

Murillo v Bushwick Economic Dev. Corp.
2020 NY Slip Op 31347(U)
April 29, 2020
Supreme Court, Kings County
Docket Number: 502822/2013
Judge: Reginald A. Boddie
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At an IAS Trial Term, Part 95 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York, on the 29th day of April 2020.

P R E S E N T:

Honorable Reginald A. Boddie, JSC

-----X
LAURA MURILLO,

Plaintiff,

Index No. 502822/2013
MS 18

against

BUSHWICK ECONOMIC DEVELOPMENT
CORP. and KAMIR MOHANSING, by his
mother and guardian, STACEY MOHANSING,

DECISION AND ORDER

Defendants.
-----X

Papers

Numbered

Notice of Motion & Annexed Affirmation/Affidavit in Support
Affirmation in Opposition
Reply

1-2
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Upon the foregoing cited papers, the decision and order on defendant Bushwick Economic Development Corp.'s (BEDCO) motion for summary judgment, pursuant to CPLR 3212, is as follows:

Plaintiff commenced this lawsuit to recover for personal injuries sustained on December 24, 2012, on the premises operated by defendant BEDCO at 470 Pulaski Street, Brooklyn, New York. The premises was a temporary Department of Housing (DOH) shelter where Kamir Mohansingh and his family, non-appearing co-defendants, were living.

Plaintiff was a case worker employed by the Administration for Children's Services (ACS). At the time of the incident, plaintiff had been the case worker assigned to the Mohansingh family for a year and a half. She was conducting a home visit of the Mohansingh

family at BEDCO's housing facility when Kamir, then 16 years old, allegedly pushed her down the stairs and assaulted her.

On the date of the incident, Ms. Murillo followed the usual procedure when she arrived at the BEDCO building. She walked in, showed her identification, signed in, and went to the Mohansingh's 5th floor apartment. Ms. Murillo had visited the Mohansingh family on two or three prior occasions at BEDCO and had visited the facility for other families prior to December 24, 2012. She did not know Kamir to be violent and he previously did not show any signs of violence. However, his mother had reported to Ms. Murillo that Kamir had a temper, she was unable to control him, he does what he wants, misses school, and would leave the home without telling her where he was staying.

On the day of the incident, plaintiff did not sense any danger when she tried to gain entry to the Mohansingh's apartment. Once inside the apartment, Kamir was being difficult toward plaintiff. He called her names and made insulting comments. Kamir's mother reported to Ms. Murillo that a window had been broken and looked at Kamir when Ms. Murillo asked who broke the window. Ms. Murillo then looked at Kamir and he stayed silent.

Ms. Murillo then indicated that she thought they should meet at the office and revisit the issue of the broken window with a court ordered supervisor since no one was communicating. She ended the visit, left the apartment, and proceeded down one step. Plaintiff heard the apartment door open and, within a fraction of a second, felt a gentle push in the middle of her back. She alleged Kamir pushed her, although she did not see him. Plaintiff fell down the stairs and alleged Kamir came down the stairs and further assaulted her.

Plaintiff testified that there were occasions during her work with ACS when she was concerned about her safety and on those occasions, she would ask her supervisor at ACS to have

another ACS employee escort her to visit the family. On the day of the incident, Ms. Murillo did not request an escort from ACS or BEDCO when she went to the Mohansingh's apartment.

BEDCO argued it is entitled to summary judgment on the grounds that it did not owe a duty to plaintiff, an ACS case worker, who was injured by her client while visiting the family's residence. Defendant further argued plaintiff's injuries were not proximately caused by BEDCO's acts as BEDCO provided sufficient minimal security and the incident involving Kamir was not foreseeable.

Plaintiff opposed the motion arguing BEDCO was negligent in providing security and/or otherwise keeping the plaintiff safe from harm by ignoring established New York City Department of Homeless Services (DHS) security protocols and their own security procedures multiple times leading up to the assault on her. Plaintiff alleged that BEDCO was negligent in failing to provide proper security, failing to remove Kamir from the premises, failing to provide for plaintiff's safety and to secure the facility for her in light of Kamir's violent tendencies.

Summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue (*see Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). A party moving for summary judgment must make a prima facie showing of entitlement as a matter of law sufficient to demonstrate the absence of any material issues of fact, but once a prima facie showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish material issues of fact which require trial of the action (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853; *Zuckerman*, 49 NY2d at 562).

