

**Brewer v Stonehill & Taylor Architects**

2011 NY Slip Op 30736(U)

March 29, 2011

Supreme Court, New York County

Docket Number: 107477/2008

Judge: Jane S. Solomon

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

DECEMENT. **JANE S. SOLOMON** PART 55

Index Number : 107477/2008

BREWER, JEFFREY

vs  
STONEHILL

Sequence Number : 002

SUMMARY JUDGMENT

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to for Summary Judgment

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

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED
<u>1-3, 4-6</u>
<u>7-8, 9</u>
<u>10, 11</u>

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion is decided by the annexed Memorandum Decision and Order.

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

**FILED**

MAR 30 2011

NEW YORK COUNTY CLERK'S OFFICE

NB: Pretrial scheduled for April 25, 2011 at 2:00

Dated: 3/29/11

[Signature]  
**JANE S. SOLOMON** J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

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

-----X  
JEFFERY BREWER and ROBIN BREWER,

Plaintiffs,

Index No. 107477/2008

-against-

DECISION & ORDER

**FILED**

STONEHILL & TAYLOR ARCHITECTS and  
R.P. BRENNAN,

Defendants.

MAR 30 2011

NEW YORK  
COUNTY CLERK'S OFFICE

-----X  
SOLOMON, J.:

Plaintiffs Jeffery Brewer and Robin Brewer sue defendants Stonehill & Taylor Architects (Stonehill) and R.P. Brennan General Contractors and Builders, Inc. s/h/a R.P. Brennan (Brennan), under the Labor Law, for injuries he sustained when he tripped while moving an item from an elevator. Stonehill moves for summary judgment dismissing the complaint on the ground that it did not breach any duty. Brennan cross-moves for the same relief.

In 2007, Stonehill leased new office space on the fifth floor of 31 West 27<sup>th</sup> Street, in Manhattan (the Office). That August, it hired Brennan to install walls and carpeting. In December, it hired Sher-Del Movers, Mr. Brewer's employer, for its move into the Office. On December 28, 2007, Mr. Brewer was removing something (he does not remember what) from the freight elevator. To do so, he walked backwards off the elevator. While backing up, he tripped over an object that he later identified as a piece of molding. No one witnessed his accident.

Mr. Brewer testified at his deposition that he had been working in the office for over an hour, had been in the hallway where the accident occurred for at least ten minutes, and had moved several pieces of furniture off the freight elevator (Brewer EBT, attached to cross-motion, Ex. E, p. 115, and 123-4). In that time, he witnessed carpenters putting up molding in a room to the left of the freight elevator, and pieces of construction material spread out throughout that room. He, however, did not notice any molding on the floor in the hallway before he tripped (Id). In support, he supplies a copy of his C-2 injury report (attached to Opposition, Ex. 3), which states that he "tripped over trim."

Paul David Taylor, president of Stonehill, testified at his deposition that he was present at the Office on December 28, but did not witness, nor hear about the accident (Taylor EBT, attached to cross-motion, Ex. F, p. 57). He stated that Brennan completed the construction work on December 13, 2007 (Id., p. 50), that he did a walkthrough when the construction was completed, and that none of the trim or moldings were unsecured (Id., p. 48-9).

Douglas Patino was Brennan's project manager for the Stonehill project. He testified that the project ran from August 2007 through December 13, 2007 (Patino EBT, attached to cross-motion, Ex. G, p. 8). He stated that Brennan and its subcontractors completed work in the Office on December 13, and

[\* 4]

that no Brennan (or subcontractor) workers were on site after that (Id., p. 16-17). He performed a walkthrough, and did not see any loose debris (Id., p. 49).

To establish negligence in a case like this, the plaintiff must demonstrate that the defendant either created a dangerous or hazardous condition, or had actual or constructive knowledge of that condition (*Gordon v. American Museum of Natural History*, 67 NY2d 836 [1986]). A defendant who moves for summary judgment has the initial burden of demonstrating that it neither created the condition nor had notice of it (*Manning v. Americold Logistics, LLC.*, 33 AD3d 427 [1<sup>st</sup> Dept., 2006]).

Stonehill and Brennan both argue that there is no evidence that they created or had notice of the existence of the hazard that Mr. Brewer tripped over. Brennan argues that it cannot be liable because it had not worked at the Office for the previous two weeks, and there is no evidence that it was there on the date of the injury. Stonehill argues that Brewer's testimony that he did not know how long the debris was on the floor, when combined with Taylor's testimony that he did not observe any items on the floor, is sufficient to establish that it had no actual or constructive notice of the hazard.

The evidence presented by the defendants consists solely of deposition transcripts. Within those transcripts, the defendants state that Brennan had been offsite for two weeks and Stonehill had approved of the work and found it satisfactory.

This evidence is opposed by the plaintiff supplying his own statement that carpenters were working on the floor at the time of the incident, and, specifically, were installing molding, a piece of which he tripped over.

The evidence presented does not establish, as a matter of law, that the defendants are entitled to summary judgment. Rather, the evidence presents two versions of events. While one version may be more credible than the other, the "credibility of witnesses and the resolution of conflicting proofs are matters properly for determination by a jury" (*Mazariegos v. New York City Transit Authority*, 230 AD2d 608, 609-10 [1st Dept., 1996]).

Accordingly, it hereby is

ORDERED that the motion for summary judgment dismissing the complaint is denied; and it further is

ORDERED that the cross motion for summary judgment dismissing the complaint is denied; and it further is

ORDERED that counsel shall appear for a pre-trial conference in Part 55, 60 Centre Street, Room 432, New York, NY, on April 25, 2011 at 2 PM.

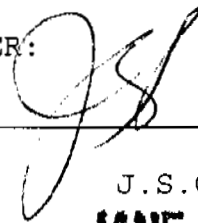
Dated: March 29, 2011

**FILED**

**MAR 30 2011**

**NEW YORK  
COUNTY CLERK'S OFFICE**

ENTER:



J.S.C.  
**JANE S. SOLOMON**