

Feliciano v F.I.P. Ltd. Family Partnership

2014 NY Slip Op 31655(U)

May 23, 2014

Supreme Court, Bronx County

Docket Number: 309188/09

Judge: Norma Ruiz

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NEW YORK SUPREME COURT ----- COUNTY OF BRONX

PART 22

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Index No. 309188/09

ANGELO LUIS FELICIANO,

Plaintiff,

-against-

Decision and Order
HON. NORMA RUIZ

F.I.P. LIMITED FAMILY PARTNERSHIP, PREMIER
ORTHOPEDICS & SPORTS MEDICINE, P.C. and
INDU GARG, M.D., P.C.,

Defendants.

F.I.P. LIMITED FAMILY PARTNERSHIP, PREMIER
ORTHOPEDICS & SPORTS MEDICINE, P.C. and
INDU GARG, M.D., P.C.,

Third Party Plaintiffs

-against

UNLIMITED CARE, INC.,

Third Party Defendant

The following papers numbered to Read on this motion SUMMARY JUDGMENT
Noticed on _____ and duly submitted as No. 6&7 on the Motion Calendar of 11/13/13

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this Motion

to:	Papers	Numbered
Notice of Motions and Affidavits Annexed.....		1-4
Answering Affidavits.....		3-4
Replying Affidavits		5-6
Memorandum of Law		

Other:

Upon the foregoing papers, the foregoing motion(s) [and/or cross-motions(s), as indicated below, are consolidated for disposition] and decided as follows:

Defendants move for summary judgment. Upon a review of the moving papers and opposition submitted thereto defendants motions are granted.

In this negligence action, the plaintiff seeks damages for injuries he sustained after falling on an exterior staircase located at 2705 Williamsbridge Road in the Bronx.

Plaintiff Angelo Luis Feliciano ("Feliciano") has been disabled since 1985. He used a walker for about 8 to 9 years before the accident. He was diagnosed with HIV, dementia and "wasting disease" (rapid weight loss caused by drug use). Due to his medical conditions he had a 24 hour home attendant named Carlixa Garcia ("Garcia"). Garcia was employed by third party defendant Unlimited Care Inc. ("Unlimited"). The home attendant's duties were cooking, cleaning, house chores, bathing the plaintiff, and taking the plaintiff to his appointments.

Prior to the subject accident, Feliciano had two accidents. One occurred when he fell in his living room and as a result fractured his hip. He believed that his bones were frail as a result of being on methadone. The fracture required open reduction and fixation with hardware.

The other accident occurred when the plaintiff was walking to the bathroom. At that time he was walking with a cane. As a result of the fall he hurt his right knee and received 3 months of physical therapy.

On the day of the accident, the plaintiff was accompanied by Garcia and was on his way to a doctor's appointment at defendant F.I.P. Limited Family Partnership's medical practice ("FIP"). It was Feliciano's first time going to this medical facility. The purpose of the visit was to exam the hardware that was surgically implanted in his leg. The screws were in place for approximately two years and were causing the plaintiff a lot of pain and the plaintiff was having difficulty sleeping. He entered the doctor's office together with Garcia through the "main" entrance on Williamsbridge Road. As he ascended the stairs, Garcia was standing behind him. Plaintiff went up the staircase and when he tried to place his foot on the third step, he fell. Although there was a handicap accessible entrance located on Radcliff Avenue (around the corner), The Williamsbridge entrance did not have signage informing patients of such. Plaintiff alleges that since it was their first time at this medical facility, he did not know that there was another entrance on Radcliff Avenue.

Plaintiff also contends that FIP was required by the Americans with Disability Act ("ADA") to maintain a handicap entrance for people with disabilities. Plaintiff further contends that the failure to place a sign at the Williamsbridge Road entrance violated the ADA act

because it denied him the ability to use the handicap access since there was no way he could know that such an entrance existed.

Defendants/third party plaintiff FIP and Indu Garg, M.D., P.C. move for summary judgment on the grounds that the plaintiff's accident was not attributable to any negligence on their part. Instead, defendants allege the accident was attributable to the plaintiff's negligence and/or the negligence of his home attendant Garcia. Defendants argue that the subject staircase was free of any defects, or hazards and was not a proximate cause of the plaintiff's accident. They further contend that the proximate cause of the accident was the plaintiff's own actions, of inappropriately using his walker as a cane for support. That by placing the wheeled part of the walke on the step he compromised his own safety and was the proximate cause of the accident. Defendants also argue that the home attendant was responsible for the plaintiff's safety and, prio to ascending the stairs with the plaintiff, should have inquired about a handicap access entry. .

At his deposition the plaintiff explaine the manner in which he ascended the exterior staircase. With one hand held onto the railing and with the other to the walker (which he was using as a cane). He testified that he had trouble managing the first step because os "body was wobbly". As he went onto the first step, his home attendant stood alongside of him. He continued to have difficulty as he placed his right foot on the second step because his leg began to hurt. Rather than return to the sidewalk, the plaintiff proceeded because he wanted to keep his appointment in a timely manner. After he placed his leg on the third step he fell, with his home attendant still standing next to him. Because his right leg did not have the strength to support his body weight, his "leg gave out" and he fell backwards, landing on the sidewalk. (See EBT, p66).

After the accident, the plaintiff's home attendant walked up the stairs and informed the medical office employees that the plaintiff fell. In turn, an employee directed the home attendant to go through the Radcliff Avenue entrance with the plaintiff who was then seen by a doctor.

Thereafter, the plaintiff was admitted to the hospital to remove the hardware from his right hip/leg. During this to week admission, the plaintiff fell getting out of his bed and fell a second time when he slipped in the bathroom.

Odaliz Maggie Vasquez ("Vasquez"), FIP's office manager testified that it was the office's custom and practice to iform clients when they make their appointment of the handicap accessible entrance on Radcliff Avenue. According to the plaintiff, his sister made the

appointment. However, Vasquez stated that she could not remember who scheduled the plaintiff's appointment and could not say whether the information about the handicap accessible entrance was relayed to the patient.

The court finds that the defendants met their initial burden in establishing their entitlement to summary judgment on the grounds that their alleged negligent conduct was not a proximate cause of the plaintiff's accident. According to the plaintiff's own testimony, he had difficulty ambulating, he was using his walker improperly and as early as the first step knew he could not safely traverse the stairs. He could have directed his home attendant to ask about alternate ingress or he could have called the office. Instead, he continued to go up the stairs. Under these circumstances, the court agrees that the lack of signage alerting patrons of the handicap accessible entrance can not be deemed a proximate cause of the plaintiff's accident. In light of this ruling the court will not address the additional arguments raised in the defendants moving papers.

The court further finds that the plaintiff's moving papers failed to raise an issue fact. In opposition, the plaintiff repeatedly argues that it was this lack of a signage that caused the accident. However, there is no explanation as to why the plaintiff did not stop trying to climb the stairs when he became unsteady on his feet.

Accordingly, the court grants the defendants motion and this action is hereby dismissed. In light of the fact that the main action was dismissed, the court denies the third party defendant's motion as moot.

This constitutes the decision and order of the Court.

Dated: 5/23/14
Bronx, New York



HON. NORMA RUIZ, J.S.C.