Slaughter v City of New York
2019 NY Slip Op 30641(U)
March 14, 2019
Supreme Court, New York County
Docket Number: 109963/2007
Judge: Lyle E. Frank

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK **PART** IAS MOTION 52EFM

Justice

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LISA S. SLAUGHTER AS ADMINISTRATRIX OF THE GOODS, CHATTELS AND CREDITS OF THE ESTATE OF PHILIP MORRIS AND IDA MORRIS[1],

Plaintiff,

- v -

THE CITY OF NEW YORK, THE NEW YORK CITY HOUSING PRESERVATION AND DEVELOPMENT, CONVENT AVENUE FAMILY LIVING FACILITY, WEST HARLEM GROUP ASSISTANCE, INC.,WEHSCO/WEST END HUB & SPRING COMPANY, MASTERRACK STEEL PRODUCTS/LEGGETT & PLATT AND LODGING KIT COMPANY,

Defendants.

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INDEX NO. 109963/2007

MOTION DATE 02/20/2019, 02/20/2019, 02/20/2019, 02/20/2019

MOTION SEQ. NO. 007 008 009 010

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 007) 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 107, 156, 164, 165, 166, 190, 191, 192, 193, 194, 195, 196, 197, 198, 207, 211

were read on this motion to/for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 157, 163, 168, 169, 170, 171, 172, 173, 174, 175, 176, 199, 210

were read on this motion to/for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 009) 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 158, 162, 167, 177, 178, 179, 180, 181, 182, 183, 200, 203, 208, 209

were read on this motion to/for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 010) 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 159, 160, 161, 184, 185, 186, 187, 188, 189, 201, 202, 204, 205, 206, 212, 213, 214

were read on this motion to/for SUMMARY JUDGMENT.

Upon the foregoing documents, and after oral argument, the Decision/Order of this Court is as follows:

[1] Through a recent uncontested motion, Lisa S. Slaughter was substituted for Ida Morris in the action, as Ms. Morris has passed away.

The motions for summary judgment by Lodging Kit Company, (mot. seq. 7), WEHSCO, (mot. seq. 8), Convent Avenue Family Living Facility and West Harlem, (mot. seq. 9), and City of New York, (mot. seq. 10), are granted in full.

This is an action to recover damages for personal injuries and death resulting from allegedly defective bunk beds.

Defendants

The City of New York ("City") was the owner of 26 Convent Avenue, the location of the shelter, and maintained a contract with Convent Avenue Family Living Facility ("Convent Avenue"), a subsidiary of West Harlem Group, for the purposes of running the subject shelter. Lodging Kit Company ("Lodging Kit") is the distribution company that Convent Avenue used to order the bunk beds that were manufactured by WEHSCO/West End Hub & Spring Company, ("WEHSCO").

Undisputed Facts

On August 24, 2005, Lodging Kit prepared a purchase order to WEHSCO, pursuant to the request of Convent Avenue, for 80 bunk bed frames. The purchase order indicated that the bunk beds would be delivered directly to Convent Avenue Family Shelter, from WEHSCO. There was no request, by Convent Avenue in the purchase order, for guardrails for the bunk beds.

Mr. and Mrs. Morris, and other members of their family, were placed at the Convent Avenue shelter because the family was displaced as a result of a house fire. The day after Mr. Morris began his stay at Convent Avenue, on March 16, 2006, he answered written questions

relating to his medical condition and denied having any medical problems. Moreover, Mr. Morris was examined by a nurse and his health was confirmed.

From March 15, 2006 until the date of the accident April 23, 2006, Mr. Morris slept on the top bunk of a bunk bed he shared with Mrs. Morris. On April 23, 2006, Mr. Morris fell from the top bunk of the bunk bed and struck his head on a table. Mr. Morris was subsequently taken to St. Luke's hospital, where it was determined that he had broken his neck and was a quadriplegic. Unfortunately, Mr. Morris passed away 88 days later, on July 19, 2006.

Lodging Kit

Preliminarily, it should be noted that Lodging Kit's motion was only opposed by plaintiff. Plaintiff erroneously relies on sections 1213.1 and 1513.1 of the Code of Federal Regulations (CFR), that only apply to manufacturers. It is undisputed that the beds ordered by Mr. Rankin, on behalf of Convent Avenue, were beds for use in an institutional setting. Mr. Rankin placed an order for specific beds and those are the beds that he received. The record is devoid of any evidence or even allegations that the beds Lodging Kit distributed were other than what was ordered. Plaintiff's arguments that the bunk beds are inherently dangerous and require a warning from the distributor is without a basis in law or in fact. *See generally Buck ex rel. Buck v Camp Wilkes, Inc.*, 906 So. 2d 778 [Miss. Ct. App. 2004] (bunk bed is not a dangerous instrumentality); *Rubin v Olympic Resort, Inc.*, 24 Misc.2d 131 [Sup Ct Nassau County, 1960] (Court was "not prepared to state that a bunk bed without a guardrail is a dangerous instrumentality in and of itself").

