

Donnelly v Christian
2019 NY Slip Op 31407(U)
May 16, 2019
Supreme Court, New York County
Docket Number: 155023/2015
Judge: Lucy Billings
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

-----x

BRIAN PATRICK DONNELLY,

Plaintiff

Index No. 155023/2015

- against -

DECISION AND ORDER

STEPHEN L. CHRISTIAN,

Defendant

-----x

LUCY BILLINGS, J.S.C.:

Plaintiff seeks damages for injuries he suffered during his employment at Goldman Sachs & Co. when he attempted to sit in the chair at his desk, but missed the chair and fell to the floor. Plaintiff claims defendant, a managing director and plaintiff's supervisor at Goldman Sachs, pulled the chair out from underneath plaintiff, causing him to miss the chair as he sat and to fall to the floor. Plaintiff claims assault, battery, negligence, and recklessness by defendant. Defendant moves for summary judgment dismissing plaintiff's claims. C.P.L.R. § 3212(b).

I. UNDISPUTED FACTS

On June 2, 2014, while working at Goldman Sachs, plaintiff stood up from the chair at his desk for exercise. When plaintiff attempted to sit back down in the chair, which he believed was directly underneath him, he missed the chair, fell to the floor, and observed his chair behind him to the right.

Plaintiff filed a claim for workers' compensation due to the injuries he sustained from the fall. The New York State Workers'

Compensation Board determined that plaintiff was entitled to benefits because he had sustained a work-related injury from the fall.

II. DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

A. The Workers' Compensation Law Bars Plaintiff's Negligence Claims.

Workers' compensation is an employee's exclusive remedy against his employer or co-employee for injuries sustained during his employment. N.Y. Workers' Comp. Law (WCL) §§ 11, 29(6); Isabella v. Hallock, 22 N.Y.3d 788, 793 (2014); Weiner v. City of New York, 19 N.Y.3d 852, 854 (2012); Fung v. Japan Airlines Co., Ltd., 9 N.Y.3d 351, 357 (2007); Macchirole v. Giamboi, 97 N.Y.2d 147, 150 (2001). The Workers' Compensation Law, however, does not prevent an employee from recovering damages from an employer or co-employee for intentional torts. Hanford v. Plaza Packaging Corp., 2 N.Y.3d 348, 350 (2004); Macchirole v. Giamboi, 97 N.Y.2d at 150; Maines v. Cronomer Val. Fire Dept., Inc., 50 N.Y.2d 535, 543 (1980).

Defendant maintains that the Workers' Compensation Law is the exclusive remedy for plaintiff's injuries because his injuries did not result from a deliberate or an intentional act. Plaintiff's claims for negligence and recklessness are not based on a deliberate or intentional act and thus are barred by the Workers Compensation Law. WCL §§ 11, 29(6); Isabella v. Hallock, 22 N.Y.3d at 793; Weiner v. City of New York, 19 N.Y.3d at 855; Macchirole v. Giamboi, 97 N.Y.2d at 149, 151. Plaintiff's claims for assault and battery, however, are not barred by the Workers'

Compensation Law, as those claims are for intentional torts based on the theory that defendant deliberately pulled plaintiff's chair out from under plaintiff intending to cause him to miss the chair and fall to the floor. Hanford v. Plaza Packaging Corp., 2 N.Y.3d at 350; Macchirole v. Giamboi, 97 N.Y.2d at 150; Maines v. Cronomer Val. Fire Dept., Inc., 50 N.Y.2d at 543..

B. Plaintiff's Claims for Assault and Battery

To establish assault, plaintiff must show physical conduct causing him apprehension of immediate harmful contact. Nicholson v. Luce, 55 A.D.3d 416, 416 (1st Dep't 2008); Holtz v. Wildenstein & Co., 261 A.D.2d 336, 336 (1st Dep't 1999); Charkhy v. Altman, 252 A.D.2d 413, 414 (1st Dep't 1998); Hassan v. Marriott Corp., 243 A.D.2d 406, 407 (1st Dep't 1997). Battery requires a showing that defendant intentionally subjected plaintiff to offensive or harmful physical contact without his consent. Nicholson v. Luce, 55 A.D.3d at 416; Charkhy v. Altman, 252 A.D.2d at 414; Hassan v. Marriott Corp., 243 A.D.2d at 407; Buggie v. Cutler, 222 A.D.2d 640, 641 (2d Dep't 1995).

Defendant is entitled to summary judgment dismissing plaintiff's claim for battery because defendant establishes that he did not subject plaintiff to harmful physical contact. Plaintiff testified at his deposition that he was injured after he missed his chair while attempting to sit down and fell to the floor, but he neither alleges in his amended complaint, nor testified, nor presents any other evidence that defendant actually physically touched plaintiff as required to support a

battery claim. Nicholson v. Luce, 55 A.D.3d at 416; Hassan v. Marriott Corp., 243 A.D.2d at 407. See Charkhy v. Altman, 252 A.D.2d at 414. Nor does any evidence suggest that defendant wielded the chair or any other instrument that touched plaintiff.

Defendant's testimony at his deposition that defendant did not touch or move plaintiff's chair satisfies defendant's prima facie burden upon his motion for summary judgment to establish a defense to plaintiff's assault claim. Plaintiff, in opposition, presents the affidavit by Karen O'Keefe, a vice president of Goldman Sachs, who attests that, when she and defendant discussed plaintiff's complaint, defendant did not deny that he had touched or moved plaintiff's chair and admitted to her that he had expected plaintiff to notice that the chair was not in its place before he sat down. Aff. in Opp'n of George D. Silva Ex. A ¶ 6. When the court draws all inferences in plaintiff's favor as the court must upon defendant's motion for summary judgment, De Lourdes Torres v. Jones, 26 N.Y.3d 742, 763 (2016); Vega v. Restani Constr. Corp., 18 N.Y.3d 499, 503 (2012); Cahill v. Triborough Bridge & Tunnel Auth., 4 N.Y.3d 35, 37 (2004), defendant's statement to O'Keefe raises an inference that defendant intentionally pulled plaintiff's chair out from under plaintiff. Otherwise, it is difficult to conceive why defendant would have paid attention to whether plaintiff would notice his chair out of place and land in his chair.

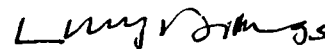
Defendant insists that his statement indicates he did not intend plaintiff to miss his chair and land on the floor.

Although that inference also might be drawn, if defendant moved the chair, he intended to move it and intended to do so to catch plaintiff unaware such that he likely would fall. If defendant did not intend plaintiff to miss his chair and land on the floor, yet was paying attention to whether plaintiff would do so, defendant would have alerted plaintiff, rather than watching in silence. In any event, even if an inference of unintentional conduct might be drawn, the court may not draw such an inference in the context of defendant's motion for summary judgment. O'Keefe's affidavit poses a factual issue whether defendant's intentional act caused plaintiff's fall and apprehension of immediate harmful contact, warranting denial of defendant's motion. Nicholson v. Luce, 55 A.D.3d at 416.

III. CONCLUSION

For all the reasons explained above, the court grants defendant's motion for summary judgment dismissing plaintiff's claims for battery, negligence, and recklessness, but denies defendant's motion seeking dismissal of plaintiff's claim for assault. C.P.L.R. § 3212(b) and (e). This decision constitutes the court's order and judgment dismissing plaintiff's claims for battery, negligence, and recklessness.

DATED: May 16, 2019



LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C.