

Young v Crescent Coffee, Inc
2020 NY Slip Op 31203(U)
April 16, 2020
Supreme Court, Kings County
Docket Number: 513711/16
Judge: Carolyn E. Wade
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At Part 84 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Brooklyn, New York on the 16th day of April 2020

PRESENT:

HON. CAROLYN E. WADE,

Justice

-----X
David Young and Novelett Young,

Plaintiffs,

Index No. 513711/16

-against-

DECISION and ORDER

Crescent Coffee, Inc, Barbara Semel, Marc Semel, Alnour Distributors Inc., Feinrose Associates, and Goodrich Management Corp.,

Defendants.

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Recitation, as required by CPLR §2219(a), of the papers considered in the review of Defendants' Motions:

PapersNumbered	
Order to Show Cause/Notice of Motion and Affidavits/Affirmations Annexed.....	1,2
Cross-Motion and Affidavits/Affirmations.....	3,4
Answering Affidavits/Affirmations.....	5
Reply Affidavits/Affirmations.....	6,7

Upon the foregoing cited papers, and after oral argument, defendant Goodrich Management LLC s/h/i/a Goodrich Management Corp. moves for an Order, granting it summary Judgment, dismissing the Complaint, and all cross-claims. Defendant Feinrose Associates moves for the same relief.

The underlying action was commenced by David Young ("Plaintiff") and his wife, Novelett Young, against the defendants for injuries that the former allegedly sustained on February 5, 2015, as a result of falling between his truck and a loading deck used by defendant Crescent Coffee Inc. The deck was located inside a building at 4210 2nd Avenue, Brooklyn, NY ("Subject Premises"). Defendant Goodrich Management Corp. ("Goodrich") was the property manager, and Feinrose Associates ("Feinrose") was the landlord of the Subject Premises. Plaintiff was employed as a truck driver for non-party Eldorado Coffee Roasters.

By Order, dated July 26, 2019, this court granted the consolidation of #516861/2017, a related action commenced by Plaintiff, into the instant index number.

A movant for summary judgment "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). "Determining whether a material issue of fact exists involves evaluating evidence in the light most favorable to the nonmovant" [citations omitted] (*Masik v. Lutheran Med. Center*, 2011 NY Misc LEXIS 7233, 4 [Sup Ct, Kings Cty 2011]). Courts assess "whether by no rational process would the trier of fact find for the nonmoving party" *Id.*

Feinrose's Motion for Summary Judgment

After a meticulous examination of the respective submissions, this Court finds as follows:

In support of its motion, Feinrose submits a copy of the deposition transcript, and the affidavit of Erwin Hozli ("Hozli"), Goodrich's property manager. Hozli, by affidavit, states that

he is fully familiar with the business practices of Goodrich and Feinrose, rather than having personal knowledge. In particular, he expressed that he was not sure who owned Feinrose (Exhibit "G" of Feinrose's motion, pgs. 9-10). He makes reference to several leases, deeds and assignment agreements to establish that Goodrich and Feinrose were not responsible for maintaining the interior or exterior of the Subject Premises. However, he does not authenticate the signatures on any of the documents.

"Authentication is a requirement separate from a foundation for an exception to the rule against hearsay" (*Malloy v. V.W. Credit Leasing*, 873 NYS2d 512 [Sup Ct, Bronx Cty 2008]). A witness can authenticate by attesting to observing the execution of the lease, identifying the signatures on the document, or by offering a handwritten comparison. *Id.*

In the instant case, neither Hozli nor any other deponent authenticated the above-referenced documents at issue; thus, they are deemed inadmissible. Moreover, this Court credits Plaintiff's contention that Feinrose has not established through admissible evidence that it was an out-of-possession landlord at the time of the accident. Several questions of fact remain, including whether the loading dock had a structural or non-structural defect; and whether Feinrose created or had constructive notice of the alleged defective condition. It is further noted that Feinrose cited from Plaintiff's unsigned deposition transcript without proof that it was sent to him for his review and execution, pursuant to CPLR 3116(a); thereby, rendering it inadmissible. Consequently, Feinrose's Motion for Summary Judgment is denied.

Goodrich's Motion for Summary Judgment

As discussed above, both Feinrose and Goodrich rely on the deposition testimony of Hozli, the latter's property manager, to establish their prima facie cases. However, Hozli has not properly authenticated the leases and deeds in question, rendering them inadmissible. Hozli maintains that the Management Agreement that Goodrich entered with Feinrose did not

imply or expressly create an obligation or a duty to a third-party, such as Plaintiff. Goodrich maintains that Plaintiff has not established that any of the exceptions set forth in *Espinal v. Melville Snow Contractors*, 98 NY2d 136 [2002], are applicable, and would result in it being held liable for its adversary's alleged injuries. However, *Espinal* provides that contracting parties may be liable to a third party under the following circumstances: "(1) where the contracting party, in failing to exercise care in the performance of his duties, "launches a force of instrument of harm" [citations omitted]; (2) where the plaintiff detrimentally relies on the continued performance of the contracting party's duties [citation omitted] and (3) where the contracting party has entirely displaced the other party's duty to maintain the premises safely [citation omitted]." *Id.* at 140.

In the instant case, after a careful review of the respective contentions, the court finds that there are several triable issues of material fact, including whether Goodrich exercised care in the performance of its duties, and **whether it entirely displaced** Feinrose's duty to maintain the **premises safely. Moreover, a question of fact remains as to whether** Goodrich had notice of the alleged **defective condition of the loading dock. As a result, this Court determines** that Goodrich has not **established its prima facie entitlement to summary judgment as a matter of law.**

Accordingly, based upon the above, Feinrose's and Goodrich's respective motions for summary judgment are denied.

This constitutes the Decision/Order of the court.


HON. CAROLYN E. WADE
A.J.S.C.