The Court rejects plaintiff's arguments and does not find that any liability can rest with Lodging Kit for a failure to warn. Contrary to plaintiff's assertions, the Court does not find that the absence of the rails on the bunk bed in question renders the bed defective.

This Court can find no theory of liability to keep Lodging Kit in this action, nor has any other party opposed the instant motion, besides plaintiff, and suggested one. Based on the foregoing, Lodging Kit's motion for summary judgment is granted.

WEHSCO

It is undisputed that WEHSCO is a manufacturer of institutional beds. There has been no evidence that the bunk bed, manufactured by WEHSCO, was defective. Nor, has there been any allegation that WEHSCO held itself out to manufacture beds other than those to be used in an institutional setting.

In support of its motion WEHSCO argues that the intent of the statutes in question is to protect children under six years old, and as the decedent was well over that age, the decedent was not within the class the statute was intended to protect, thus the statutes are inapplicable. Further, WEHSCO annexes an affidavit from mechanical engineer, Bert Reiner, who affirms that the institutional beds manufactured by WEHSCO were not defective, were safe and complied with all applicable federal guidelines.

Plaintiff correctly asserts that the statutes she relies upon are clear in that locations "intended for use by children under 6 are not considered to be institutions." However, the location in where the subject incident occurred was a family shelter. Plaintiff[2] contends that this creates a question of fact that precludes summary judgment. The Court disagrees. Whether or not the location in question is defined as an institution is not dispositive to whether WEHSCO is liable in the instant action.

[2] WEHSCO's motion for summary judgment was opposed only by plaintiff.

16 C.F.R. §§ 1213.1 states:

> (a) Scope, basis, and purpose. This part 1213, a consumer product safety standard, prescribes requirements for bunk beds to reduce or eliminate the risk that children will die or be injured from being trapped between the upper bunk and the wall, in openings below guardrails, or in other structures in the bed. (b) Application and effective date. The standard in this part applies to all bunk beds, *except those manufactured only for institutional use*, that are manufactured in the United States, or imported, on or after June 19, 2000. (Facilities intended for use by children under age 6 are not considered to be institutions.) emphasis added.

The plain language of the of the sections of the CFR relied on by plaintiff, indicate that non-institutional beds are required to be equipped with guardrails to protect children from injury or death because of entrapment. This is extremely important, because to the extent that plaintiff alleges WEHSCO is in violation of the statute and its violation was the proximate cause of decedent's accident, that argument is incorrect. First, the Court agrees with WEHSCO that, decedent was not in the class that the statute intended to protect; further, the injury decedent suffered was not the type of injury that the statute was intended to protect against.

Notwithstanding that the bunk beds manufactured by WEHSCO were in fact institutional beds, the beds had pre-drilled holes that made it possible for the purchaser of the beds to install guardrails and or a ladder. In fact, WEHSCO offered these items for purchase as accessories.

The Court finds it particularly persuasive that Convent Avenue was in possession of guardrails and would install them as they deemed necessary. Even if this Court reached the issue of determining whether Convent Avenue is a non-institutional setting as per the CFR, the pertinent fact remains that guardrails were never specifically ordered by Convent Avenue with

the purchase of the 80 bunk beds. Ruben Rankin, of Convent Avenue, stated that if guardrails were needed, they would have been ordered.

Even assuming, *arguendo*, that WEHSCO had a duty to provide non-institutional beds to its customers, the fact that the beds were delivered disassembled left the option to assemble with or without guardrails on the purchaser. Plaintiff[3] has failed to raise a material issue of fact or to rebut the engineer's affidavit.

Based on the foregoing, WEHSCO's motion for summary judgment is granted.

City of New York, Convent Avenue and West Harlem

First, it must be noted that New York City Housing Preservation and Development (HPD) is a non-suable entity, thus the case against it is dismissed without opposition. As to the arguments presented by the City of New York, Convent Avenue and West Harlem, the Court agrees with the precedent cited by the defendants.[4] These defendants did not create nor were the defendants on notice of an alleged dangerous condition.

The decedent, Mr. Morris, underwent a medical evaluation prior to the subject incident. It is undisputed that there was nothing in Mr. Morris's medical evaluation that would predispose him to this type of accident, i.e. history of seizures or vertigo. The record is devoid of any evidence that Mr. Morris had any difficulties either ascending or descending from the top bunk bed or made any complaints regarding the bed, other than his desire for a larger bed so that he could sleep with his spouse. None of the defendants were aware of anyone falling out of a bunk bed, or any bed for that matter, prior to the occurrence. Thus, the City, Convent Avenue and

[3] WEHSCO's motion for summary judgment was only opposed by plaintiff.
[4] *Juarez v. Wavecrest Management Team Ltd.* 88 AD3d 611 [1st Dept 2011]; *Marchewka v. Bermuda Star Lines*,937 F Supp 328,335 [SD NY1996].

