Pineda v TSI Dobbs Ferry, LLC
2014 NY Slip Op 32923(U)
May 20, 2014
Supreme Court, Westchester County
Docket Number: 58861/2011
Judge: William J. Giacomo
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INDEX NO. 58861/2011
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To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
PRESENT: HON. WILLIAM J. GIACOMO, J.S.C.

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ERIC PINEDA,

Plaintiffs,

Index No. 58861/2011

-against-

Decision & Order

TSI DOBBS FERRY, LCC and ONE LAWRENCE STREET, LLC,

Defendants.

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The following documents numbered 1 to 14 were read on defendants' motion for summary judgment dismissing the complaint.

	PAPERS NUMBERED
Notice of Motion/Affidavits/Exhibits A-G	1-9
Affidavits in Opposition/Exhibits A-C	10-13
Replay Affirmation	14

Factual and Procedural Background

On September 17, 2011, plaintiff was allegedly injured when the foot pedal on a bicycle he was riding during a spin class detached. Plaintiff was attending the spin class at the New York Sports Club located at 50 Livingstone Avenue, Dobbs Ferry, New York. Defendant TSI Dobbs Ferry is the owner of the New York Sports Club business and defendant One Lawrence Street, LLC is the landlord and owner of the premises. Plaintiff claims he was using the bicycle for about 15 minutes when the pedal detached. Plaintiff

then unstrapped his foot from the pedal and finished the class on another bicycle. He did not notify the gym that the accident had occurred. He is not certain if the pedal broke off or unscrewed and detached.

Plaintiff commenced this personal injury action on November 7, 2011. In his complaint plaintiff seeks damages on a theory of negligence. Issue was joined on August 16, 2012.

Defendants now move for summary judgment dismissing the complaint on the ground that there is no evidence that they were negligent. Defendants note that William Goda, the fitness manager of the gym, testified at his deposition that at the time the accident occurred it was his custom to inspect the spin bikes once per month to insure they were running smoothly. Goda noted that he has never received any report of a pedal coming off a bike while a member was riding it. He was not aware that a pedal had come off a bike on the day of plaintiff's alleged accident; September 17, 2011.

Defendants argue that they cannot be negligent because they did not have constructive notice of any dangerous condition with respect to the spin bikes and there is no evidence that they created a dangerous condition. They note that plaintiff is not sure which part of the bike came off. Further, plaintiff is not able to identify which bike he was using at the time of the incident. Defendants argue that the mere happening of an accident does not mean there was negligence. Defendants also argue that plaintiff assumed the risk of dangers involved in participating in a sporting activity such as spinning. Defendant One Lawrence Street, LLC argues that as out possession landlord it had no notice of a defective condition with respect to a spin bike and thus cannot be negligent.

With respect to plaintiff's res ipsa loquitur claim, defendants argue that theory of negligence does not apply because the spin bikes were not in their exclusive control. Rather, the bikes were used everyday by members of the gym.

In opposition, plaintiff claims that there are questions of fact regarding whether defendants had constructive notice of the defective bike. Notably, plaintiff argues that since William Goda testified that he walked through the gym and inspected the equipment on a daily basis; he had constructive notice of the defective bike. Plaintiff also argues that the defendants' claim of assumption of the risk does not apply to this case because he was not participating in a sporting event. Plaintiff further claims that the fact that he can't identify the specific bike he was riding at the time of the accident does not mean that he cannot establish a sufficient nexus between the bike and the cause of his accident at trial. Finally, plaintiff argues in support of his res ipsa loquitur claim that a bike pedal does not detach in the absence of negligence, that the bike was in the exclusive control of the defendants and he did nothing to contribute to the accident.

Discussion

A party seeking summary judgment bears the initial burden of affirmatively demonstrating its entitlement to summary judgment as a matter of law. *(See Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Alvarez v Prospect Hospital*, 68 N.Y.2d 320 [1986]). "Once this showing has been made ... the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (*see Zuckerman v. City of New York*, 49 NY2d 557 [1980]).

Here, defendants have established prima facie entitlement to summary judgment. Defendants have established that they did not have actual or constructive knowledge of the defective bike, nor did they create the dangerous condition. Defendant One Lawrence Street, LLC as an out of possession landlord is not liable for any accident occurring with equipment on the premises. Further, the doctrine of res ipsa loquitur does not apply because the defendants did not have exclusive control over the bike in question.

In opposition, plaintiff fails to raise an issue of fact which would preclude summary judgment dismissing the complaint.

At the outset the Court notes that plaintiff has not demonstrated how defendant One Lawrence Street, LLC the out of possession landlord was negligent in this case. Accordingly, summary judgment dismissing the complaint against One Lawrence Street, LLC is GRANTED.

Further, with respect to defendant TSI Dobbs Ferry, LLC there is no evidence that it had actual knowledge of a defective bike before or after the accident. Notably, after the accident occurred plaintiff did not inform anyone at the gym that the pedal had come off the bike. Rather, he simply moved to a different bike and completed the spin class.

Also, there is no evidence that TSI Dobbs Ferry, LLC created the dangerous condition with the bike.

Although the defendant's lack of notice would not stand as a bar to the plaintiff's recovery if res ipsa loquitur applied (*see Levinstim v Parker*, 27 A.D.3d 698, 815 N.Y.S.2d 596 [2nd Dept 2006] *citing Parsons v State of New York*, 31 AD2d 596 [1968] *and Katz v Goldring*, 237 App Div 824 [1932]), the doctrine has no application under the

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circumstances presented here. The doctrine of res ipsa loquitur involves a common sense application of the rules pertaining to circumstantial evidence in negligence cases having particular characteristics. Recognizing from our everyday experience that certain accidents do not ordinarily happen in the absence of negligence, the doctrine permits, but does not require, the jury to draw an inference of negligence against the defendant *(see Finocchio v. Crest Hollow Club at Woodbury, Inc.*, 184 A.D.2d 491, 584 N.Y.S.2d 201 [2nd Dept1992]). To apply res ipsa loquitur, a plaintiff must establish that: (1) the accident is of a kind that ordinarily does not occur in the absence of negligence; (2) the instrumentality or agency causing the accident is in the exclusive control of the defendants; and (3) the accident must not be due to any voluntary action or contribution by plaintiff. *(See Smith v. Consolidated Edison Co. of New York, Inc.*, 104 A.D.3d 428, 961 N.Y.S.2d 73 [1st Dept 2013]).

Here, the bike was not in the exclusive control of TSI Dobbs Ferry, LLC. Notably, the bike was available for use by all members of the gym and guests. Further, plaintiff could not identify which bike caused his accident.

Based on the foregoing, TSI Dobbs Ferry, LLC's motion for summary judgment dismissing the complaint is GRANTED.

Dated: White Plains, New York
May 20, 2014

WILLIAM J. GIACOMO, J.S.C.