

| |
|--|
| Giwoyna v RCPI Trust |
| 2011 NY Slip Op 33045(U) |
| November 14, 2011 |
| Sup Ct, NY County |
| Docket Number: 110365/09 |
| Judge: Paul Wooten |
| Republished from New York State Unified Court System's E-Courts Service. Search E-Courts (http://www.nycourts.gov/ecourts) for any additional information on this case. |
| This opinion is uncorrected and not selected for official publication. |

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

PRESENT: HON. PAUL WOOTEN
Justice

PART 7

PAUL GIWOYNA,

Plaintiffs,

- v -

RCPI TRUST c/o TISHMAN SPEYER
PROPERTIES, L.P., B.R. FRIES &
ASSOCIATES, FLOORING TECHNOLOGIES
INC., SHEHADI COMMERCIAL FLOORING,
and STATE CARPET SALES, INC.,
Defendants.

INDEX NO. 110365/09

MOTION DATE _____

MOTION SEQ. NO. 001

FILED

NOV 21 2011

The following papers, numbered 1 to 3 were read on this motion by defendant RCPI TRUST c/o TISHMAN SPEYER PROPERTIES, L.P.. for summary judgment dismissing the plaintiff's complaint.

NEW YORK
COUNTY CLERK'S OFFICE

| | <u>PAPERS NUMBERED</u> |
|---|------------------------|
| Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ... | <u>1</u> |
| Answering Affidavits — Exhibits (Memo) _____ | <u>2</u> |
| Replying Affidavits (Reply Memo) _____ | <u>3</u> |

Cross-Motion: Yes No

RCPI Trust c/o Tishman Speyer Properties L.P. (RCPI) moves this Court, pursuant to 3212, for an Order granting it summary judgment dismissing the plaintiff's complaint. The parties completed discovery and a Note of Issue was filed on May 11, 2011. The plaintiff opposes the motion.

BACKGROUND

Plaintiff is an employee of NBC who alleges that, on April 1, 2008, he slipped and fell on glue in the 3rd floor hallway of a building (the Building) located at 30 Rockefeller Plaza, New York, N.Y. (see Bill of Particulars, items 1, 7-9, 15). He alleges that RCPI is the owner of the Building including the 3rd floor. NBC occupies the 3rd and 4th floors of the Building, with offices for the Today Show (the Show) and NBC News, and it contracted for the renovation (the Project) of the 3rd and 4th floors (DeFouw EBT, at 8; Kida EBT, at 10).

B.R. Fries & Associates (Fries) was the general contractor for the Project (*Id.* at 8, 10-

11). Shehadi Commercial Flooring (Shehadi) was the flooring subcontractor (Trost EBT, at 6-7) and it subcontracted out the actual installation work to Flooring Technologies, Inc. (Flooring) (*Id.* at 11-12).

Plaintiff alleges that, on April 1, 2008, he was employed by NBC as props manager for the Show and that his office was normally located on the 3rd floor of the Building (plaintiff EBT, at 14-15, 18). He states that, during the Project, his office had been temporarily relocated to the 4th floor and that he went to the 3rd floor through a stairwell near the central elevator bank to inspect the Project's progress (*Id.* at 23, 29, 32). He further states that, as he took one step from the stairwell into the hallway, his foot went out from underneath him and he fell on wet glue on the floor (*Id.* at 28, 36-37, 40).

Plaintiff contends that he had never previously seen glue on the 3rd floor, that the glue was all over the floor where a new floor was to be installed, and that as a result of his fall he suffered a contusion on his right hip and continuing pain (*Id.* at 42, 46, 50, 62, 106). He also states that he does not know RCPI, but believes that Tishman Speyer Properties L.P. (Tishman) owns the Building (*Id.* at 89). He further states that he doesn't know either Fries or Shehadi (*Id.* at 102).

RCPI contends that Tishman was previously the property manager for RCPI, but that NBC owned the 3rd and 4th floors of the Building (DeFouw EBT, at 7-8). It asserts that, while RCPI previously owned the Building, it no longer has any assets, since it transferred them to RCPI Landmark and that "NBC ... [owns its] own floors [of the Building]" (*Id.* at 10-11). It also states that neither Tishman nor RCPI had any duties for the 3rd and 4th floors and that NBC did its own renovations in its own space in the Building (*Id.* at 13-14).

Fries alleges that it was the general contractor for the Project, pursuant to a contract with NBC, that it hired Shehadi to do the flooring and that Shehadi subcontracted the actual installation work to Flooring (Kida EBT, at 10-11, 15, 21). It states that the flooring work required

glueing down new carpet tiles, and this work required that an hour before the tiles were to be laid down, a thick shiny, sticky adhesive had to be applied to the floor (*Id.* at 32, 39-40, 44, 73). It further states there was caution tape in the hallway but there were no signs, and the accident report indicates that plaintiff fell on glue in the 3rd floor hallway (*Id.* at 46, 49-50, 61, 66-67).

Shehadi contends that it was responsible for the flooring installation for the Project pursuant to a contract with the general contractor, Fries (Trost EBT, at 6-8), and that it had no laborers, so it subcontracted out the actual work to Flooring, pursuant to purchase orders and work orders (*Id.* at 13, 19-20). It states that the glue was to be laid down from wall to wall on the 3rd floor, preparatory to laying down the tiles and that, as a rule, the general contractor was responsible for clearing out and cordoning off the work area (*Id.* at 27-29).

