

Palionis v Jakobson Props., LLC

2016 NY Slip Op 30347(U)

March 2, 2016

Supreme Court, New York County

Docket Number: 150016/2013

Judge: Cynthia S. Kern

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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GERARD PALIONIS,

Plaintiff,

Index No. 150016/2013

-against-

DECISION/ORDER

JAKOBSON PROPERTIES, LLC, ET AL,
Defendants.

-----X

HON. CYNTHIA KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for: _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	_____ 1
Answering Affidavits	_____ 2
Replying Affidavits.....	_____ 3
Exhibits.....	_____ 4

Plaintiff commenced this action for personal injuries he allegedly incurred when he slipped and fell while descending the stairs between the second and first floor in the building in which he resides. At the time of the occurrence, the power to the premises was out and there was no electric light in the stairwell as a result of the blackout which occurred in the aftermath of Superstorm Sandy. The defendants have brought the present motion for summary judgment dismissing the action against them. As will be explained more fully below, the motion for summary judgment is granted.

The plaintiff alleges in his bill of particulars that he was caused to “trip and fall down the subject staircase due to the negligence of the defendants, defects in the stairwell, defects in the staircase, and improper and defective emergency lighting.” He testified that when he left his apartment, there were no lights on in the common hallway and no lights on in the stairway and that he used the light from his cellphone to proceed. He further testified that he went down with

his right foot and the foot slipped and then all of a sudden he was propelled forward. He did not know if the steps were wet or if there was any debris or other substance on the steps.

On a motion for summary judgment, the movant bears the burden of presenting sufficient evidence to demonstrate the absence of any material issues of fact. See *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986). Summary judgment should not be granted where there is any doubt as to the existence of a material issue of fact. See *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). Once the movant establishes a *prima facie* right to judgment as a matter of law, the burden shifts to the party opposing the motion to “produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim.” *Id.*

In the present case, defendants have made a *prima facie* showing of their right to judgment as a matter of law dismissing plaintiff’s claim for liability based on defective emergency lighting as there is no statutory or common law requirement that defendants maintain lighting in the stairway during a blackout. The Court of Appeals has specifically held, in a decision upholding a grant of summary judgment to the owners of the premises, that there is no liability under Multiple Dwelling Law section 37 or for common law negligence based on a claim that the landlord failed to properly illuminate a dark stairway during a blackout. *Kopsachillis v. 130 E. 18 Owners Corp.* 11 N.Y.3d 512 (2008). In that case, the building staff had put candles and flashlights in the stairway and staff from the building escorted occupants up the stairs. Plaintiff claimed, however, that the stairs were dark when she went back down the stairs. The court held, based on the foregoing facts, that there was no evidence of negligence on the part of the building owner with respect to insufficient illumination sufficient to create an issue of fact. *Id.*

The First Department has also explicitly held that there is no liability on the part of the owner of premises for failing to provide sufficient illumination in a dark stairway during a blackout. See *Viera v. Riverbay Corp.* 44 A.D.3d 577, 579 (1st Dept 2007). The court held as follows:

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 a 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.

Based on the foregoing case law, defendants have established that they have no liability to plaintiff for any claim based on insufficient illumination of the stairs during the blackout which occurred in the aftermath of Superstorm Sandy. Moreover, there is no allegation in the present case that the plaintiff slipped because the stairs were wet or that there was any substance or debris on the stairway.

The primary case relied upon by plaintiff to establish that the owner had a duty to illuminate during the blackout is distinguishable and was actually distinguished by the First Department in its decision in *Viera*. *Goldstein v. Consolidated Edison Co. of NY*, 115 A.D.2d 34 (1st Dept 1986). In *Goldstein*, the superintendent created a hazardous condition by encouraging tenants to obtain water from a street hydrant which he had opened and then ascend darkened stairways back to their apartment. In *Viera* and in the present case, there is no allegation that anybody from the building created a dangerous condition by encouraging residents of the building to carry water in pails in the darkened stairways or to use the stairways. The court also finds that the other arguments raised by plaintiff in opposition to the motion for

summary judgment, including the argument that defendants assumed a duty to plaintiff because they attempted to place some lighting in the stairwells, are insufficient to create an issue of fact.

Finally, the affidavit of plaintiff's expert submitted in opposition to the motion is insufficient to create a disputed issue of fact. To the extent that the expert argues that there was insufficient emergency lighting during the blackout, such argument is insufficient to create an issue of fact based on the case law previously discussed. To the extent that the expert argues that there were uneven riser heights in the premises, these findings are insufficient to create an issue of fact as the expert did not connect plaintiff's fall to any purported defect in the risers and plaintiff's testimony was that he simply slipped. *See Budano v. Gurdon*, 110 A.D.3d 543 (1st Dept 2013) (affidavit of plaintiff that inconsistent stair dimensions contributed to his inability to prevent his fall and findings of plaintiff's expert concerning uneven riser heights were insufficient to create an issue of fact where plaintiff had previously testified that he simply slipped and expert failed to connect plaintiff's fall to any purported defect in the risers). *See also Raghu v. New York City Hous Auth.*, 72 A.D.3d 480 (1st Dept 2010) (there was no basis for expert to opine that the defects in the stair risers caused plaintiff's fall where she had testified that she simply slipped). The findings of the expert regarding plumbing fixtures do not create an issue of fact as plaintiff's fall was not caused by plumbing fixtures.

Based on the foregoing, the motion by the defendants for summary judgment is granted and the complaint is dismissed as to all defendants. Based on this finding, the court need not reach the other arguments raised by defendants. The foregoing constitutes the decision, order and judgment of the court.

Dated: 3/2/16

Enter: _____

J.S.C.
CYNTHIA S. KERN
J.S.C.