

Douglas-Grant v 259 W. 10th LLC
2020 NY Slip Op 32567(U)
August 6, 2020
Supreme Court, New York County
Docket Number: 158797/2015
Judge: Robert R. Reed
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ROBERT R. REED PART 43

Justice

-----X

JAMES DOUGLAS-GRANT,
Plaintiff,

- v -

259 WEST 10TH LLC,
Defendant.

-----X

259 WEST 10TH LLC
Plaintiff,

-against-

KLARACON
Defendant.

-----X

INDEX NO. 158797/2015
MOTION DATE 01/09/2020
MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

Third-Party
Index No. 595076/2016

The following e-filed documents, listed by NYSCEF document number (Motion 003) 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 79, 80, 81, 82

were read on this motion for JUDGMENT - SUMMARY

ROBERT R. REED, J.:

Defendant 259 West 10th LLC moves for summary judgment dismissing the complaint. This is a personal injury/negligence action. The complaint alleges that, on November 10, 2014, plaintiff was injured during the course of his employment as a laborer at the premises located at 259 West 10th Street, New York, New York (premises). While carrying a roll of "floor paper," plaintiff had his hand strike the elevator doorframe outside of the premises elevator, and it was injured while caught between the roll and the doorframe. Plaintiff is suing defendant on the ground that defendant, the owner of the premises, maintained an elevator that was dangerous, unsafe and not properly protected.

Defendant moves for dismissal of the complaint on the ground that there is no issue of fact regarding its liability. Defendant argues that the elevator doorframe was not defective or dangerous; that plaintiff caused his own injury and the doorframe may have furnished a condition or an occasion for the accident, but not a proximate cause; and that the doorframe was open and obvious and plaintiff was not unreasonably exposed to a dangerous condition.

Defendant submits as evidence the deposition testimony of plaintiff. Plaintiff described the events leading to the accident as follows: Plaintiff, employed by third-party defendant Klaracon (which has since been dismissed in this action), was engaged in renovating apartments at the premises. On the morning of the accident, plaintiff was in the process of laying floor paper in the hallways in order to protect floors from the renovation work. Each roll of floor paper contains approximately 200 to 300 feet of paper. Prior to the accident, plaintiff had laid down floor paper on the basement hallway floor. Upon completion of that task, plaintiff obtained a new roll, intending to carry it to the elevator in order to lay paper on another hallway floor. Plaintiff carried the roll toward the elevator using both of his hands, with one hand placed on each end of the roll, and held the roll at his stomach-level. While carrying the roll, he managed to get his hand caught between the elevator doorframe and the roll of paper. Plaintiff never entered the elevator and his hand was not caught in the elevator door. Nevertheless, plaintiff injured two fingers on his hand as a result of the accident.

Based on this testimony and other evidence, defendant argues that it is entitled to summary judgment, asserting that, under the described circumstances, it cannot be liable for negligence. Defendant argues that the doorframe was neither defective nor dangerous at the time of the accident. Moreover, defendant contends that plaintiff was actually responsible for the accident, by his handling of the roll. Although the doorframe may have provided the condition

for the occurrence of this accident, defendant argues that it was not a cause of the accident. Finally, defendant contends that the doorframe was an open and obvious item. According to defendant, the doorframe was not concealed or difficult for plaintiff to perceive. Although the matter of an open and obvious condition is usually considered a jury issue, defendant argues that sometimes evidence can demonstrate an open and obvious condition as conclusive, as in this case. Thus, defendant seeks the granting of its motion.

In opposition to the motion, plaintiff argues that an issue of fact prevents the granting of this motion. He argues that there is a question as to whether defendant properly provided a safe elevator, mentioning a lack of padding on the exterior of the elevator. Plaintiff also argues that defendant failed to conduct reasonable inspections of the premises. Plaintiff refers to the expert affidavit of Dr. Andrew Schwartz, regarding the duty of care. Plaintiff also argues that the open and obvious condition is strictly a jury question, which precludes summary judgment.

In reply, defendant argues that there is no reason for inspections since these would be irrelevant, as plaintiff is responsible for his injury. Defendant claims that it has no duty to put padding on the exterior of the elevator, only in the interior. Defendant notes that the expert evidence mentioned by plaintiff is not provided. Defendant repeats its argument that, in some instances, the open and obvious condition can be decided as a matter of law.

