

Castillo v Port Auth. of N.Y. & N.J.

2015 NY Slip Op 32342(U)

December 8, 2015

Supreme Court, Queens County

Docket Number: 22684/11

Judge: Duane A. Hart

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This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, **DUANE A. HART** IAS PART 18
Justice

<p>-----</p> <p>LOURDES CASTILLO,</p> <p style="text-align: center;">Plaintiff(s),</p> <p style="text-align: center;">-against-</p> <p>THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, FIVE STAR PARKING, INC., AERO SNOW REMOVAL CORP., CRISTI CLEANING SERVICE CORP., and FIVE STAR PARKING,</p> <p style="text-align: center;">Defendant(s).</p> <p>-----</p>	<p>JUSTICE DUANE A. HART</p> <p>Index No.: 22684/11</p> <p>Motion Date: October 7, 2015</p> <p>Cal. Nos.: 24, 25, 26</p> <p>Mot. Seq. Nos.: <u>17</u>, <u>18</u>, <u>& 19</u></p>
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The following papers numbered 1 to 10 read on this motion by Defendant FIVE STAR PARKING ("FIVE STAR") for an Order, pursuant to CPLR §3212, granting summary judgment in favor of said Defendant, dismissing Plaintiff's complaint as well as any and all cross-claims and counterclaims as against it on the issue of liability (Sequence No. 17); on the motion by Defendant PORT AUTHORITY for an Order, pursuant to CPLR §3212, granting summary judgment on the issue of liability and on its claim for contractual indemnity from CRISTI CLEANING SERVICE CORP. and FIVE STAR (Sequence No. 18); and on the motion by Defendant CRISTI CLEANING SERVICE CORP. for an Order, pursuant to CPLR §3212, granting summary judgment on the issue of liability (Sequence No. 19).

	<u>PAPERS</u> <u>NUMBERED</u>
Notice of Motion-Affidavits-Exhibits	1 - 4
Answering Affidavits-Exhibits.....	5 - 7
Replying Affidavits.....	8 - 10

Upon the foregoing papers, it is ordered that the motion by Defendant FIVE STAR PARKING ("FIVE STAR") for an Order, pursuant to CPLR §3212, granting summary judgment in favor of said Defendant, dismissing Plaintiff's complaint as well as any and all cross-

claims and counterclaims as against it on the issue of liability (Sequence No. 17), is denied; and it is further

ORDERED, that the motion by Defendant PORT AUTHORITY for an Order, pursuant to CPLR §3212, granting summary judgment on the issue of liability (Sequence No. 18), is hereby denied; and it is further

ORDERED, that the branch of the motion by Defendant PORT AUTHORITY for an Order, granting summary judgment on its claim for contractual indemnity from CRISTI CLEANING SERVICE CORP. and FIVE STAR (Sequence No. 18), is denied without prejudice with leave to renew; and it is further

ORDERED, that the motion by Defendant CRISTI CLEANING SERVICE CORP. for an Order, pursuant to CPLR §3212, granting summary judgment on the issue of liability (Sequence No. 19), is denied.

Plaintiff in the above action seeks to recover for personal injuries arising out of an alleged slip and fall on ice, on February 16, 2010, at approximately 10:30 P.M. in the employee parking lot (Lot 10E) at LaGuardia Airport, Queens County. Defendant FEMUR was the owner or landlord of the premises on the date of the incident. Defendant PORT AUTHORITY is purportedly the owner of the subject premises where Plaintiff's accident occurred. There existed a contract between PORT AUTHORITY and FIVE STAR, in which FIVE STAR manages the parking lot for the PORT AUTHORITY at LaGuardia Airport. Plaintiff claimed that her injuries are the result of Defendants' negligence in the ownership, operation, maintenance, management and control of the subject floor.