West Harlem Group have established that they were not on notice of any alleged defective or dangerous condition.

Plaintiff contends that Convent Avenue was under a duty to install guardrails on the bunk beds, based on the testimony of Ruben Rankin, Director of Maintenance for Convent Avenue, that guardrails were generally installed on the top bunk on beds which were going to be used by residents of the shelter. Mr. Rankin testified that he would inspect the premises and if he was aware that anyone was going to be sleeping on the top bed of a bunk bed, he would have the guardrails installed. He also testified, that he generally did not allow someone over 50 years of age to sleep on the top bed of a bunk bed.

However, plaintiff has failed to cite to any rule, statute, ordinance or law which requires a shelter, such as Convent Avenue, to install guardrails on top bunk beds that are being used by healthy adults. Regardless of whether Convent Avenue had an internal procedure of putting guard rails on the top bunk beds, it was not under any legal obligation to do so. Thus, if Convent Avenue employees did not follow its procedure of installing a guardrail on Mr. Morris's bunk bed, it was only a breach of an internal guideline which imposed a higher standard on the employees, and not a breach of the duty of reasonable care.

In *Sherman v. Robinson*, 80 N.Y.2d 483 [1992], the Court of Appeals held that a "[v]iolation of a company's internal rules is not negligence in and of itself, and where such rules require a standard that transcends reasonable care, breach cannot be considered evidence of negligence." See also, *Byrd v. Walmart, Inc.*, 128 AD3d 629 [2d Dept 2015]. Further, in *Barretto v. City of New York*, 229 AD2d 214 [1st Dept 1997], the Court held that, in the absence of prior incidents putting the defendant on notice, an athletic director's testimony, that student

athletes should never be left alone in the gymnasium, did not trigger a duty of constant supervision or otherwise establish a higher standard of care.

Here, Mr. Rankin's testimony that Convent Avenue routinely installed guardrails on the top bunk of bunk beds in the shelter did not impose a higher duty of care on Convent Avenue to ensure that guardrails were installed on the bunk beds used by healthy adult residents. Convent Avenue had only a duty to exercise reasonable care under the circumstances, which did not require the installation of guardrails on a bunk bed that was used by a healthy 62-year-old man.

Further, public policy considerations support this position. Similar to the reasoning of many Good Samaritan statutes, the Court finds it unreasonable and against public policy to deem a party's conduct negligent when it fails to go "above and beyond" the ordinary standard of care.

The Court also agrees with the defendants' contention that no defendant in this case created a dangerous condition or had actual or constructive notice of such condition. This case does appear to be analogous to the cases cited by the City where no cause of action was deemed to exist, including *Williams v Jones* 34 So. 3d 926 (La. Ct. App. 2010).[5] Moreover, there has been no evidence set forth by the plaintiff that would indicate that either the decedent or his wife has complained or otherwise expressed concern about the bed in question. The only possible concern indicated was to a "Ms. White" by Ms. Morris, but there is no indication who this person is or who this person worked for. *See* Convent Avenue Exhibit H, Mrs. Morris deposition testimony 83:5-12. Further, Ms. Morris then contradicts that statement when specifically asked if she voiced concerns about guardrails and testifies that she did not mention guardrails to anyone. *See id* at 85:9-22, 8:6-9, 88:12-13, 212:15-19, 22-24.

[5] The Court has cited many non-jurisdictional cases in this decision, the Court appreciates that the cases cited are not at all binding however, finds them to be persuasive and instructive in the case at bar.

As this Court has dismissed the City of New York from the case, the Court does not reach the issues of indemnification by Convent Avenue of the City, nor does it reach the notice of claim issue raised by the City.

The motion for summary judgment, as it pertains to West Harlem, is granted. It is undisputed that West Harlem is the parent company of Convent Avenue, thus evidence sufficient to pierce the corporate veil must be demonstrated. That was not done here. West Harlem has established its prima facie entitlement to judgment as a matter of law, as it was not involved in the day to day operations of Convent Avenue nor was there any wrongful conduct alleged by West Harlem to attempt to satisfy the legal requirements to pierce the corporate veil. *See Morris v State Dept. of Taxation & Fin.*, 82 NY2d 135, 142 [1993]. Moreover, even if the corporate veil was pierced, summary judgment would still be appropriate for the same reasons that summary judgment is appropriate for Convent Avenue.

ORDERED that defendants' motions for summary judgment, motions sequence 7-10, are granted and the complaint and any and all cross-claims are dismissed with costs and disbursements to defendants as taxed by the Clerk upon the submission of an appropriate bill of costs;

and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

3/14/2019
DATE

LYLE E. FRANK, J.S.C.
HON. LYLE E. FRANK J.S.C.

CHECK ONE:	X	CASE DISPOSED		NON-FINAL DISPOSITION			
	X	GRANTED	☐ DENIED	GRANTED IN PART		☐ OTHER	
APPLICATION:		SETTLE ORDER		SUBMIT ORDER			
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT		☐ REFERENCE	