

Fitzpatrick v Affairs & Banquets Floral Servs., Inc.
2019 NY Slip Op 34606(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. ¹

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EILEEN FITZPATRICK,

Plaintiff,

DECISION & ORDER
Index No. 67980/2016
Motion Sequence 2

-against-

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

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

Plaintiff,

-against-

MICHELE FITZPATRICK,

Defendant.

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

Notice of Motion/Affirmation/Affidavit/Exhibits A-M	1-16
Memorandum of Law in Support	17
Affirmation in Reply/Exhibits A-D	18-22
Memorandum of Law in Reply	23

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,

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

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

The Church, now moves for summary judgment pursuant to CPLR 3212, to dismiss the complaint and any cross-claims against it, arguing that the undisputed evidence revealed that the Church cannot be held liable for the plaintiff's alleged injuries.

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. There was no other opposition to the Church'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.

The plaintiff specifically argues that the Church breached its duty of care to the public, including the plaintiff, because no one from the Church was available on the day of the wedding to meet with Fitzpatrick and inspect and install the runner.

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.

“An owner or tenant in possession of realty owes a duty to maintain the property in a reasonably safe condition” (*Livingston v Better Medical Health, P.C.*, 149 AD3d 1061, 1062 [2d Dept 2017]). To impose liability upon the Church, “there must be evidence that a dangerous or defective condition existed, and that the [Churc] had actual or constructive notice of the condition and failed to remedy it within a reasonable time (*Id.*). Therefore, “a defendant moving for summary judgment in a slip-and-fall action has the initial burden of making a prima facie showing that it neither created the hazardous condition nor had actual

or constructive notice of its existence for a sufficient length of time to discover and remedy it" (*Id.*).

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 the Church has met its burden for summary judgment.

Here, the evidence and testimony submitted by the Church in support of its motion for summary judgment dismissing the claims against it, are sufficient to establish it prima facie entitlement to judgment as a matter of law. The Church demonstrated that it neither created the dangerous or defective condition with respect to the runner, nor did it have actual or constructive notice of the condition prior to the plaintiff's accident. The plaintiff provides pictures, which have not been authenticated, but if the Court accepts the pictures as admissible evidence, they fail to demonstrate that the Church created the alleged defect or had actual or constructive notice of the alleged defect.

Further, the plaintiff failed to show how the Church owed a duty to the plaintiff to have someone present on the day of the wedding. In this case, there was no defect with the actual property and the Church was not on notice of a defective condition with the runner, since no one from the Church was present at the wedding. The plaintiff cannot demonstrate that someone from the Church has a duty to be present at every function held at the Church. Additionally, the Court finds that the condition of the runner was open and

obvious and as a matter of law, was not inherently dangerous (*Cupo v Karfunkel*, 1 AD3d 48, 52 [2d Dept 2003]). In opposition, the plaintiff failed to raise a triable issue of fact.

Accordingly, it is

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

ORDERED that all claims in the complaint and all cross claims against Our Lady of Fatima, s/h/a Church of the Annunciation, are dismissed.

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

Dated: White Plains, New York
September 30, 2019



HON. SAM D. WALKER, J.S.C.