Plaintiff commenced this action by the service of a Summons and Complaint on or about November 28, 2010 in Supreme Court, Bronx County. Plaintiff then served a Supplemental Summons and Complaint on or about February 18, 2011. Issue was joined by the service of Defendant CRISTI CLEANING SERVICE CORP.'s ("CRISTI CLEANING") Verified Answer to the Amended Complaint with cross-claims on or about April 12, 2011. Defendant FIVE STAR interposed its Answer to the Amended Complaint with cross-claims on or about April 12, 2011. Defendant PORT AUTHORITY interposed its Verified Answer to the Amended Complaint with cross-claims on or about March 31, 2011. Discovery demands and responses were served, and depositions went forward. The herein case was ultimately transferred to Supreme Court, Queens County by Decision and Order of the Honorable Justice Kibbie Payne, dated July 21, 2011.

Plaintiff subsequently commenced a separate action against SNOW LIFT, LLC in Supreme Court, Queens County under Index Number

700252/13 by filing a Summons and Complaint on or about January 24, 2013. By Decision and Order of this Court, dated December 31, 2013, the instant action was joined with Castillo v. Snow Lift, LLC, indicated by Index Number 700252/13.

This Court notes that the action as against SNOW LIFT, LLC. was discontinued by Stipulation of Discontinuance, dated September 30, 2014. And by Decision and Order, dated September 13, 2013, this Court granted Defendant AERO SNOW REMOVAL CORP.'s motion for summary judgment to dismiss the Complaint as against it. The Note of Issue with a Certificate of Readiness was filed on December 3, 2014.

Now, upon motion, Defendant FIVE STAR argues that it is entitled to summary judgment on the issue of liability as there is no proof of negligence with respect to the herein accident where it did not owe a duty to Plaintiff and where FIVE STAR did not perform snow and ice removal in parking lot 10E at LaGuardia Airport.

Defendant PORT AUTHORITY, in support of its motion for summary judgment, argued that it never received any complaints, maintenance requests, repair records, or notifications of any icy or slippery conditions in parking lot 10E for one month prior to and including the date of the herein accident. They also argue that FIVE STAR was obligated to notify the PORT AUTHORITY if any snow removal was needed in parking lot 10E and to report any unsafe or hazardous conditions to it.

Upon its motion, Defendant CRISTI CLEANING argued that it is entitled to summary judgment as it was only responsible for snow and ice removal from bus shelters, sidewalks and walkways. And that CRISTI CLEANING owed no duty to Plaintiff for the snow and ice removal from the handicapped parking space area where Plaintiff alleged that her accident occurred.

Summary judgment is a drastic remedy which deprives a litigant of his or her day in court, and should only be granted where there is no doubt as to the absence of triable issues. See Kolivas v. Kirchoff, 14 A.D.3d 493 (2d Dep't. 2005); Zuckerman v. City of New York, 49 N.Y.2d 557 (1980). The Court's function in determining a motion for summary judgment is not to resolve issues of fact or determine matters of credibility but to determine whether such issues exist. See Scott v. Long Island Power Auth., 294 A.D.2d 348 (2d Dep't. 2002); Anyanwu v. Johnson, 276 A.D.2d 572 (2d Dep't. 2000). In viewing the evidence, the Court must accept the plaintiff's pleadings as true and the proof must be read in the light most favorable to the plaintiff, as the party opposing the motion. See Negri v. Stop & Shop, Inc., 65 N.Y.2d 625 (1985).

In support of its motion, Defendant FIVE STAR submitted the deposition testimonies of Plaintiff, the maintenance unit supervisor (Brian Stamm) and the operations group supervisor (Mike Zozzaro) for PORT AUTHORITY; Haroon Akhtar, Mario Cueller, Frederick James, and Jackson Williams on behalf of FIVE STAR; and the manager of CRISTI CLEANING (Brian Brown).

Plaintiff testified that, on the date of the accident, she parked her vehicle in parking lot 10E at LaGuardia Airport to report to work. She parked her vehicle near the back fence of the subject employee parking lot. After she parked her vehicle, Plaintiff testified that she proceeded to the last bus stop in the parking lot. Before the time of the accident, Plaintiff did not make any complaints about icy conditions in the employee parking lot 10E. She testified that when she ended work at approximately 10:00 P.M. and boarded a bus to return to parking lot 10E to retrieve her vehicle. She exited the bus at the first stop located inside parking lot 10E. Plaintiff testified that she was walking through parking spaces toward her parked vehicle. Plaintiff then stepped over a concrete sidewalk into a handicapped parking space. And that after stepping off the sidewalk, she took one or two steps when she fell. She testified that she did not observe any snow on the ground where she fell but stated that it was snowing on the morning of February 16, 2010.

