge of its obligation under paragraph 5 of the lease to repair structural defects. Accordingly, it hereby is

ORDERED that the motion and cross-motion for summary judgment are denied, and counsel shall appear in Part 55, 60 Centre Street, Room 432, New York, NY for a pre-trial conference on July 23, 2007 at 2 PM.

Dated: June 15, 2007

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J.G.S.

JEFFREY G. SOLOMON