

Adzel v Edward Bldrs. Inc.
2020 NY Slip Op 32464(U)
July 20, 2020
Supreme Court, Kings County
Docket Number: 507758/2016
Judge: Reginald A. Boddie
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At an I.A.S. 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 20th day of July 2020.

P R E S E N T:

Honorable Reginald A. Boddie
Justice, Supreme Court

-----X
DANIEL ADZEL,

Plaintiff,

Index No. 507758/2016

Cal. No. 1, 2 MS 3, 4

-against-

DECISION AND ORDER

EDWARD BUILDERS INC.,

Defendants.
-----X

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

<u>Papers</u>	<u>Numbered</u>
MS 3 Notice of Motion & Annexed Affirmation/Affidavits	1-2
MS 3 Opposition	3
MS 3 Reply	4
MS 4 Notice of Motion & Annexed Affirmation/Affidavits	5-6
MS 4 Opposition	7
MS 4 Reply	8

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Upon the foregoing cited papers, the decision and order on motion sequence 3 and 4 for summary judgment, pursuant to CPLR 3212, is as follows:

Plaintiff commenced this action to recover for personal injuries allegedly suffered in a trip and fall while descending an interior stairway leading to the basement at 18 East 686 Street, New York, NY 10065, at 6:00 AM, on Saturday, March 19, 2016. At the time of the accident, plaintiff was employed by Aron Security, Inc. d/b/a Arrow Security (Arrow Security) and was working a double shift on the premises. The premises, a residential apartment building, was

owned by ARO Holdings LLC (ARO). ARO hired Edward Builders, Inc. (Edward Builders) as a contractor to renovate the premises. Edward Builders hired Arrow Security to provide security on the premises during the hours between approximately 4:00 PM and 8:00 AM when its construction workers were not on the premises.

The staircase in question was made of stone and the steps were covered in plywood. Plaintiff testified he did not know what caused his fall. He also testified that he reached out for a handrail when he fell and there was no handrail. Edward Dukeshtein, President of Edward Builders, testified that his workers installed the plywood boards on the steps when they first began the job in 2015, and that at the time of the accident, his workers might have removed the handrails in furtherance of the construction work they were doing.

Arrow Security sought summary judgment (MS 3) on plaintiff's claims of negligence and labor law violations and claims for contractual indemnification, failure to procure insurance, common law indemnification, and contribution alleged in the third-party summons and complaint by ARO and Edward Builders. ARO and Edward Builders opposed. ARO and Edward Builders argued they have no liability because the alleged hazardous condition upon which the plaintiff claims caused him to fall simply did not exist, and the video evidence incontrovertibly confirms as much. Edward Builders and ARO also averred they are entitled to contractual indemnification from third-party defendant Arrow Security.

Edward Builders and ARO sought summary judgment (MS 4) on all claims including all cross-claims and counter-claims on the grounds that plaintiff tripped and fell forward on his own volition and plaintiff's credibility as to how the accident happened is highly questionable. Plaintiff argued in opposition that his testimony that there was concrete powder on the stairs, the

absence of handrails and the June 14, 2016 report of plaintiff's expert engineer, Herbert Weinstein raised triable issues of fact.

Generally the inability of a plaintiff to establish the cause of the fall is grounds for granting summary judgment and dismissing the complaint, even when there are allegations of a missing or defective handrail unless plaintiff establishes a connection between the defect and the fall (*see e.g. Plowden v Stevens Partners, LLC*, 45 AD3d 659, 660 [2d Dept 2007], citing *Guitierrez v Iannacci*, 43 AD3d 868, 841 [2d Dept 2007]; *Rodriguez v Cafaro*, 17 AD3d 658 [2d Dept 2005] ; *Birman v Birman*, 8 AD3d 219, 220 [2d Dept 2004]). Here, plaintiff tripped at the top of a staircase on a stair that was covered with plywood, but testified that he did not know and never came to learn what caused his fall. His testimony that concrete powder caused his fall was speculative and insufficient to defeat summary judgement (*see id.*). He further testified he reached for the handrail to stop his fall, but the handrail was missing. Plaintiff testified that were two three-foot tall, five-foot by four-foot garbage dumpsters on the landing at the bottom of the staircase. Plaintiff testified he missed grabbing onto a dumpster to stop his fall.

The evidence offered by the plaintiff in opposition was insufficient to raise a triable issue of fact. The plaintiff testified at his deposition that he did not know what caused him to fall, and failed to establish any defect on the steps. Plaintiff proffered expert evidence that the height differential of the concrete steps and the lack of handrails failed to conform to the applicable provisions of the New York City Building Code. However, a determination that these alleged defects, rather than a misstep or loss of balance, were a proximate cause of the plaintiff's accident would be based on sheer speculation (*see Bitterman v Grotyohann*, 295 AD2d 383, 384 [2d Dept 2002]; citing *see Jefferson v Temco Servs. Indus.*, 272 AD2d 196, 197 [1st Dept 2000];

see also Conry v Avellino, 287 AD2d 478, 479 [2d Dept 2001]).

Accordingly, the motions for summary judgment are granted to the extent plaintiff's complaint against Arrow Security, Edward Builders and ARO is dismissed. The remainder of the motions is denied as moot.

E N T E R:



Hon. Reginald A. Boddie
Justice, Supreme Court

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