“It is axiomatic that summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of factual issues” (*Birnbaum v Hyman*, 43 AD3d 374, 375 [1st Dept 2007]). “The substantive law governing a case dictates what facts are material, and “[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment [citation omitted]” (*People v Grasso*, 50 AD3d 535, 545 [1st Dept 2008]). “To prevail on a summary judgment

motion, the moving party must provide evidentiary proof in admissible form sufficient to warrant the direction of summary judgment in his or her favor [citation omitted]" (*Kershaw v Hospital for Special Surgery*, 114 AD3d 75, 81 [1st Dept 2013]). "Once the burden is met, the burden shifts to the opposing party to submit proof in admissible form sufficient to create a question of fact requiring a trial [citation omitted]" (*id.* at 82).

Regarding negligence, the predicate for holding a defendant liable is that a duty is owed to plaintiff, and the breach of that duty is the proximate cause of plaintiff's injuries (*see Medinas v Milt Holdings LLC*, 131 AD3d 121, 126 [1st Dept 2015]). A plaintiff alleging injury by a dangerous condition must show that defendant either created this condition or failed to remedy it, despite actual or constructive notice (*see Haseley v Abels*, 84 AD3d 480, 482 [1st Dept 2011]). A landowner is under a duty to maintain its property in a reasonably safe condition under the existing circumstances (*see Pappalardo v New York Health & Racquet Club*, 279 AD2d 134, 141-142 [1st Dept 2001]).

Defendant contends that there is an exception to this common law duty: the action of a plaintiff whose conduct is the actual cause of the accident, where defendant's property serves only as a source of the accident (*see Starks v R & L Carriers*, 134 AD3d 500 [1st Dept 2015]). As defendant argues, plaintiff was negligent in his handling of the floor paper roll and his confrontation with the doorframe and resultant injuries could not be attributed to any defect in the doorframe. The doorframe, defendant contends, was not dangerous, or was open and obvious to any reasonable person at the time. Also, defendant argues that there is case law holding that the matter of an open and obvious condition can be determined as a matter of law (*see Tagle v Jakob*, 97 NY2d 165, 169 [2001]). Defendant argues that this is such a situation.

In his opposition papers, plaintiff contends that there is an issue as to whether defendant

failed to provide a safe elevator. Plaintiff submits the deposition testimony of defendant's superintendent, Ignatius Said. Said testified that, on the day of the accident, the inside of the elevator was equipped with padding, and the outside area was not padded. He also testified that defendant failed to provide workers like plaintiff with safety equipment during their work there. According to plaintiff, defendant failed to maintain a safe elevator because it failed to use padding on the elevator's exterior doorframe as a protective measure, which resulted in his injuries. In reply, defendant states that it is common practice to pad the interior of elevators when people are moving objects on the premises in order to protect the walls of the elevator from scratches. Defendant, however, avers that it has no duty to protect people by placing padding on the outside of its elevators.

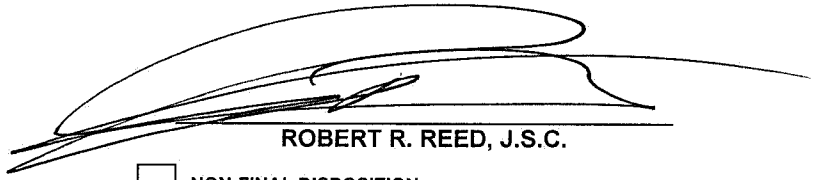
After assessing the evidence presented on this motion, the court concludes that defendant is entitled to summary judgment. There is simply no proof that the doorframe of the subject elevator was in a defective or dangerous condition. The consequences of plaintiff's conduct with respect to his handling of the floor paper roll were highly unusual, but defendant is not liable for plaintiff's subsequent injuries. In opposing this motion, plaintiff attempts to raise an issue of fact regarding safety measures. The court finds that he has failed to raise a material issue of fact. There was no duty on defendant's part to pad the exterior of the elevator as a protective measure for workers.

Accordingly, it is

ORDERED that defendant 259 West 10th LLC's motion for summary judgment is granted and the complaint is dismissed in its entirety with costs and disbursements as taxed by the Clerk of the Court; and it is further

ORDERED that the Clerk is respectfully directed to enter judgment accordingly.

8/6/2020
DATE



ROBERT R. REED, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: