

<b>Fitzpatrick v Affairs &amp; Banquets Floral Servs., Inc.</b>
2019 NY Slip Op 34585(U)
September 30, 2019
Supreme Court, Westchester County
Docket Number: Index No. 67980/2016
Judge: Sam D. Walker
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To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER  
PRESENT: HON. SAM D. WALKER, J.S.C.

-----X  
EILEEN FITZPATRICK,

Plaintiff,

**DECISION & ORDER**  
Index No. 67980/2016  
Motion Sequence 1

-against-

AFFAIRS & BANQUETS FLORAL SERVICES, INC. dba  
ARCADIA FLORAL COMPANY; CHURCH OF THE  
ANNUNCIATION and MICHELE FITZPATRICK.,  
Defendants.

-----X  
AFFAIRS & BANQUETS FLORAL SERVICES INC dba,  
ARCADIA FLORAL CO.

Plaintiff,

-against-

MICHELE FITZPATRICK,

Defendant.

-----X  
The following papers were read and considered in connection with the defendant's motion for summary judgment:

Notice of Motion/Affirmation/Exhibits A-J<sup>1</sup>

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Procedural and Factual Background

The plaintiff, Eileen Fitzpatrick, commenced this action on November 30, 2016 against the defendants, seeking damages for alleged injuries sustained on July 9, 2016, when she alleges that she tripped and fell on a runner in the center aisle at the conclusion of her granddaughter, Michele Fitzpatrick's wedding ceremony at Our Lady of Fatima s/h/a

<sup>1</sup>The plaintiff's cross-motion papers were also considered to the extent it opposed the motion, but not with regard to seeking summary judgment.

Church of the Annunciation ("the Church"), located at 470 Westchester Avenue, Tuckahoe, New York.

The defendant, Michele Fitzpatrick ("Fitzpatrick"), now moves for summary judgment pursuant to CPLR 3212, to dismiss the complaint and any cross-claims against her. Fitzpatrick argues that summary judgment is warranted since she did not create any dangerous condition on the premises and had no actual or constructive notice of the alleged dangerous and defective condition relating to the runner.

The plaintiff filed a cross-motion for summary judgment in opposition, but such motion was denied in its entirety by Decision and Order (Lefkowitz, J.), finding that the plaintiff's motion was untimely and the plaintiff did not seek an extension, nor offer any reason why the motion was untimely nor why the lateness should be excused. The Court will only consider the parts of that motion that oppose the defendants' motions and not those parts seeking affirmative relief for summary judgment, as such was deemed untimely. No other defendant filed any opposition to Fitzpatrick's motion for summary judgment.

The plaintiff argues in opposition that the runner was a dangerous and defective instrumentality sold into commerce with knowledge of its dangerous propensities by the florist to Fitzpatrick, who had no instructions as to how to use the runner and a Church, which completely failed to supervise Fitzpatrick's wedding and the runner's installation. The plaintiff argues that a jury reasonably would conclude that the defendants created a dangerous condition.

#### Discussion

A party on a motion for summary judgment must assemble affirmative proof to establish his entitlement to judgment as a matter of law. (*Zuckerman v City of N.Y.*, 49 NY2d 557 [1980]). “[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact,” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Only when such a showing has been made must the opposing party set forth evidentiary proof establishing the existence of a material issue of fact. (See e.g. *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). The burden shifts to the party opposing the motion to show the existence of material issues of fact by producing evidentiary proof, in admissible form, in support of their position.

In a slip-and-fall case, a defendant moving for summary judgment has the initial burden of establishing, prima facie, that it neither created the dangerous condition nor had actual or constructive notice of its existence for a sufficient length of time to discover and remedy it, (*Sawicki v GameStop Corp.*, 106 AD3d 979; *Armijos v Vrettos Realty Corp.*, 106 AD3d 847, 847; *Freiser v Stop & Shop Supermarket Co., LLC*, 84 AD3d 1307, 1308).

Upon viewing the evidence in a light most favorable to the non-moving party (*Pearson v Dix McBride, LLC*, 63 AD3d 895, 895 [2d Dept 2009]), and upon bestowing the benefit of every reasonable inference to that party (*Rizzo v Lincoln Diner Corp.*, 215 AD2d 546, 546 [2d Dept 1995]), the Court finds that Fitzpatrick has met her burden for summary judgment.

The plaintiff testified that she did not notice any issues with the runner until after the ceremony and after the bride and groom had walked down the aisle, other people walked

on the runner after the bride and groom, and she does not know if her foot was on top of the runner or underneath it when she fell.

Fitzpatrick testified that she purchased the runner from the florist for her wedding and the florist delivered the runner to the church. She had no discussions with anyone from the church regarding the runner and the only time she saw the runner was when she was proceeding into the church. Fitzpatrick testified that two of her groomsmen rolled the runner out in the aisle, per her husband's request, but she did not instruct the groomsmen on how to place the runner and did not see the runner rolled out before she proceeded down the aisle because the doors were closed. After the ceremony, she proceeded down the aisle to the back of the church and learned that her grandmother had fallen. She was not advised of any complaints about the runner on the day of the wedding prior to the plaintiff's accident and no one else fell during the wedding.

Here, Fitzpatrick established through testimony and evidence that, prior to the plaintiff's accident, a reasonable person would not have known and would not have reason to know that the runner was defective as alleged. Fitzpatrick had no actual or constructive notice. There is no evidence that Fitzpatrick caused the runner to be defective and Fitzpatrick did not install or exercise any control over the runner on the day of her wedding. The runner was rolled out by someone other than Fitzpatrick and she had no conversations with anyone concerning how the runner should be rolled out.

Therefore, Fitzpatrick has met her burden for summary judgment and the plaintiff has failed to offer any evidence to show the existence of material issues of fact.

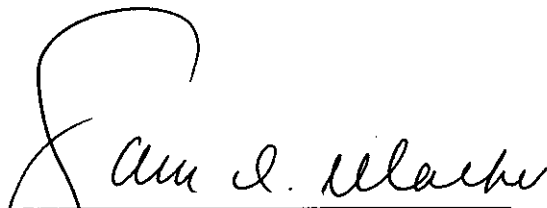
Accordingly, it is

ORDERED that the motion is GRANTED.; and it is further

ORDERED that all claims in the complaint and third-party complaint and all cross claims against Michele Fitzpatrick, are dismissed.

The foregoing constitutes the Opinion, Decision and Order of the Court.

Dated: White Plains, New York  
September 30, 2019



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