Doumas v Ronkonkoma Laundromat Inc.
2020 NY Slip Op 34936(U)
September 4, 2020
Supreme Court, Suffolk County
Docket Number: Index No. 619958/2018
Judge: George Nolan

Short Form Order

Index No. 619958/2018

SUPREME COURT – STATE OF NEW YORK
PART 55 - SUFFOLK COUNTY

PRESENT:
Hon. George Nolan
Justice Supreme Court

SCOTT DOUMAS,

Plaintiff,

-against-

RONKONKOMA LAUNDROMAT INC. and JCWC, LLC,

Defendants.

Mot. Seq. No. #002 - MG
Mot. Seq. No. #003 - MD
Mot. Seq. No. #004 - MD
Orig. Return Date: 06/04/2020
Mot. Submit Date: 08/20/2020

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Upon the e-filed documents numbered 76 through 135, and upon due deliberation and consideration by the Court of the foregoing papers, it is hereby

ORDERED that the motion of the defendant Ronkonkoma Laundromat, Inc. (hereinafter "Ronkonkoma Laundromat"), for an order pursuant to CPLR 3212 granting Ronkonkoma Laundromat summary judgment (motion sequence no. 002); the motion of the defendant, JCWC, LLC (hereinafter "JCWC"), for an order pursuant to CPLR 3212 granting JCWC summary judgment (motion sequence no. 004); and the motion of plaintiff Scott Doumas for an order compelling defendants to respond to the plaintiff's discovery demand of October 12, 2019 (motion sequence no. 003), are hereby consolidated for consideration and determination; and it is further

ORDERED that the defendant Ronkonkoma Laundromat's motion for summary judgment is granted and the plaintiff's complaint and all cross claims asserted against Ronkonkoma Laundromat are dismissed; and it is further

ORDERED that the defendant JCWC' motion for summary judgment is denied; and it is further

ORDERED that the plaintiff's motion to compel is denied.

This action arises out of an alleged slip and fall accident that occurred on July 2, 2017, at approximately 7:40 a.m., in the parking lot of a commercial strip mall located on Hawkins Road, Ronkonkoma, New York. This commercial strip mall housed several businesses, including the Ronkonkoma Laundromat. Each business in the strip mall had its own address; the address of the Ronkonkoma Laundromat was 432 Hawkins Avenue. All of the businesses in this strip mall shared a common parking lot. The plaintiff's alleged accident occurred in an area of the parking lot directly in front of the Ronkonkoma Laundromat. It is undisputed that the commercial building and parking lot was owned by defendant JCWC.

The plaintiff Doumas testified at an examination before trial on June 3, 2019. Doumas testified that on the date of the accident he was employed by Giant Owl, Inc., a laundry service company, as a pickup and delivery driver. On the date of the accident, Doumas drove a large "step van" from Medford to his first scheduled stop, the Ronkonkoma Laundromat and he parked the van in the loading area directly in front of the laundromat. When Doumas attempted to exit the van, he stepped down onto "some sort of debris," lost his balance and fell to the ground. Doumas testified he took photographs of the area where he fell immediately after the accident and he identified the photographs at his deposition. One of the marked photographs showed a substantial amount of cigarette butts, sand and other debris laying in the area where plaintiff claims to have fallen.

Craig Renard testified on behalf of Ronkonkoma Laundromat at a deposition on August 2, 2019. Renard testified that he co-owned the Hawkins Avenue commercial strip mall with Larry Fleischer. Ronkonkoma Laundromat leased the laundromat premises from defendant JCWC. Pursuant to the terms of the written lease between JCWC and Ronkonkoma Laudromat, the landlord was responsible to maintain the parking lot. According to Renard, the landlord hired someone to clean the parking lot on a regular basis but Renard couldn't identify the entity that provided this service. Renard identified the lease that was in effect on the date of the subject accident.

Jerome Prinzavalli testified at an examination before trial on August 2, 2019 on behalf of defendant JCWC. Prinzavalli is the only member of JCWC, a limited liability company. JCWC owns the commercial strip mall on Hawkins Avenue that houses the Ronkonkoma Laundromat. There are several businesses located in the strip mall and they share a parking lot. Pursuant to its lease with Ronkonkoma Laundromat, JCWC was responsible for maintaining the parking lot. Prinzavalli hired Branden's Lawn Service (hereinafter "Branden") to keep the parking lot clear of debris but there was no written agreement between JCWC and Branden. According to Prinzavalli,

