

Rodriguez v Saint Joseph's R. C. Church
2020 NY Slip Op 31201(U)
April 29, 2020
Supreme Court, Kings County
Docket Number: 511828/2018
Judge: Devin P. Cohen
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Supreme Court of the State of New York
County of Kings

Index Number 511828/2018

Part 91

DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

EVELYN RODRIGUEZ,

Plaintiff,

against

SAINT JOSEPH’S ROMAN CATHOLIC CHURCH,

Defendant.

Papers

Numbered

Notice of Motion and Affidavits Annexed.....	<u>1</u>
Order to Show Cause and Affidavits Annexed...	<u>2</u>
Answering Affidavits.....	<u>3</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u> </u>
Other	<u> </u>

Upon the foregoing papers, defendant’s motion for summary judgment is decided as follows:

Factual Background

Plaintiff commenced this action to recover for injuries she sustained when she allegedly hurt her foot on premises owned by defendant. In her bill of particulars, plaintiff alleges that the staircase was defective, but she does not explain how. Plaintiff alleges the violation of the following sections of the New York City Building Code: §§27-369(e), 27-370(d), 27-375(e)(1), 27-375(f), 27-381, 27-382, 27-384, 27-735, and 27-736. Sections 27-369(e) and 27-370(d) state when ramps are necessary when there is a change in level in corridors and exits. Section 27-375(e)(1) provides the requirements for risers. Section 27-375(f) provides the circumstances under which handrails for stairs are necessary and the requirements for those handrails. Sections 27-381, 27-382, 27-384, 27-735, and 27-736 concern lighting requirements for exits and exit lights.

At her deposition, plaintiff testified that she was on defendant’s premises to attend a special mass. She testified that, while she was on defendant’s premises, she saw a friend of hers

who asked her the location of the restroom. Plaintiff testified that she and her friend, Patricia, walked through a set of double doors where they encountered a stairwell. She testified that she walked up the steps and stopped at the last step on a flat area, next to another step that lead to set of brown doors. Plaintiff testified that she did not place her foot on that next step that is located directly below the brown doors.

Plaintiff further testified that, while she was on the flat area, she asked Father Francis about the location of the restroom. Plaintiff testified that Father Francis explained where he thought the restroom was located. Plaintiff testified that, as she turned to walk back down the steps, she found she could not move her left foot. She testified that she did not fall. She testified that she took her left foot out of her shoe and felt that her foot was broken. At different times, plaintiff testified that, when she turned to walk back down the stairs, she had no feeling in her left foot, that her left foot was in pain, and that her left foot was not in pain but it felt “funny”.

Plaintiff testified that, from the time that she spoke with Father Francis to the time she felt something “funny”, plaintiff remained on that flat area. She further testified that she did not look to see if there was anything wrong with that flat area where she had been standing, and that she did not look to see if there was anything wrong with the bannister. Plaintiff testified that she never complained to anyone associated with defendant about the area surrounding the accident.

Father Charles Keeney, a parochial vicar with defendant, testified at his deposition that he was not aware of any maintenance or repairs performed on the staircase where plaintiff claimed she was injured for the year prior to the accident. Father Keeney testified that, on a daily basis, he used the brown doors just off the stairs where plaintiff claimed she had her accident.

Analysis

On a motion for summary judgment, the moving party bears the initial burden of making a prima facie showing that there are no triable issues of material fact (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003]). Once a prima facie showing has been established, the burden shifts to the non-moving party to rebut the movant's showing such that a trial of the action is required (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).

Defendant, as property owner, had a duty to maintain the property in a reasonably safe condition (*Pilgrim v Ave. D Realty Co.*, 173 AD3d 788, 789 [2d Dept 2019]). To prevail on summary judgment, defendant has the prima facie burden of establishing that plaintiff is unable to identify the defect or dangerous condition that caused the accident (*Noel v Starrett City, Inc.*, 89 AD3d 906, 907 [2d Dept 2011]).

Plaintiff's complaint and bill of particulars do not identify a specific defect. The bill of particulars does identify certain building code provisions that, plaintiff claims that defendant violated. However, at her deposition, plaintiff did not identify a dangerous condition or defect that implicated any of these building code provisions. Indeed, plaintiff did not identify any defect at her deposition, nor a precipitating event, but rather testified only how her foot felt.

In support of its motion, defendant submits the affidavit of Jeffrey Schwalje, a professional engineer, who states that, on August 7, 2019, he inspected the area of the accident. Specifically, in his affidavit, Mr. Schwalje states that he inspected the room where the staircase was located, the dimensions and composition of the staircase, the friction coefficient of the stairs, the handrails, and the lighting of the room. Mr. Schwalje opined that the stairs were slip resistant, safe for use, and code compliant. He further opined that the handrail was "secure,

graspable, properly positioned and code compliant.” He also opined that the lighting “provided to the landing clearly illuminated the landing surface”, and that the landing “did not violate any New York code, standard or law.”

In opposition, plaintiff provides an affidavit in which she changes her prior testimony. She states that, rather than stopping on the flat surface, or landing, of the staircase, she walked up the single stair past the landing and through the brown doors, and then spoke with Father Francis on the other side of the doors. She states that, after speaking with Father Francis, she walked back through the brown doors and, instead of walking down the single step to the landing, she missed the step and struck her foot on the landing.

Plaintiff’s new version of the facts surrounding her accident contradicts her earlier deposition testimony. At her deposition, plaintiff specifically states that she stayed on the landing and never walked past the landing to the step just before the brown doors. Plaintiff cannot create a feigned issue of fact in her affidavit by changing how her alleged accident occurred (*Keizer v SCO Family of Services*, 120 AD3d 475, 477 [2d Dept 2014]).

Plaintiff also submits the affidavit of Adam Cassel, a professional engineer, who states that he, along with Paul Angelides, P.E., inspected the area of the accident on August 28, 2018. In short, Mr. Cassel opines that the step just before the brown doors is dangerous because it is not wide enough and is a natural tripping hazard for anyone exiting through the doors, and that the handrail will not serve its purpose in steadying a person exiting through the doors because the doors, when opened, block the handrail. However, Mr. Cassel’s opinion about which elements of the staircase are dangerous does not implicate the building code provisions plaintiff cited in her bill of particulars. At best, Mr. Cassel’s opinion relates only to plaintiff’s new narrative of


her accident. Because this court rejects plaintiff's new narrative as an improper attempt to create an issue of fact, Mr. Cassel's opinion has no impact on this action. Finally, even if the Court were to consider Mr. Cassel's opinion and plaintiff's new explanation, plaintiff could not prevail. Plaintiff does not claim to have tripped nor to have grabbed for a handrail, accordingly these defects would not support a finding of liability for plaintiff's claim.

Conclusion

For the foregoing reasons, the defendant's motion for summary judgment is granted, and this case is dismissed.

This constitutes the decision and order of the court.

April 29, 2020
DATE


DEVIN P. COHEN
Justice of the Supreme Court