Bilgrami v County of Nassau
2019 NY Slip Op 34710(U)
December 30, 2019
Supreme Court, Nassau County
Docket Number: Index No. 611305/18
Judge: James P. McCormack
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SUPREME COURT - STATE OF NEW YORK

PRESENT:

Honorable James P. McCormack
Justice

TRIAL/IAS, PART 21
NASSAU COUNTY

SYED A. BIIGRAMI,

Plaintiff(s),

-against-

Index No.: 611305/18

COUNTY OF NASSAU, TOWN OF HEMPSTEAD, EXXON MOBIL CORPORATION, INWOOD FUEL, INC., 105 SHERIDAN REALTY, LLC, and NEW YORK AMERICAN WATER,

Defendant(s).

Motion Seq. No.: 003

Motions Submitted: 11/1/19

The following papers read on this motion

Notice of Motion/Supporting Exhibits....................................X
Affirmations in Opposition..XX
Reply Affirmation...X

Defendant, New York American Water (NYAW), moves this court for an order, pursuant to CPLR §3212, granting it summary judgment and dismissing the complaint against it. Plaintiff, Syed A. Bilgrami (Bilgrami) and Defendant, Inwood Fuel, Inc. (Inwood), oppose the motion. None of the other Defendants submit papers in support of, or in opposition to the motion[1].

[1] By short form order dated July 9, 2019, this court granted the unopposed motion of Exxon Mobil Corporation to dismiss complaint dismissed against them.

Bilgrami commenced this slip and fall action by summons and complaint dated August 20, 2018. Issue was joined by service of an answer with a cross claim by Defendant Town of Hempstead. Inwood interposed an answer with cross claims dated November 9, 2018. Defendant, Exxon Mobil Corporation served an answer with a cross claim dated December 5, 2018. NYAW interposed an answer with a cross claim dated January 24, 2019.

Bilgrami alleges that on December 25, 2017 he slipped and fell on ice in front of 105 Sheridan Boulevard, Inwood, County of Nassau. NYAW now moves for summary judgment, alleging they did not own, maintain or in any way control the location where the accident occurred.

In a motion for summary judgment the moving party bears the burden of making a *prima facie* showing that he or she is entitled to summary judgment as a matter of law, submitting sufficient evidence to demonstrate the absence of a material issue of fact (*see Sillman v. Twentieth Century Fox Films Corp.*, 3 NY2d 395 [1957]; *Friends of Animals, Inc. v. Associates Fur Mfrs.*, 46 NY2d 1065 [1979]; *Zuckerman v. City of New York*, 49 NY2d 5557 [1980]; *Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]).

The failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegard v. New York University Medical Center,* 64 NY2d 851 [1985]). Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of action. (*see Zuckerman v. City of New York,* 49 NY2d 557 [1980],

supra). The primary purpose of a summary judgment motion is issue finding not issue determination, (*see Garcia v. J.C. Duggan, Inc.*, 180 AD2d 579 [1st Dept 1992]), and it should only be granted when there are no triable issues of fact (*see Andre v. Pomeroy*, 35 NY2d 361 [1974]).

One cannot be held liable for a dangerous or defective condition on property unless ownership, occupancy, control or special use of the property has been established. (*Ruggiero v. City School District of New Rochelle*, 109 A.D.3d 894 [2nd Dept 2013]*; Soto v. City of New York*, 244 A.D.2d 544 [2nd Dept. 1997]; *James v. Stark*, 183 A.D.2d 873 [2nd Dept. 1982]).

Herein, in support of its motion, NYAW submits the affidavit of Machael Kane, Field Manager for NYAW. Mr. Kane states that NYAW never owned, leased, operated, managed, occupied or controlled the subject premises. (*Schwalb v. Kulaski*, 29 AD3d 563 [2d Dept 2006]). Further, NYAW never performed any work, repairs or other service at or near the subject location.

Based upon Mr. Kane's affidavit, NYAW has established entitlement to summary judgment as a matter of law. The burden shifts Bilgrami and the co-Defendants to raise a material issue of fact requiring a trial of the matter.

In opposition, Bilgrami and Inwood only offer the affirmation of counsel, and both argue that NYAW's motion is premature because discovery has not yet occurred. However, neither Bilgrami nor Inwood has offered any evidentiary basis to suggest that discovery may lead to relevant evidence. "The mere hope and speculation that evidence sufficient to defeat the motion might be uncovered during discovery is an insufficient

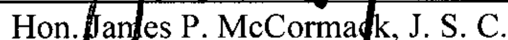
basis upon which to deny the motion" (*Hanover Ins. Co. v. Prakin,* 81 AD3d 778 [2d Dept. 2011]; *see also Essex Ins. Co. v. Michael Cunningham Carpentry,* 74 AD3d 733 [2d Dept. 2010]; *Peerless Ins. Co. v. Micro Fibertek, Inc.*, 67 AD3d 978 [2d Dept. 2009]; *Gross v. Marc,* 2 AD3d 681 [2d Dept. 2003]). As a result, Bilgrami and Inwood are unable to raise an issue of fact.

Accordingly, it is hereby

ORDERED, that NYAW's motion for summary judgment is GRANTED in its entirety. The complaint is dismissed against the NYAW. As the court finds NYAW cannot be found liable, all cross claims against NYAW are dismissed. NYAW's cross claims are dismissed as moot.

The foregoing constitutes the Decision and Order of the Court.

Dated: December 30, 2019
Mineola, N.Y.



Hon. James P. McCormack, J. S. C.

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