Brian Stamm testified on behalf of PORT AUTHORITY. Mr. Stamm testified at his deposition that he was a maintenance unit supervisor for PORT AUTHORITY for five years. He testified that his duties and responsibilities included contract administration, staffing, scheduling, and overseeing snow removal. He testified that parking lot 10E was an employee parking lot on the date of the accident. In February 2010, Mr. Stamm testified that PORT AUTHORITY was involved in snow and ice removal. If necessary, PORT AUTHORITY would have AERO SNOW REMOVAL CORP. perform snow and ice removal depending on the severity of the snow storm. Mr. Stamm further testified that PORT AUTHORITY would salt parking lot 10E, and that on the date of the incident, PORT AUTHORITY was actively salting from 6:30 P.M. to 6:30 A.M. the next day on February 17, 2010. Mr. Stamm testified that FIVE STAR manages the parking lot and is responsible for toll collecting and monitoring the vacancy of parking spaces. He specifically testified that FIVE STAR does not have any duties with regard to snow and ice removal.

Mike Zozzaro also testified on behalf of PORT AUTHORITY. Mr. Zozzaro was an Operations Group Supervisor at the PORT AUTHORITY for about twenty-two years. Mr. Zozzaro testified that either AERO SNOW REMOVAL CORP. or the PORT AUTHORITY was responsible for snow

and ice removal in parking lot 10E. He recalled that he was informed of Plaintiff's accident on the date of the incident. After being informed that the fall occurred in the handicapped parking spaces located inside parking lot 10E, Mr. Zozzaro testified that he personally walked over to the parking spaces to observe the alleged condition and called the PORT AUTHORITY's salt truck to return and salt the area again.

Haroon Akhtar testified on behalf of FIVE STAR. Mr. Akhtar testified that he worked for FIVE STAR from year 2003 to 2010. In February 2010, Mr. Akhtar's duties consisted of collecting revenue from parking operations. He testified that FIVE STAR monitors airport employees and provides assistance when they exit or enter parking lot 10E. He further testified that FIVE STAR did not perform cleaning services in parking lot 10E in February 2010. Mr. Akhtar also testified that FIVE STAR would only perform snow and ice removal near the exit plaza by the booth that housed FIVE STAR attendants.

Mario Cueller also testified on behalf of FIVE STAR. On the date of the incident, Mr. Cueller was a supervisor with ABM Parking (formerly FIVE STAR) and that he responded to the Plaintiff's incident on said date. He recalled the Plaintiff had informed him that she was walking from the bus stop and proceeded along the handicapped parking spaces before the incident occurred.

Frederick James testified on behalf of FIVE STAR. Mr. James testified at his deposition that he was employed at FIVE STAR as a Supervisor In Charge in year 2010. He remembered receiving a call from Jackson Williams, a parking attendant, who indicated that Plaintiff approached him and stated that she had fallen inside parking lot 10E. After he received the call from Mr. Williams, Mr. James then notified Mr. Zozzaro at the PORT AUTHORITY.

Jackson Williams, on behalf of FIVE STAR, testified at his deposition that he was employed by FIVE STAR as a traffic attendant and that it was not part of his responsibilities to check parking lot 10E for hazardous conditions.

Brian Brown, a manager employed by CRISTI CLEANING, testified at this deposition that he never observed anyone from FIVE STAR remove snow or ice from any portion of parking lot 10E.

Based on the deposition testimonies, Defendant FIVE STAR argued that it is entitled to summary judgment where its contract with the PORT AUTHORITY was not a "comprehensive and exclusive" agreement that displaced the PORT AUTHORITY's duty as owner to maintain parking lot 10E. Defendant FIVE STAR also argued that the

evidence demonstrated that it did not perform snow and ice removal of handicapped parking areas in the subject parking lot where the Plaintiff's accident occurred. Finally, FIVE STAR argued that it also did not have actual or constructive notice of the alleged icy condition that purportedly caused the fall.

