

Richardson v City of New York

2009 NY Slip Op 32982(U)

December 8, 2009

Supreme Court, New York County

Docket Number: 102799/03

Judge: Saliann Scarpulla

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

PRESENT: Scarpulla

PART 52

Justice

Index Number : 102799/2003

RICHARDSON, JOHN

INDEX NO. _____

vs

CITY OF NEW YORK

MOTION DATE _____

Sequence Number : 009

MOTION SEQ. NO. _____

SUMMARY JUDGMENT

MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the accompanying decision.

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

FILED
DEC 23 2009
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 12/18/09

Saliann Scarpulla
SALIANN SCARPUILLA
J.S.C. J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 52

-----X

JOHN RICHARDSON,

Plaintiff,

- against-

Index No.: 102799/03

Submission Date: 9/30/09

DECISION AND ORDER

CITY OF NEW YORK, CAMP LAGUARDIA,
VOLUNTEERS OF AMERICA, INC. AND
VOLUNTEERS OF AMERICA - GREATER
NEW YORK, INC.,

Defendants.

-----X

Plaintiff *pro se*:
John Richardson
70 Amsterdam Avenue, Apt. 10D
New York, NY 10023

For Defendant The City of New York:
Michael A. Cardozo, Corporation Counsel
100 Church Street, 4th Floor
New York, NY 10007

For Defendants Volunteers of America, Inc.
and Volunteers of America - Greater New York, Inc.:
Lester Schwab Katz & Dwyer, LLP
120 Broadway
New York, NY 10271

Papers considered in review of these motions and cross motion:

- Notice of Motion 1
- Notice of Motion 2
- Notice of Motion 3
- Order to Show Cause 4
- Notice of Cross-motion 5
- Affs in Opp 6, 7
- Reply 8

HON. SALIANN SCARPULLA, J.:

In this action to recover damages for personal injuries, defendants Volunteers of America, Inc. and Volunteers of America - Greater New York, Inc. (“VOA”) move to strike *pro se* plaintiff John Richardson’s (“Richardson”) complaint pursuant to CPLR

§3126, or to preclude Richardson from offering any evidence at trial, or for summary judgment dismissing the complaint and cross claims asserted against them. Defendants City of New York and Camp LaGuardia (“City defendants”) cross move for summary judgment dismissing the complaint insofar as asserted against them. Richardson moves to “preclude the defendants June 9, 2009 (IME) and to preclude (all) the defendants depositions.” Richardson also moves by order to show cause for permission to obtain Judge Paul Feinman’s September 24, 2008 and May 27, 2009 court transcripts.¹

Richardson commenced this action in or about January 2003. According to the allegations of the complaint, Richardson resided at Camp LaGuardia, a men’s homeless shelter owned by the City of New York and managed by VOA. Richardson alleged that on December 27, 2001, in a Camp LaGuardia bathroom, another resident Elbert Quizenberry (“Quizenberry”) assaulted him with a metal object.² Richardson seeks to recover damages for the severe injuries he sustained, claiming that defendants were negligent in causing and allowing unsafe conditions to exist at the shelter and in failing to provide proper security at the shelter.

VOA now moves to strike Richardson’s complaint pursuant to CPLR §3126, or to preclude Richardson from offering any evidence at trial, or for summary judgment dismissing the complaint and cross claims asserted against it. In support of its motion,

¹ The May 27, 2009 transcript has been submitted with the motion papers.

² Quizenberry was subsequently arrested.

VOA first argues that Richardson's complaint should be stricken or he should be precluded from offering any evidence at trial because he willfully and deliberately disobeyed the court's ruling directing him to appear for a "last shot" independent medical examination on June 9, 2009, after having failed to participate in several previously scheduled independent medical examinations.

VOA next argues that it should be granted summary judgment because security at the shelter was provided by the City of New York and was reasonable under the circumstances, the assault was sudden and unexpected and therefore, unforeseeable, and Richardson was a targeted victim. In support of this argument, VOA submits the examination before trial testimony of Richardson, City of New York Department of Homeless Service ("DHS") Police Officer John Dudzik ("Dudzik"), and Camp LaGuardia former Associate Director of Operations Brian L. Bardell ("Bardell").

Richardson testified that there was 24 hour security at the shelter, and that there were uniformed guards performing periodic checks of the sleeping quarters and public locations. He further testified that there were never any prior incidents between him and Quizenberry.

