

Kalma v IPC Sys., Inc.
2012 NY Slip Op 30516(U)
February 29, 2012
Sup Ct, NY County
Docket Number: 118252/09
Judge: Saliann Scarpulla
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT:

Salvatore Scarpulla
Justice

PART

19

Index Number : 118252/2009

KALMA, CAROL

VS.

IPC SYSTEMS

SEQUENCE NUMBER : 001

SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

Motion to/for _____

No(s). _____

No(s). _____

No(s). _____

Upon the foregoing papers, It is ordered that this motion is

accordance with the
decision/order.

determined in
accompanying

FILED

2012

CLERK'S OFFICE
NEW YORK

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

Dated:

2/29/12

Salvatore Scarpulla
J.S.C.

1. CHECK ONE: ☒ CASE DISPOSED ☐ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ☐ SETTLE ORDER ☐ SUBMIT ORDER
- ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 19

----- X
CAROL KALMA,

Plaintiff,

- against-

IPC SYSTEMS, INC.,

Index No.: 118252/09

Submission Date: 11/16/11

DECISION AND ORDER

Defendant.

----- X
For Plaintiff:

Cascione, Purcigliotti & Galluzzi, P.C.
20 Vesey Street, Suite 1100
New York, NY 10007

For Defendant:

Hoey, King & Epstein
55 Water Street, 29th Floor
New York, NY 10041

Papers considered in review of this motion for summary judgment:

Notice of Motion 1

Aff in Opposition 2

HON. SALIANN SCARPULLA, J.:

In this action to recover damages for personal injuries, defendant IPC Systems, Inc. ("IPC") moves for summary judgment dismissing the complaint.

Plaintiff Carol A. Kalma ("Kalma") commenced this action seeking to recover damages for the injuries she sustained on October 18, 2007 when she tripped and fell at IPC's office located at 162 Fifth Avenue and broke her wrist. Kalma had been employed as a consultant by Resources Global Professionals and was assigned to work at IPC's offices providing accounting consulting services. The office was comprised of several rows of desks and cubicles.

According to Kalma's examination before trial testimony, on the evening of October 18, 2007, Brian Green ("Green"), an accountant employed by IPC, gathered employees to a desk to order dinner. Kalma went over to the desk and spoke to Green for approximately ten minutes. Green then made a joke and raised his hand to high-five Kalma. Kalma took one step forward to high-five him, and then took a step back because the high-five made her lose her balance. When she stepped back, her foot landed on a file box on the floor and she fell. She did not see the box prior to her incident. She did not know who put the box there and how long it had been there prior to the incident.

Green testified at an examination before trial that generally in the office, boxes were kept on the floor along side the desk of the person that was working with the boxes. He further testified that IPC was in the process of moving offices at the time of the incident. He did not recall seeing the subject box before Kalma fell and he does not know what caused her to fall.

IPC now moves for summary judgment dismissing the complaint, arguing that it did not breach a duty of care owed to Kalma and its actions were not a proximate cause of Kalma's injuries. IPC maintains that Kalma's examination before trial testimony reveals that Kalma was caused to lose her balance and fall because of a high-five and her tripping over the box was only secondary to the high-five. It was her loss of balance from the high-five that caused her foot to hit the box on the floor. The presence of the box on the floor was not a proximate cause of Kalma's injuries.

In opposition, Kalma argues that (a) IPC fails to submit any evidence establishing its lack of notice of the subject box on the floor; and (b) issues of fact exist as to the condition that caused her fall.

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 landowner must act as a reasonable person in maintaining his or her property in a reasonably safe condition in view of all the circumstances, including the likelihood of injury to others, the seriousness of the injury, and the burden of avoiding the risk. *See Cupo v. Karfunkel*, 1 A.D.3d 48, 51 (2nd Dept. 2003). For a defendant to be liable in tort to a plaintiff who is injured as a result of an allegedly defective condition upon his property, it must be established that a defective condition actually existed, and that the landowner either affirmatively created the condition or had actual or constructive notice of its existence. *See Thomas v. Phillips*, 246 A.D.2d 531 (2nd Dept. 1998).

Here, IPC has met its burden of establishing entitlement to judgment as a matter of law. No evidence was presented to establish that the existence of the file box on the floor

of the accounting office constituted a dangerous condition sufficient to impute negligence, or that IPC created or had notice of any dangerous condition. *See Fargot v. Pathmark Stores, Inc.*, 264 A.D.2d 708 (2nd Dept. 1999). IPC submits Green's testimony in which he explained that he did not see the specific box prior to her fall, but that generally boxes were kept on the floor along side the desk of the person that was working with the boxes. IPC also submits Kalma's testimony that (1) as she was giving Green the high-five, she lost her balance, stepped back, hit the box with her foot, and fell; (2) she did not see the box prior to the incident; and (3) she did not know who put the box there or how long it had been there prior to the incident.

To defeat this motion, Kalma had to establish the existence of facts and conditions from which the negligence of the defendant and the causation of the accident by that negligence may be reasonably inferred. *See Flores v. City of New York*, 29 A.D.3d 356 (1st Dept. 2006). Kalma fails to submit any evidence sufficient to raise an issue of fact as to whether the existence of the box on the floor constituted a dangerous condition and whether IPC breached any duty owed to her.

In accordance with the foregoing, it is hereby

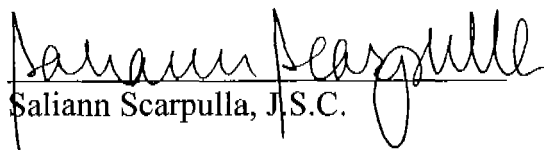
ORDERED that defendant IPC Systems, Inc.'s motion for summary judgment

dismissing the complaint-is granted, the complaint is dismissed and the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the decision and order of the Court.

Dated: New York, New York
February 21, 2012

ENTER:


Saliann Scarpulla, J.S.C.

FILED
MAR -5 2012
COUNTY CLERK'S OFFICE
NEW YORK