Defendant PORT AUTHORITY opposed Defendant FIVE STAR's motion for summary judgment. Pursuant to the contract between PORT AUTHORITY and FIVE STAR, PORT AUTHORITY argued that FIVE STAR had constructive notice of the alleged hazardous condition because parking lot supervisors are required to perform field inspections of parking lots, including parking lot 10E. Defendant PORT AUTHORITY further argued that the contract expressly intended that FIVE STAR's maintenance responsibilities to be so broad as to impose upon FIVE STAR a duty of care to third parties. PORT AUTHORITY contended that FIVE STAR was contractually obligated to monitor and patrol parking lot 10E for any hazardous conditions, and that it failed to notify PORT AUTHORITY of any dangerous or icy conditions in the employee parking lot.

Upon review, Defendant FIVE STAR's motion for summary judgment is denied. There is an issue of fact as to whether FIVE STAR had notice of a dangerous and defective condition, such that it owed a duty to Plaintiff to take proper action by notifying the PORT AUTHORITY of the alleged hazardous condition.

Based upon the evidence submitted in support of its motion for summary judgment, Defendant PORT AUTHORITY argued that CRISTI CLEANING was responsible for performing snow and ice removal services for bus shelters, sidewalks, and crosswalks of parking lot 10E. Defendant PORT AUTHORITY further argued that CRISTI CLEANING employees were responsible for monitoring or policing the condition of the areas that it cleaned or maintained. According to PORT AUTHORITY, CRISTI CLEANING was obligated to rope off any unsafe conditions in the event that a hazardous condition created to avoid accidents.

Defendant PORT AUTHORITY also claimed that FIVE STAR was also responsible for monitoring parking lot 10E for any hazardous conditions, that included snow and ice. Under the terms of its contract with PORT AUTHORITY, FIVE STAR was obligated to rope off an unsafe area and place warning signs to prevent accidents.

Defendant PORT AUTHORITY contends that the evidence demonstrated that it did not create or have notice of an alleged hazardous condition. As its crews were actively removing snow from parking lots, including lot 10E, PORT AUTHORITY, it says, did not breach a duty of care to Plaintiff on the date of the incident.

Plaintiff, Defendant CRISTI CLEANING, and Defendant FIVE STAR opposed the motion by Defendant PORT AUTHORITY for summary judgment. They argued that, the fact that Defendant PORT AUTHORITY actively performed snow and ice removal in parking lot 10E at the time of the incident, demonstrated that it did have notice of an alleged hazardous condition. They further argued that there is question of fact as to whether PORT AUTHORITY employees involved with the snow removal had notice of an icy condition when they were clearing the snow.

Upon review, Defendant PORT AUTHORITY's motion for summary judgment is denied. Because of the PORT AUTHORITY's active participation in the snow and ice removal of parking lot 10E, it cannot be said that it is free from negligence. There is at least a question of fact as to whether Defendant PORT AUTHORITY's acts or omissions created the alleged hazardous condition.

With respect to Defendant CRISTI CLEANING's motion for summary judgment, it argued that the testimonies of PORT AUTHORITY's witnesses show that it was either the PORT AUTHORITY or AERO SNOW REMOVAL CORP.'s responsibility for snow and ice removal of parking lot 10E, and not a duty of CRISTI CLEANING to perform.

Defendant PORT AUTHORITY opposed Defendant CRISTI CLEANING's motion. It argued that CRISTI CLEANING was obligated to perform snow and ice removal from sidewalks adjoining the accident location. Defendant PORT AUTHORITY also argued that CRISTI CLEANING was responsible for reporting any icy condition complained of or observed.

Based upon the foregoing, Defendant CRISTI CLEANING's motion for summary judgment is denied as there is an issue of fact as to whether CRISTI CLEANING's acts or omissions in its snow removal of the adjoining areas created the alleged icy condition on which Plaintiff fell.

Dated: December 8, 2015

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J.S.C.