Dudzik testified that he was assigned to work at Camp LaGuardia and at the time of the incident, there were approximately 48 officers employed and working at various shifts at the shelter. No one from VOA supervised his work. Dudzik was responsible for routine patrol and facility access. He and other DHS officers would patrol hallways,

dormitory entrances, sleeping areas and bathrooms. The purpose of the patrols was to police any safety violations and to insure the well being of the residents. Dudzik was not aware of any reported concerns or complaints from Richardson regarding safety or security. Dudzik knew of only one other incident of violence in the 14 years of working at Camp LaGuardia, a slashing that occurred in the 1990's.

Bardell testified that a minimum of two VOA employees plus a supervisor would supervise the dormitories at all times. DHS was responsible for quality control and providing police presence throughout the facility. Bardell was unaware of any prior incidents, complaints, or problems regarding Richardson or Quizenberry.

The City defendants cross move for summary judgment dismissing the complaint asserted against them. The City defendants argue that (1) the provision of security by DHS is a governmental function to which no liability can attach absent a special duty and here, no special duty existed; and (2) even if a special duty existed or the City defendants are viewed as landowners with proprietary duties owed to its tenants, the City defendants are still entitled to summary judgment because there was no negligence in their provision of security.

Richardson moves to “preclude the defendants June 9, 2009 (IME) and to preclude (all) the defendants depositions.” Richardson also seeks permission to obtain Judge Paul Feinman’s September 24, 2008 and May 27, 2009 court transcripts. In support of his motion, he argues that prior orders issued by Judge Feinman precluded defendants from

* 6]

offering certain evidence at trial and from conducting an independent medical examination. In opposition to VOA's motion and the City defendants' cross motion, Richardson argues that VOA and City employees contributed to his injuries by harassing him and facilitating the attack.

Discussion

A party moving for summary judgment must make a *prima facie* showing that it is entitled to judgment as a matter of law. *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320 (1986). Once a showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial of the action. *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980). The Court finds that VOA and the City defendants met their respective burdens of establishing entitlement to judgment as a matter of law and Richardson has failed to raise any triable issue of fact in opposition.

First, VOA correctly maintains that property owners and managing agents have a duty to maintain premises in a reasonably safe condition, which includes taking minimal precautions to protect members of the public from the reasonably foreseeable criminal acts of third persons. This duty imposes a minimum level of care on landlords and managing agents who know or have reason to know that there is a likelihood that third parties may endanger the safety of those lawfully on the premises. *See Maria T. v. New York Holding Co. Assoc.*, 52 A.D.3d 356 (1st Dept. 2008); *Jackson-Ott v. Mack*, 30

A.D.3d 1025 (4th Dept. 2006); *Wayburn v. Madison Land Ltd. P'ship*, 282 A.D.2d 301 (1st Dept. 2001). Here, the evidence presented establishes that VOA had no knowledge of prior problems or incidents involving Richardson or Quizenberry at the shelter. Furthermore, while VOA was not in charge of security at the shelter, it nevertheless provided employees who supervised the dormitories at all times and there is no evidence to suggest that the measures provided by VOA were inadequate or improper. Richardson has not raised any issue of fact as to whether the attack was foreseeable and whether VOA failed to comply with its duty to take minimal security precautions.

Furthermore, Richardson's claim that the City defendants failed to provide adequate and proper security measures at the shelter implicates a governmental function, liability for the performance of which is barred absent the breach of a special duty owed to the injured party. Because there is no evidence of a special duty owed in this case, Richardson can not recover under this theory. *See Akinwande v. City of New York*, 260 A.D.2d 586 (2nd Dept. 1999). In any event, the evidence presented establishes that the City defendants provided 24 hour security at the shelter and that there were uniformed guards performing routine periodic checks of the sleeping quarters and public locations. Richardson has not raised any issue of fact as to whether the attack was foreseeable and whether the City defendants failed to take appropriate security measures at the shelter.

In light of these determinations, the remaining motions and order to show cause are denied as moot.

In accordance with the foregoing, it is

ORDERED that defendants Volunteers of America, Inc. and Volunteers of America - Greater New York, Inc.'s motion is granted to the extent that summary judgment dismissing the complaint and cross claims asserted against them is granted; and it is further

ORDERED that defendants City of New York and Camp LaGuardia's cross motion for summary judgment dismissing the complaint insofar as asserted against them is granted; and it is further

ORDERED that plaintiff John Richardson's motion to preclude and order to show cause are denied.

This constitutes the decision and order of the Court.

Dated: New York, New York
December 7, 2009

ENTER:

Saliann Scarpulla

J.S.C.
SALIANN SCARPULLA
J.S.C.

FILED
DEC 23 2009
NEW YORK
COUNTY CLERK'S OFFICE