

Blatt v Touchstone Tel. Prods., LLC

2010 NY Slip Op 32667(U)

September 23, 2010

Sup Ct, NY County

Docket Number: 109595/07

Judge: Saliann Scarpulla

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

PRESENT: HON. SALIANN SCARPULLA
Justice

PART 19

RICHARD A. BLATT,

Plaintiff,

- v -

TOUCHSTONE TELEVISION PRODUCTIONS, LLC,

Defendants.

INDEX NO. 109595/07

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for summary judgment.

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

PAPERS NUMBERED	
1	_____
2	_____
3	_____

Cross-Motion: Yes No

FILED
SEP. 28 2010
NEW YORK
COUNTY CLERK'S OFFICE

Upon the foregoing papers, it is

ORDERED that the motion is determined in accordance with the accompanying decision/order.

This constitutes the Decision and Order of the Court.

Dated: September 27, 2010

Saliann Scarpulla
Saliann Scarpulla, 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: CIVIL TERM: PART 19

-----X
RICHARD A. BLATT,

Plaintiff,

-against-

TOUCHSTONE TELEVISION PRODUCTIONS, LLC,

Defendant.
-----X

Index No.:109595/07
Submission Date: 6/9/2010

DECISION AND ORDER

For Plaintiff:
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Papers considered in review of this motion for summary judgment:

- Notice of Motion 1
- Aff in Opp 2
- Reply 3

FILED
SEP. 28 2010
NEW YORK
COUNTY CLERK'S OFFICE

HON. SALIANN SCARPULLA, J.:

In this action to recover damages for personal injuries, defendant Touchstone Television Productions, LLC (“Touchstone”) moves for summary judgment dismissing the complaint.

Plaintiff Richard A. Blatt (“Blatt”), president of Capitol Glass and Sash Co., Inc., (“Capitol”) a glass fabrication company, commenced this action in or about July 2007 seeking to recover damages for the injuries he sustained to his left leg during an accident that occurred on July 12, 2006.

Blatt and his son Jeremy Blatt (“Jeremy”), a Capitol employee, testified at examinations before trial.¹ Blatt testified that he began working at Capitol in 1971. Capitol had been supplying glass to Touchstone for at least ten years prior to the subject accident. In 2006, Touchstone placed an order with Capitol for ten or twelve sheets of four feet by eight feet long, half inch thick tempered glass. Each sheet of glass weighed approximately 250 pounds. Touchstone was to pick up the order at Capitol’s store. Pursuant to Touchstone’s collective bargaining agreement (“Agreement”) with Theatrical Drivers and Helpers of Local Union #817 (“Teamsters”), any “pickup and/or delivery or hauling of any description” was to be performed by union workers and trailers were to be operated, unloaded and loaded only by employees working under that Agreement. When ordering glass from Capitol, Touchstone would generally have two Teamsters employees pick up the glass from Capitol’s facility in a box truck.

On July 12, 2006, two Teamsters employees, Tom Buckman (“Buckman”) and Bobby Deluca (“Deluca”)² drove to Capitol’s facility to pick up the order. Blatt knew both Buckman and Deluca, having dealt with them prior to the accident, and believed that Deluca would always come in with a “chip on the shoulder” and was obnoxious. At prior times that they came to Capitol’s facility to pick up glass, they would say, “I’m not

¹Blatt’s employee Kendell Villaroel also testified at an examination before trial.

²Buckman is now deceased and Deluca refused to appear for a deposition.

picking that [glass] up, it's too big, it's not my job." Blatt had helped load glass onto trucks in the past when the workers had complained so as not to "lose the job."

According to Blatt, Deluca and Buckman backed their truck up to Capitol's loading dock and then lowered the tailgate of the truck onto the dock. Blatt heard Deluca tell Jeremy that he refused to load the glass onto the truck because the glass was too big. Blatt testified, "It's not my job to load the truck, it's a union thing. I'm not supposed to load the truck. They don't let me load the trucks, but this guy was being an idiot and I didn't have a choice." According to Blatt, even though he was aware that the unions were "very tough" and did not want anyone near the trucks, he did not want to jeopardize his business with Touchstone and thus decided to load the glass onto the truck with Jeremy and his assistant Kendell.

Jeremy testified that the Teamsters asked him for help loading the glass, which he felt was normal, so he agreed and asked Kendell to help him as well, and the Teamsters told him to put the glass on right side of the truck. There was a hamper and equipment on the left side of the truck. Jeremy got some blankets from the Teamsters and placed them on the floor of the truck. Blatt, Jeremy and Kendell took turns loading the glass onto the truck vertically and holding the glass in place on the right side of the truck. The Teamsters stood quietly and watched. After loading about ten pieces of glass, Blatt was on the truck holding the glass in place. According to Jeremy, at that time, the Teamsters were getting straps to tie the glass together to secure it in place. Within seconds, the ten

pieces of glass started to fall on Blatt. He was pinned under the glass and sustained a crush injury to his left leg. Neither Blatt, Jeremy or Kendell knew what caused the glass to fall but they all believed that the glass fell by the force of its own weight.

