

Rodriguez v Napa Realty Corp.
2018 NY Slip Op 30502(U)
February 20, 2018
Supreme Court, Bronx County
Docket Number: 301520/2014
Judge: Norma Ruiz
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX : PART 22

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NOEMA ABREU RODRIGUEZ,

Plaintiff,

Index No: 301520/2014

-against-

DECISION/ORDER

NAPA REALTY CORP., BP PRODUCTS NORTH
AMERICAS, INC. BP GAS STATION and
POINT SERVICE STATION, INC.,

Defendants.
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HON. NORMA RUIZ:

Plaintiff seeks to recover damages for injuries allegedly sustained as the result of a slip and fall on snow and ice at a gas station leased by Point Service Station, Inc. (“Point Service”) and owned by Napa Realty Corp. (“Napa”). BP Products North Americas, Inc. and BP Gas Station (together “the BP defendants”), supply gasoline to Point Service Station, Inc. Moving collectively, defendants seek summary judgment dismissing the action.

The motion is determined as follows:

Plaintiff alleges that she slipped and fell on February 20, 2014, shortly after exiting a bus, as she was walking on the sidewalk adjacent to the gas station leased by Point Service and owned by Napa. She claims that she slipped and fell on ice, sustaining personal injuries, as she was walking by the entrance/exit ramp of the gas station. Defendants contend that no duty was owed to plaintiff, and further that, based on certified climatological reports, the icy condition complained of did not exist on the date in question.

With respect to Point Service, it submits the deposition testimony of Charanjit Singh, its

president, owner and sole shareholder, who testified as to Point Service's general maintenance procedures (*see Sikora v Earth Leasing Prop. Liab. Co.*, 132 AD3d 600 [1st Dept 2015]; *Santiago v New York City Health & Hosps. Corp.*, 66 AD3d 435 [1st Dept 2009]). However, Point Service failed to present any specific proof as to the maintenance conducted that particular day, nor did it offer any evidence concerning the specifics as to when the sidewalk entrance/exit to the gas station was last inspected, shoveled or salted (*see Sikora v Earth Leasing Prop. Liab. Co.*, *supra*; *Spector v Cushman & Wakefield, Inc.*, 87 AD3d 422 [1st Dept 2011]; *Santiago v New York City Health & Hosps. Corp.*, *supra*). Therefore, Point Service failed to establish, as a matter of law, that it lacked notice of the alleged icy condition. Moreover, Point Service failed to establish, as a matter of law, that the incident occurred in an area, i.e., a designated area of an adjacent bus stop, that Point Service had no duty maintain (*see New York City Admin. Code § 7-210*). Notably, plaintiff claims that she slipped and fell on ice as she was walking by the *entrance/exit ramp of the gas station*.

Point Service did make a prima facie showing that the alleged icy condition could not have been present at the time the incident occurred. The affidavit of George Wright, a meteorologist, demonstrated that, based on the weather conditions in the area for more than 46 hours prior to the time of the alleged incident, the purported icy condition could not have formed. However, in opposition, plaintiff raised a triable issue of fact. Plaintiff submits the affidavit of Howard Altschule, a Certified Consulting Meteorologist, who avers that plaintiff slipped and fell on pre-existing snow and ice, and that no new ice formed at the location for approximately 25 1/2 hours before the incident (*see George v New York City Hous. Auth.*, 151 AD3d 532 [1st Dept 2017] ["plaintiff raised a triable issue of fact as to whether NYCHA had notice of the condition, by submitting an expert meteorologist's opinion that, based on meteorological data, the ice condition was present for at least

45 hours prior to plaintiff's accident"]; *Santiago v New York City Health & Hosps. Corp.*, 66 AD3d 435 [1st Dept 2009]). Thus, plaintiff has raised a triable issue of fact as to "the timing of the ice formation" (*George v New York City Hous. Auth.*, supra).

Napa made a prima facie showing of entitlement to judgment as a matter of law dismissing the complaint as against it on the basis that it was not responsible for the snow removal. Napa's chief operating officer, Adam Good, testified at deposition that Point Service, as tenant, was responsible for snow removal. Additionally, Point Service acknowledges that it was wholly responsible for snow removal at the subject premises under the relevant lease. For her part, plaintiff submits no evidence contradicting Napa's showing that it owed no duty to plaintiff as an out-of-possession landlord with no contractual obligation to keep the sidewalks clear of snow and ice (*see Xiang Fu He v Troon Mgmt., Inc.*, ___ AD3d ___, 66 NYS3d 884 [1st Dept 2018]; *Cepeda v KRF Realty LLC*, 148 AD3d 512 [1st Dept 2017]).

The BP defendants made a prima facie showing that they were the franchisor for the gas station, the supplier of fuel and not otherwise involved in the maintenance and operation of the gas station (*see O'Sullivan v 7-Eleven, Inc.*, 151 AD3d 658 [1st Dept 2017] [Court relied upon franchise agreement wherein franchisor relinquished control of day-to-day operations, including maintenance, in determining that 7-Eleven, Inc. was free of liability due to a slip and fall on snow and ice]). "The mere existence of a franchise agreement is insufficient to impose vicarious liability on the franchisor for the acts of its franchisee; there must be a showing that the franchisor exercised control over the day-to-day operations of its franchisee (*Schoenwandt v Jamfro Corp.*, 261 AD2d 117 [1st Dept 1999])" (*Martinez v Higher Powered Pizza, Inc.*, 43 AD3d 670, 671 [1st Dept 2007]). Plaintiff does not meaningfully challenge the BP defendants' prima facie showing and therefore does not raise a

triable issue of fact as to their liability.

For the foregoing reasons, it is hereby

ORDERED that defendants' motion seeking dismissal of the action as to the BP defendants and as to defendant Napa is granted and is otherwise denied in all other respects.

This constitutes the decision and order of the court.

Dated: February 20, 2018



Norma Ruiz, J.S.C.