Morreale v 105 Page Homeowners Assoc., Inc.
2008 NY Slip Op 33717(U)
August 5, 2008
Supreme Court, Kings County
Docket Number: 23122/06
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: PART 16

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BARBARA MORREALE,

Plaintiff, Decision and order

- against - Index No. 23122/06

105 PAGE HOMEOWNERS ASSOCIATION, INC., PERILLO CHIROPRACTIC LLP, VINCENT SCOTTO, BROTHERS II PIZZERIA L.L.C., EUGENE J. FLOTTERON, JOSEPH FALLACARO AND NANCY FALLACARO,

Defendant, August 5, 2008

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PRESENT: HON. LEON RUCHELSMAN

The defendant Scotto has moved seeking summary judgement pursuant to CPLR §3212 dismissing the complaint. The defendant Pizzeria cross moves likewise seeking summary judgement dismissing the complaint. The defendant Flotteron has also moved seeking summary judgement dismissing the complaint. The plaintiff has opposed all three motions. The defendant Fallacaro has opposed Flotteron's motion. Papers were submitted and arguments were held after reviewing all the arguments this court now makes the following determination.

Background

On December 10, 2004 the plaintiff was returning to her car at a strip mall located on Page Avenue in Staten Island. She had been to the defendant Pizzeria and had parked the car in a parking spot directly in front of defendant Perillo Chiropractic a few storefronts away in front of 105 Page Avenue. As she returned to

the car she tripped and sustained injuries when she fell upon the stone bumper in front of her vehicle. A lawsuit was instituted by plaintiff against numerous defendants and following discovery the defendants make summary judgement motions seeking to dismiss the complaint. Defendant Scotto the owner of the Pizzeria as well as Alexi Pizzeria and Brothers II Pizzeria all argue that they cannot be held liable since they did not own the parking spot where the plaintiff was injured and had no duty to maintain the parking spot in a reasonable manner. Defendant Flotteron, the owner of the strip mall adjacent to where the accident occurred and the owner of the parking spaces which align those stores argues that it had no duty to maintain the parking spaces in front of buildings it did not own and therefore should not be responsible for this accident. Fallacaro, the owner of the chiropractic store argues that there are questions of fact exactly where plaintiff fell and thus Flotteron's motion must be denied. The plaintiff opposes all summary judgement motions essentially arguing that since all the parking spaces were available for all stores, and not those which only aligned to a particular store, there are questions whether all the defendants should be responsible for plaintiff's accident.

Conclusions of Law

Summary Judgment may be granted where the movant establishes sufficient evidence which would compel the court to grant judgment

in his or her favor as a matter of law (Zuckerman v. City of New York, 49 NY2d 997, 427 NYS2d 998, [1980]). Summary Judgment would thus be appropriate where no right of action exists foreclosing the continuation of the lawsuit.

The defendant Fallacaro stated unequivocally that he, as the owner of the property was responsible for the maintenance of the parking spaces directly in front of the chiropractor's office (see, Deposition of Joseph Fallacaro, page 16). That testimony is scarcely disputed. The plaintiff counters that "because it is foreseeable that patrons would be parking in front of other establishments (i.e., on adjoining property) and walking from their vehicles to various destinations all within the same strip mall, the owners of all the establishments making use of this shared parking lot should be charged with the duty of providing the public with a reasonably safe means of ingress and egress" (see, Affirmation in Opposition to Scotto's Motion, ¶ 6). That might be true in cases where all the tenants own the parking lot in common (see, e.g., Bridgham v. Fairview Plaza Inc., 257 AD2d 914, 684 NYS2d 317 [3rd Dept., 1999]) although that would then be determined by the express terms of the lease (id). However, the parking spot where plaintiff fell was not owned by the moving defendants at all and the plaintiff has not cited any authority imposing a duty upon someone who does not own the land in question merely because he owns adjacent land and it is foreseeable for someone to park in

lone location and walk to another. Therefore, based on the foregoing, the motions of the defendants Scotto and the Pizzeria are granted and the complaints against them are dismissed.

The defendant Fallacaro argues that there are questions of fact whether the accident occurred on the parking space he owns or the adjacent one owned by defendant Flotteron and that such question must be resolved by a trier of fact.

However, a careful examination of plaintiff's testimony reveals that there is no question where the accident occurred. On page 34 of the plaintiff's deposition she stated in response to where the accident occurred "in front of the chiropractor's office" and stated again "right in front of the chiropractor's office". Moreover, on page 37 the plaintiff again reiterated that the car had been parked "in front of the chiropractor's office". It is true that on page 42 the plaintiff expressed confusion over the location of the parking bumper, however, that was unequivocally resolved. Indeed, on page 45 the plaintiff was asked "did your son park the car in the parking lot in front of the chiropractic place" and she responded "yes". Similarly, the "confusion" the plaintiff experienced during the deposition at page 50 does not raise any question that the accident occurred in front of the chiropractic office in a space owned by defendant Fallacaro. Therefore, Flotteron's motion seeking summary judgement is granted.

Therefore, based on the foregoing, all of the motions seeking

summary judgement are granted and the complaints as to those defendants are hereby dismissed.

So ordered.

ENTER:

DATED: August 5, 2008
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC