

Mangiapane v Dalton Mgt. Co. LLC

2014 NY Slip Op 32295(U)

August 27, 2014

Supreme Court, New York County

Docket Number: 157261/13

Judge: Anil C. Singh

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

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LEONARD MANGIAPANE,

Plaintiff,

-against-

DALTON MANAGEMENT CO. LLC and
COOPER GRAMERCY ASSOCIATES,

Defendants.

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DECISION AND
ORDER

Index No.
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HON. ANIL C. SINGH, J.:

Defendants move for an order pursuant to CPLR 3211(a)(7) and CPLR 3212 dismissing the complaint, contending that they cannot be held liable for plaintiff’s fall down an unilluminated stairwell in defendants’ apartment building during an extended power outage caused by an unprecedented natural disaster. Plaintiff opposes the motion.

Hurricane Sandy (unofficially known as “Superstorm Sandy”) was the deadliest and most destructive hurricane of the 2012 Atlantic hurricane season. While it was a Category 2 storm off the coast of the Northeastern United States, the storm became the largest Atlantic hurricane on record (as measured by diameter, with winds spanning 1,100 miles). Its storm surge hit New York City on October 29, 2012, flooding streets, tunnels and subway lines and cutting power in and around the city.

Plaintiff Leonard Mangiapane resides at 401 Second Avenue in Manhattan. His apartment is on the twenty-second floor. Defendants are the owner and manager of the building.

Lower Manhattan lost power on October 29, 2012. Power was not restored until November 3, 2012.

Without electricity, the elevators stopped working. Plaintiff and his fellow tenants had to use the stairs. Plaintiff contends that he fell in an unilluminated stairwell during the power outage, sustaining injuries.

Plaintiff commenced the instant personal injury action by filing a summons and verified complaint on August 8, 2013. The complaint alleges that plaintiff's trip and fall was caused by the negligence of the defendants. Plaintiff contends that there was no lighting in the stairways, so the stairwell was in an unsafe, defective and dangerous condition.

Defendants filed a verified answer on October 10, 2013, asserting five affirmative defenses.

Defendants exhibit the sworn affidavit of Manuel Szklanny, who states that he is the superintendent of the building. Mr. Szklanny asserts that at the time of the accident, the building had no electricity or elevator service due to the hurricane. Power was out in the entire building beginning on October 29, 2012, and continuing until November 3, 2012. At the time of plaintiff's accident, power had not yet been

restored to the building. According to Mr. Szklanny, the building had emergency lighting which illuminated for two hours after the power went out.

Discussion

The standards for summary judgment are well settled. “The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (Winegrad v. New York University Medical Center, 64 N.Y.2d 851, 853 [1985]). Despite the sufficiency of the opposing papers, the failure to make such a showing requires denial of the motion (see id.) Summary judgment is a drastic remedy and should only be granted if the moving party has sufficiently established that it is warranted as a matter of law (see Alvarez v. Propect Hosp., 68 N.Y.2d 320, 324 [1986]). Moreover, summary judgment motions should be denied if the opposing party presents admissible evidence establishing that there is a genuine issue of fact remaining (see Zuckerman v. City of New York, 49 N.Y.2d 557, 560 [1980]). “In determining whether summary judgment is appropriate, the motion could should draw all reasonable inferences in favor of the nonmoving party and should not pass on issues of credibility” (Garcia v. J.C. Duggan, Inc., 180 A.D.2d 579, 580 [1st Dept., 1992], citing Assaf v. Ropog Cab Corp., 153 A.D.2d 520, 521 [1st Dept., 1989]). The court’s role is “issue-finding, rather than issue-determination” (Sillman v. Twentieth Century-Fox Film Corp., 3 N.Y.2d 395, 404 [1957] (internal quotations

omitted)).

The fact of the instant matter are analogous to the facts in Viera v. Riverbay Corp., 44 A.D.3d 577 [1st Dept., 2007]). There, the Court granted defendant's motion for summary judgment, stating:

Concerning plaintiff's claim that defendant failed to provide adequate lighting in the stairway, defendant made a prima facie showing that it did not breach any duty of care owed to plaintiff in this regard. Defendant maintained lights in the stairway, but those lights were rendered inoperable by the blackout. Plaintiff cited no statute or regulation imposing a duty on defendant to illuminate the stairway during the blackout, i.e., an absolute duty to illuminate the stairway. To the contrary, before both the motion court and this Court plaintiff relied solely on common-law principles of premises liability in arguing that defendant had a duty to provide lighting in the stairway during the blackout. However, defendant owed no such duty of care.

(Viera, 44 A.D.3d at 579 (internal citations omitted)).

Under similar circumstances, the Court of Appeals in Kopsachilis v. 130 E. 18 Owners Crop, 11 N.Y.3d 512 [2008]), held that a building owner had no liability under the Multiple Dwelling Law for plaintiff's trip and fall in a stairwell during a blackout.

Because the defendants in the instant matter were under no absolute duty to illuminate the stairwell during the power failure, we find that defendants have made out a prima facie case in their favor based on the sworn affidavit of Manuel Szklanny.

Plaintiff contends that there are material issues of fact as to whether defendants took any steps to address the lack of lighting in the stairwells during the extended

blackout. Further, plaintiff asserts that the instant matter is distinguishable from Veira and Kopsachilis because the power outage caused by the hurricane lasted a period of four days, as opposed to the shorter blackouts in the prior cases. However, this is a factual distinction without a difference. In any event, the Appellate Division and the Court of Appeals have spoken on the matter. There is no statutory or common law duty to illuminate a staircase during a blackout.

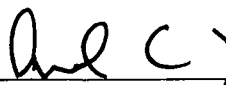
Accordingly, it is

ORDERED that defendants' motion for summary judgment is granted, and the complaint is dismissed; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

The foregoing constitutes the decision and order of the court.

Date: 8/27/14
New York, New York



Anil C. Singh

HON. ANIL C. SINGH
SUPREME COURT JUSTICE