Flooring contends that it was hired by Shehadi, pursuant to work orders and purchase orders, to install the tile and carpeting on the 3rd floor hallway of the Building as part of the Project, with Fries as general contractor (Findlay EBT, at 9-11). It states that Fries, as general contractor, was responsible for blocking off the work area and placing signs, but that while there were signs in the area, it does not know if there were signs in the stairwell (*Id.* at 20-21, 25). It further states that its foreman, Malone, saw plaintiff go through the door into the hallway and told him "not to walk through because there was glue" and observed his fall (*Id.* at 25-26). It also states that there was no contract for the work with RCPI (*Id.* at 27).

STANDARDS OF LAW

A party seeking summary judgment must make a prima facie case showing that it is entitled to judgment as a matter of law by proffering sufficient evidence to demonstrate the absence of any material issue of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). If the movant fails to make this showing, the motion must be denied (*Id.*). Once the movant meets its burden, then the opposing party must produce evidentiary proof in admissible form sufficient to raise a triable issue of material fact (*Zuckerman v City of New York*, 49 NY2d 557, 562

[1980]). In deciding the motion, the court must draw all reasonable inferences in favor of the nonmoving party and deny summary judgment if there is any doubt as to the existence of a material issue of fact (*Dauman Displays v Masturzo*, 168 AD2d 204, 205 [1st Dept 1990], *lv dismissed* 77 NY2d 939 [1991]).

Generally, a landowner must act as a reasonably prudent person in maintaining its property in a reasonably safe condition under all the circumstances, including the likelihood of injury, the potential seriousness of injury and the burden of avoiding the risk (*Peralta v Henriquez*, 100 NY2d 139, 144 [2003]). Additionally, a party must be aware of the alleged defective or dangerous condition, either through having created it, actual knowledge of the condition or constructive notice of it through the defect's visibility for a sufficient amount of time prior to the accident to enable a defendant to discover and remedy it (*Gordon v American Museum of Natural History*, 67 NY2d 836, 837 [1986]).

DISCUSSION

Plaintiff has proffered a brief affirmation of counsel, asserting that RCPI has not made an adequate showing that it lacks ownership, and therefore its motion should be denied. However, RCPI has clearly presented evidence that NBC owned the 3rd floor of the Building (DeFouw EBT, at 10-11, 13-14). The duty to maintain property in a reasonably safe condition applies to an owner (*see Peralta*, 100 NY2d at 144; *Rivera v Nelson Realty, LLC*, 7 NY3d 530, 533-534 [2006]). Where a party establishes that it "did not own the premise on the day of the accident ... and that the alleged dangerous condition did not exist during [its] period of ownership ... [it has] established [its] prima facie entitlement to judgment as a matter of law" (*Coyne v Talleyrand Partners, L.P.*, 22 AD3d 627, 629 [2d Dept 2005], *lv denied* 6 NY3d 705 [2006] [internal citation omitted]; *Suchmacher v Manana Grocery*, 73 AD3d 1017 [2d Dept 2010]; *Kay v City of New York*, 222 AD2d 558 [2d Dept 1995]).

Moreover, NBC controlled the 3rd and 4th floors of the Building and RCPI had no control

over the Project (see DeFouw EBT, at 13-14). Consequently, the Court finds that RCPI has met its burden of entitlement to summary judgment as a matter of law, as it had no notice of the transient condition of sticky glue upon which plaintiff alleges that he fell and, accordingly would not have had notice of, or the ability to discover and correct the purportedly defective condition (see plaintiff EBT, at 40; Gordon, 67 NY2d at 837; Haseley v Abels, 84 AD3d 480 [1st Dept 2011]). Therefore, RCPI's motion for summary judgment dismissing the complaint as against it is granted.

Accordingly it is,

ORDERED that the motion of defendant RCPI Trust c/o Tishman Speyer Properties L.P. for summary judgment dismissing the complaint as asserted against it is granted and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements as taxed by the Clerk of the Court upon the submission of an appropriate bill of costs; and it is further,

ORDERED that, within 30 days of entry, counsel for defendant RCPI Trust c/o Tishman Speyer Properties L.P. is directed to serve a copy of this Order with Notice of Entry upon all parties and the County Clerk, who is directed to enter judgment accordingly.

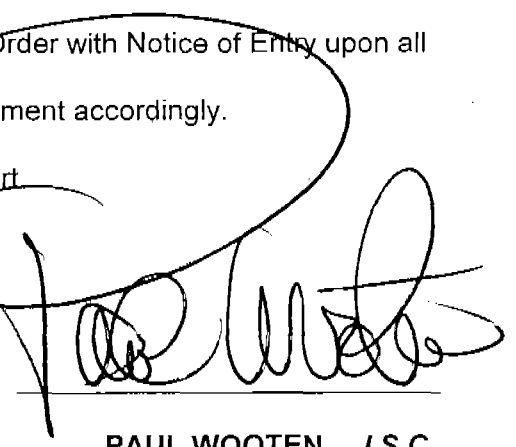
This constitutes the Decision and Order of the Court

Dated: 11-14-11

FILED

NOV 21 2011

NEW YORK
COUNTY CLERK'S OFFICE


PAUL WOOTEN J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE