Schieldrop v Lucida, Inc.

2019 NY Slip Op 31086(U)

April 11, 2019

Supreme Court, New York County

Docket Number: 151103/2016

Judge: Kathryn E. Freed

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED, *Justice* — PART IAS MOTION 2EFM

INDEX NO. 151103/2016

MOTION SEQ. NO. 002

---X

JESSICA SCHIELDROP,

Plaintiff,

- v -

LUCIDA, INC. and HALSTEAD MANAGEMENT COMPANY, LLC,

Defendants.

---X

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 002) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35

were read on this motion to/for SUMMARY JUDGMENT.

Upon the foregoing documents, it is ordered that the motion is **granted**.

In this personal injury action, defendants Lucida, Inc. ("Lucida") and Halstead Management Company, LLC ("Halstead Management") move, pursuant to CPLR 3212, for summary judgment dismissing the complaint of plaintiff Jessica Schieldrop ("Schieldrop"). Plaintiff opposes the motion. After oral argument, and after a review of the parties' papers and the relevant statutes and caselaw, it is ordered that the motion is **granted**.

FACTUAL AND PROCEDURAL BACKGROUND:

Plaintiff commenced this tort action on February 10, 2016 by filing a summons and complaint. (Doc. 22.) In the complaint, she alleges that, on January 6, 2016, she was walking in front of 151 East 88th Street in Manhattan when she tripped over discarded Christmas trees that had been stacked along the sidewalk. (Doc. 21 at 1–2.) Defendant Lucida is the condominium building located at the premises (*id.* at 3) and defendant Halstead Management is the management

company for the building (*id.*). In her complaint, plaintiff asserted one cause of action, sounding in negligence, as against defendants. (Doc. 22 at 4–5.)

During discovery, two depositions took place: On March 21, 2017, plaintiff testified at her deposition that she was "a few feet" away from the Christmas trees when she first saw them piled up on the curb. (Doc. 25 at 27–28.) She also said that the trees "were all neatly aligned, except for one or two tree trunks that were not in alignment with all the other trees" (*id.* at 32) and that it was dark outside when the accident occurred (*id.* at 12).

On September 11, 2017, Kevin Grady ("Grady") testified on behalf of defendant Lucida. (Doc. 26.) Grady is Lucida's resident manager. (*Id.* at 7.) He stated that the trees were placed on the curb pursuant to a procedure issued by the New York City Department of Sanitation ("Sanitation") regarding the disposal of Christmas trees:

> Q: After the Christmas season is finished, tenants have to dispose of Christmas trees each year?
> A: Yes.
> Q: Was there a general procedure in place at the Lucida in 2016 regarding removal of Christmas trees from the building?
> A: The procedure, which was every year, Sanitation would pick up the trees, they tell buildings to put them out on the sidewalk, and they're supposed to pick them up and mulch them . . . .
>
> * * *
>
> Q: And you mentioned that you work at the Lucida Condominium for about six and a half years now; is that right?
> A: Yeah.
>
> * * *
>
> Q: So, for the approximately five years prior to January of 2016 that you worked at the Lucida Condominium, was that the same practice that you just described with regard to the removal of Christmas trees from the building?
> A: Yes.

(*Id.* at 23–24.) There was no particular date on which the trees were to be picked up, but defendant was told that Sanitation would collect the trees between January 3 and 14. (*Id.* at 30.) He also said that the trees were stacked "neatly," but that at times some of the trees would fall; when that happened, "[W]e would just tidy them up when we [saw] them." (*Id.* at 48–49.) Further, at his deposition, Grady viewed a video recording of the immediate time periods before and after the accident.[1] (Doc. 21 at 5.) He stated that plaintiff can be seen in the video walking between a truck and trees. (Doc. 26 at 86.) He admitted, however, that the recording does not show plaintiff falling over a tree because the "big truck" is obstructing the view. (*Id.*)

Plaintiff filed the note of issue on June 6, 2018. (Doc. 36.) Defendants now move, pursuant to CPLR 3212, for summary judgment dismissing the complaint. (Doc. 20.) They argue that they are entitled to such relief because the allegedly defective condition was not inherently dangerous and because it was open and obvious. (Docs. 21 at 7–11.) In particular, they rely on plaintiff's deposition testimony that she noticed the trees from "a few feet" away prior to tripping on them. (Docs. 21 at 9; 25 at 27–28.) Further, they claim that they did not create or have actual or constructive notice of the alleged condition, since the trees were stacked "neatly" and someone would "tidy them up" whenever a tree fell off the pile. (Doc. 26 at 48–49.)