Here, defendant established its prima facie entitlement to summary judgment. Ms. Murillo testified, in compliance with BEDCO's security procedures, she was required to show

identification and sign in to the facility when she arrived to visit the Mohansingh family. She did not request an escort from her supervisor at ACS or the facility because she had no reason to believe she was at risk of harm. Having established security protocol for accessing the premises was followed, defendant demonstrated its entitlement to summary judgment and the burden shifted to plaintiff to raise a triable issue.

Plaintiff, relying on *Credle v City of New York*, 65 Misc 3d 1215(A), 2019 NY Slip Op 51659(U) (Sup Ct Kings County 2019) and *Espinal v Melville Snow Contrs., Inc.*, 98 NY2d 136, 138 (2002), argued BEDCO, as the operator of the facility at 470 Pulaski Street, owed her a duty of care. A contractual obligation, standing alone, will generally not give rise to tort liability in favor of a third party (*see Espinal*, 98 NY2d at 138). There are, however, three exceptions to this rule (*Rudloff v Woodland Pond Condominium Assn.*, 109 AD3d 810, 810 [2d Dept 2013], citing *Espinal*, 98 NY2d at 140]). Liability may arise where the contracting party, in failing to exercise reasonable care in the performance of his or her duties, launches a force or instrument of harm (*Rudloff*, 109 AD3d at 810). Liability may also arise where the plaintiff detrimentally relies on the continued performance of the contracting party's duties, or where the contracting party has entirely displaced another party's duty to maintain the premises safely (*Rudloff*, 109 AD3d at 810).

Plaintiff's opposition failed to demonstrate that one of these exceptions applied here. Plaintiff proffered the transcript of Yajayra Reyes-Martinez, the program director who oversaw the daily operations of the facility in 2012, for the purpose of demonstrating that BEDCO failed to follow its own protocols for notifying DHS of incidents to ensure the safety and well being of its residents. Plaintiff argued that BEDCO failed to evaluate the risks Kamir posed prior to the commencement of his residence at the facility or after his December 14, 2012 hospitalization and

the December 23, 2012 incident with the broken window. The testimony of Ms. Reyes-Martinez and Ms. Brown, however, established that BEDCO was not authorized to do this type of evaluation or exclude a resident on its own initiative.

Moreover, even assuming BEDCO breached such a duty, the incidents involving alleged damage to property were too attenuated from the incident involving physical violence to Ms. Murillo to establish foreseeability. Simply stated, Kamir was not alleged to have assaulted any person previously. On December 14, Kamir was angry and banging on cabinets. The record demonstrates that this incident involved property only. On December 23, the evidence indicated that a window was broken when the Mohansingh children were rough-housing. The record demonstrated that this incident involved property only and there is no indication the damage was attributable to aggressive behavior. There is no indication from either of these incidents or from Ms. Murillo's own experiences with Kamir that he had exhibited violent behavior toward any person prior to December 24, 2012.

The issue of foreseeability is normally a question of fact for a jury, but, as here, it is a question of law when but a single inference can be drawn from undisputed facts (*see Elwood v Alpha Sigma Phi*, 62 AD3d 1074, 1076 [3d Dept 2009]; citing *Hendricks v Lee's Family Inc.*, 301 AD2d 1013 [3d Dept 2003]; *Hessner v Laporte*, 171 AD2d 999 [3d Dept 1991]). Therefore, plaintiff has failed to raise a triable issue of fact.

Further, plaintiff proffered the affidavit of Dr. Robert McCrie to establish that BEDCO was negligent in identifying Kamir as a safety threat and the attack on plaintiff was foreseeable. However, Dr. McCrie's conclusions about Kamir's propensities were speculative and unsupported by facts in the record. Speculation is insufficient to defeat a motion for summary

judgment (*e.g. Rizzo v Sherwin-Williams Co.*, 49 AD3d 847, 849 [2d Dept 2008]; *Austin v CDGA Nat. Bank Trust*, 114 AD3d 1298, 1300 [4th Dept 2014]).

Moreover, plaintiff's opposition was untimely according to the November 12, 2019 stipulation between the parties. The court, in light of the parties' stipulation and plaintiff having failed to demonstrate a reasonable excuse for the lateness, declines to excuse the lateness. For all of the reasons indicated above, defendant's motion for summary judgment is granted and the complaint against BEDCO is dismissed.

ENTER:



Honorable Reginald A. Boddie
Justice, Supreme Court