Blatt then commenced this action in or about July 2007 seeking to recover damages for the injuries he sustained. He alleged that Touchstone was negligent, inter alia, in failing to load or assist in the loading of the tempered glass onto the truck as contractually required; in failing to provide a truck or other transport which was adequately equipped to secure and transport the tempered glass; in failing to secure the glass in its truck; and in failing to take adequate and proper safety measures to avoid glass from falling onto Blatt.

Touchstone now moves for summary judgment dismissing the complaint, arguing that Touchstone can not be held liable because it owed no duty to Blatt and Blatt's actions were the sole proximate cause of his injuries.

In opposition, Blatt argues that issues of fact exist as to whether Touchstone breached its duty to properly secure the glass on its truck so as to prevent foreseeable injury to persons in the truck and to ensure that the truck was safe for the work to be performed. Specifically, Blatt maintains that Touchstone breached its duty by failing to use a glass-transport truck, leaving an obstruction in the truck, ineffectively supervising the loading, and failing to secure the glass.

* 6]

Blatt also argues that Touchstone owed an assumed duty of care when its employees began directing and supervising the loading and securing process, and breached that duty and that Touchstone breached its contractual duty to load and unload the trucks under its Agreement with the Teamsters.

Finally, Blatt argues that Touchstone's breaches of duty were a proximate cause of the accident in that the glass tipped over because (1) Deluca and Buckman told them to place all of the panes of glass on the right side of the truck; (2) there were not enough people involved holding the glass while it was being secured because of the Teamsters' refusal to help; and (3) the Teamsters did not fasten and secure the glass in a timely and proper manner.

Discussion

A movant seeking summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, offering sufficient evidence to eliminate any material issues of fact. *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985). Once a showing has been made, the burden shifts to the opposing party who must then demonstrate the existence of a triable issue of fact. *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986); *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980). A motion for summary judgment must be denied if there is any doubt as to the existence of a triable issue of fact. *See Rotuba Extruders, Inc. v. Ceppos*, 46 N.Y.2d 223, 231 (1978).

To prove a prima facie case for negligence, the plaintiff's evidence must establish (1) the existence of a duty on defendant's part as to plaintiff; (2) a breach of this duty; and (3) that such breach was a substantial cause of the resulting injury. *See Merino v. New York City Transit Auth.*, 218 A.D.2d 451 (1st Dept. 1996). Absent a duty running directly to the injured person there can be no liability in damages, however careless the conduct or foreseeable the harm. *532 Madison Ave. Gourmet Foods, Inc. v. Finlandia Ctr., Inc.*, 96 N.Y.2d 280, 289 (2001).

Here, Touchstone met its burden of making a prima facie showing of entitlement to judgment as a matter of law by submitting evidence demonstrating that it owed no duty to Blatt and that any breach of an alleged duty owed to Blatt was not a proximate cause of the accident.

Blatt fails to raise any triable issues of fact in opposition. First, contrary to Blatt's contention, Touchstone did not breach any purported duty of care owed to Blatt. There was no evidence presented that the Teamster workers were responsible for "directing" or "supervising" the loading and unloading of the truck nor that they actually did so. The evidence presented merely indicates that Blatt and Jeremy volunteered to load the glass and the Teamsters stood by and watched Blatt and his crew do their work.

There was also no evidence presented that Touchstone owed a duty to use a glass-transport truck or to remove any "obstructions" from the truck that they brought. In fact, Touchstone had picked up previous glass orders from Capitol in the past in box trucks

without incident or complaint. Further, Blatt presents no evidence that the truck was, in fact, unsafe or that the Teamsters' suggestion that the glass be placed on the right side of the truck was negligent or caused the accident.

Finally, no evidence was presented that the Teamsters owed a duty to Blatt to secure the glass on their truck and, in any event, the evidence establishes that they were in the process of obtaining the materials to secure the glass when the accident occurred. No evidence was presented that they were obtaining those materials in an untimely or improper manner.³

Second, Blatt fails to raise a triable issue of fact that any act or omission by Touchstone was causally related to the accident. No evidence was presented to suggest that Blatt's injuries were caused by any unsafe condition on the truck or any unsafe actions taken by the Teamsters. Rather, his injuries were a direct result of the voluntary actions he and his employees undertook in loading the glass. *See generally Mattes v. Joseph*, 282 A.D.2d 506 (2nd Dept. 2001). The evidence presented demonstrates that an unfortunate accident occurred that did not result from any negligence on the part of Touchstone. Accordingly, Touchstone's motion for summary judgment is granted and the complaint is dismissed.

In accordance with the foregoing, it is hereby

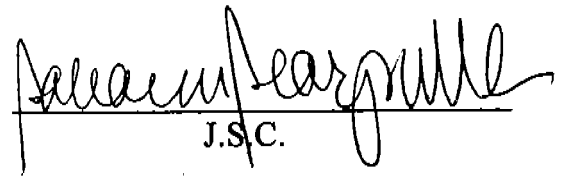
³ Blatt's argument that Touchstone owed him a duty of care pursuant to Touchstone's contract with the Teamsters is also without merit.

ORDERED that defendant Touchstone Television Productions, LLC's motion for summary judgment dismissing the complaint is granted and the complaint is dismissed.

This constitutes the decision and order of the court.

Dated: New York, New York
September 23, 2010

ENTER:


J.S.C.

FILED
SEP 28 2010
NEW YORK
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