In opposition, plaintiff asserts that summary judgment must be denied since defendants have failed to prove that the Christmas trees were stacked in a reasonably safe manner. (Doc. 32 at 4.) Moreover, she maintains that there are issues of fact as to how the accident occurred because a truck obstructed the footage of her fall. (*See id.*) The video does, however, show an employee of

[1] A hardcopy filing of the video recording has not been submitted as an exhibit to the Court. However, the parties presented the video to the Court for viewing during oral argument on October 2, 2018. This Court also notes that there is a slight discrepancy between the video recording and the events as alleged in the complaint: The complaint lists the date of plaintiff's accident as January 6, 2016. (Doc. 22 at 4.) Grady, however, testified at deposition that the video is dated January 5, 2016. (Doc. 26 at 61.)

defendants moving a Christmas tree after plaintiff fell. (*Id.* at 5.) Plaintiff maintains that that employee's "action is powerful circumstantial evidence that the place where the tree was located and the manner and position it was in when plaintiff tripped on its trunk was unsafe to pedestrians." (*Id.*) The employee was identified in the incident report as "Matt" (Doc. 27 at 3), who was not deposed (Doc. 32 at 5).

LEGAL CONCLUSIONS:

Under CPLR 3212, a party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law on the undisputed facts. (*See Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985].) The movant must produce sufficient evidence to eliminate any issues of material fact. (*Id.*) If the moving party makes a prima facie showing of entitlement to judgment as a matter of law, the burden then shifts to the party opposing the motion to present evidentiary facts in admissible form which raise a genuine, triable issue of fact. (*See Mazurek v Metro. Museum of Art*, 27 AD3d 227, 228 [1st Dept 2006].) If, after viewing the facts in the light most favorable to the non-moving party, the court concludes that a genuine issue of material fact exists, then summary judgment will be denied. (*See Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]; *Rotuba Extruders, Inc. v Ceppos*, 46 NY2d 223, 231 [1978].)

A "defendant who moves for summary judgment . . . has the initial burden of making a prima facie demonstration that it neither created the hazardous condition, nor had actual or constructive notice of its existence." (*Smith v Costco Wholesale Corp.*, 50 AD3d 499, 500 [1st Dept 2008].) This Court finds that defendants established their prima facie entitlement to judgment as a matter of law. Grady testified at his deposition that the Christmas trees were piled "neatly" and that an employee would "tidy them up" when necessary. (Doc. 26 at 48–49.) This "curbside

collection system" is mandated by New York City Administrative Code § 16-309, which provides: "The commissioner shall establish and implement a curbside collection system for Christmas trees during a minimum of two weeks in January for each year . . . ." Therefore, defendants were not negligent in "neatly" stacking the Christmas trees in front of their curb. (*See Bisogno v 333 Tenants Corp. Co-Op*, 72 AD3d 555, 556 [1st Dept 2010] (defendants' placement of "Christmas trees near the curb on the sidewalk in front of their building" did not create an unreasonably dangerous condition).) Moreover, the trees were open and obvious, since plaintiff herself testified that she saw them from "a few feet" away prior to falling. (Doc. 25 at 27–28.) (*See Barchi v Rudin E. 55th St. LLC*, 144 AD3d 444, 445 [1st Dept 2016] (granting summary judgment to defendants where plaintiff admitted to observing open and obvious Christmas trees before he tripped on them); *see also Baynes v City of New York*, 81 AD3d 423, 424 [1st Dept 2011] (concluding that gravel was an open and obvious condition where plaintiff testified that she was looking down and observed the gravel).)

In opposition, plaintiff failed to raise a triable issue of fact. Her argument that defendants failed to proffer evidence that the trees were stacked in a reasonably safe condition is flatly refuted by Grady's testimony that the trees were positioned "neatly." (Doc. 26 at 48–49.) Grady further stated that he had been the resident manager of Lucida for the five years prior to plaintiff's accident (Doc. 26 at 7), during which time he had followed the same practice for disposing of the Christmas trees (*id.* at 24–25). Moreover, plaintiff's contention that the obstructed video recording gives rise to a question of fact regarding defendants' negligence is based on mere speculation. (*See, e.g.*, *LoBianco v Lake*, 62 AD3d 590, 590 [1st Dept 2009] ("[P]laintiff's speculation as to defendants' alleged negligence was insufficient to raise a triable issue of fact.").) The motion for summary judgment must therefore be granted.

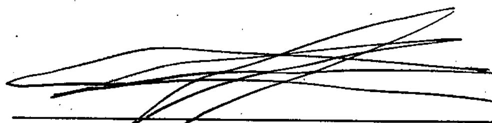
In light of the foregoing, it is hereby:

ORDERED that defendants Lucida, Inc. and Halstead Management Company, LLC's motion for summary judgment dismissing the complaint of plaintiff Jessica Schieldrop is granted; and it is further

ORDERED that, within 30 days after this order is filed with NYSCEF, counsel for the moving parties shall serve a copy of this order with notice of entry upon all parties, and upon the General Clerk's Office at 60 Centre Street, Room 119; and it is further

ORDERED that the Clerk shall enter judgment accordingly; and it is further

ORDERED that this constitutes the decision and order of this Court.



4/11/2019
DATE

KATHRYN E. FREED, 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