Branden cleaned the parking lot twice a month and would bill for the services at the end of the year. Prinzavalli testified that Branden last cleaned the subject parking lot prior to the plaintiff's alleged accident on June 30, 2017. Mr. Prinzavalli further testified that he owns and operates an auto repair shop which is located directly next to the commercial strip mall. Prinzavalli testified that he walked through the strip mall parking lot every day that he was at work and would pick up garbage if he saw it lying in the parking lot. Prinzavalli claimed he had an independent recollection of inspecting the parking lot on July 2, 2017 and he observed no debris in the parking lot. Prinzavalli examined a photograph that had been marked as plaintiff's exhibit "A" during plaintiff's deposition, and he agreed that there were cigarette butts, leaves and papers depicted in the photograph. He further agreed that garbage tended to accumulate in that section of the parking lot but he never saw as much debris as was depicted in plaintiff's Exhibit "A." Mr. Prinzavalli learned about the plaintiff's alleged accident in October, 2017 when he was served with legal papers. He thereafter installed security cameras on the premises.

Turning first to Ronkonkoma Laundromat's motion for summary judgment, it is well established that "[l]iability for a dangerous and defective condition on property is... predicated upon ownership, occupancy, control or special use of the property. Where none is present, a party cannot be held liable for injuries caused by the dangerous or defective condition of the property" (***Ruffino v. New York City Tr. Auth.***, 55 AD3d 817, 818; 865 NYS2d 667 [2d Dept 2008]). Defendant Ronkonkoma Laundromat established as a matter of law that it did not own, occupy, possess or make special use of the parking lot where plaintiff's fall allegedly occurred and, in fact, co-defendant JCWC admits that it owned and was responsible for maintaining the parking lot. Therefore, Ronkonkoma Laundromat owed no duty of care to maintain the parking lot and cannot be held liable for the alleged dangerous condition in the parking lot (*see* ***Rosato v. Foodtown***, 208 AD2d 705, 617 NYS2d 531 [2d Dept 1994]).

Turning next to JCWC's cross-motion for summary judgment, in order to establish a *prima facie* case, a plaintiff in a slip-and-fall negligence action must prove either that the defendant created the condition that caused the plaintiff's injuries or that the defendant had actual or constructive notice of the condition (***Schwartz v. Mittelman***, 220 AD2d 656, 632 NYS2d 667 [2d Dept 1995]). However, a defendant who moves for summary judgment in such a case has the initial burden of making a *prima facie* showing that it neither created the hazardous condition nor had actual or constructive notice of its existence for a sufficient length of time to discover and remedy it (***Britto v. Great Atlantic & Pacific Tea Company***, 21AD3d 436, 799 NYS2d 828 [2d Dept 2005]). "To meet its initial burden on the lack of constructive notice, a defendant must offer some evidence as to when the area in question was last cleaned or inspected relative to the time when the plaintiff fell" (***Birnbaum v. New York Racing Association, Inc.***, 57 AD3d 598, 598-599, 869 NYS2d 222 [2d Dept 2008]). Only after the moving defendant satisfies this threshold burden will the court examine the sufficiency of the plaintiff's opposition (***Joachim v. 1824 Church Avenue, Inc.***, 12 AD3d 409, 784 NYS2d 157 [2d Dept 2004]).

Here, defendant JCWC met its initial burden through the deposition testimony of Jerome Prinzavalli. Prinzavalli testified that Branden cleaned the subject parking lot on June 30, 2017. Prinzavalli further testified that he inspected the parking lot nearly every day and when he inspected the parking lot on the date of the alleged accident, it was clear of debris.

However, the plaintiff has submitted evidence sufficient to create a triable issue of fact on the issue of constructive notice. "Photographs may be used to prove constructive notice of an alleged defect shown in the photographs if they are taken reasonably close to the time of the accident and there is testimony that the condition at the time of the accident was substantially as shown in the photographs" (***Ferlito v. Great South Bay Associates***, 140 AD2d 408, 409, 528 NYS2d 111 [2d Dept 1988]). Here, a jury could infer from the volume of sand, cigarette butts and other debris shown in the photographs that were authenticated by the plaintiff, that the complained of condition came into being over such a length of time that JCWC should have known of the condition and corrected it prior to the plaintiff's alleged accident.

Lastly, the plaintiff's motion to compel is denied as records relating to the installation of surveillance cameras at the commercial strip mall, long after the date of the plaintiff's alleged accident, are not relevant or material to this action.

The foregoing constitutes the Decision and Order of the Court.

ENTER

Date: September 4, 2020
Riverhead, New York

HON. GEORGE NOLAN, J.S.C.

__ **FINAL DISPOSITION** _X_ **NON-FINAL DISPOSITION**