Dorlouis v NY & Presbyt. Hosp.
2020 NY Slip Op 35372(U)
October 21, 2020
Supreme Court, Kings County
Docket Number: Index No. 513476/2017
Judge: Peter P. Sweeney

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 73
----------X
JEAN-KENSON DORLOUIS,

Plaintiff,

-against-

NY & PRESBYTERIAN HOSPITAL,

Defendant.
----------X

Index No.: 513476/2017
Motion Date: 7-20-20
Cal No.: 23-24

DECISION/ORDER

The following papers numbered 1 to 5 were read on these motions:

Papers	**Numbered**
Notice of Motion/Cross Motion/Affirmations/ Affidavits/Exhibits/Memo of Law.....	.....1-2.....
Answering Affirmations/Affidavits/Exhibits/Memo of Law....	.....3-4.....
Reply Affirmations/Affidavits/Exhibits/Memo of Law.....	.....5.....

Upon the foregoing papers, the motion and cross-motion are decided as follows:

In this action to recover damages for personal injuries, the defendant, NY & PRESBYTERIAN HOSPITAL (hereinafter "NYPH"), moves for an order pursuant to CPLR 3212 granting summary judgment dismissing plaintiff's complaint. Plaintiff JEAN-KENSON DORLOUIS cross-moves for an order granting him summary judgment on the issue of liability. Both motions are consolidated for disposition.

Background:

The plaintiff, JEAN-KENSON DORLOUIS, commenced this action to recover damages for burn injuries that he suffered on March 21, 2017 while working in a pathology laboratory located at NYPH located at 1300 York Avenue, New York, New York. At the time of the accident, plaintiff was removing a beaker from an autoclave machine, a machine used to sterilize medical instruments, when the beaker exploded causing the heated liquid inside to erupt

over and burn his face, arms, body and legs. He commenced this action against NYPH claiming various theories of negligence.

The evidentiary materials submitted by NYPH in support of its motion for summary included plaintiff's deposition testimony, the deposition transcript of Kendrick Ou, the corporate director for real estate for NYPH and the affidavit of Matthew Brinton, an employee of Weill Cornell Medical College who works as the Director of Laboratories. At his deposition, plaintiff testified that since 2010, he worked as a lab technician in the microbiology and immunology department at Weill Cornell Medicine at NYPH at 1300 York Avenue, New York, New York. At the beginning of 2017, he also started to work as a lab technician for the pathology department which is located in the same building. plaintiff's duties included using the autoclave machine to sterilize lab equipment and instruments.

After arriving at work on March 21, 2017, the day of the accident, plaintiff went to the pathology lab and picked up two large beakers filed with liquid that needed to be autoclaved. He placed the beakers on a cart and wheeled them to the autoclave machine. Once he arrived at the autoclave machine, he placed each beaker inside a plastic bucket and then placed the two plastic buckets into the autoclave machine for the 31-minute sterilization process. Once that cycle was completed, he returned to the autoclave machine, opened the door of the machine to release the steam and to let the items inside partially cool down. When he reached in to remove the first bucket containing one of the beakers, the beaker exploded, causing the heated liquid inside to erupt over and burn his face, arms, body and legs. As a result, the plaintiff suffered burn injuries and was admitted to the burn unit of the hospital for six days.

Kendrick Ou testified that he joined NYPH in March of 2017 and that his duties include overseeing NYPH's buildings where hospital employees, affiliates and tenants are housed,

overseeing the parking garages and overseeing various real estate transactions on behalf of NYPH. As part of his duties, he also reviews leases. Mr. Ou testified that there was a lease agreement in effect at the time of the accident between NYPH and Weill Cornell, a copy of which was also submitted in support of the motion. The lease agreement covers the Weill Cornell campus, a superblock of buildings between 68th and 70th Street on York Avenue to the west and the FDR drive to the east, which includes the building at 1300 York Avenue, the accident location. The lease states that the NYPH owns the underlying land where the buildings are located, and that Weill Cornell owns the buildings. Mr. Ou testified that other than supplying power to the building, NYPH has no function with respect to 1300 York Avenue.

Matthew Brinton averred in his affidavit that the autoclave machine is owned and operated by Weill Cornell Medical College, who is also responsibility for its maintenance, control, servicing and repair. He further averred that plaintiff's use of the autoclave machine on the date in question was as an employee of Weill Cornell Medical College, sterilizing instruments and beakers used in a laboratory owned and operated by Weill Cornell Medical College and prepared by employees of Weill Cornell Medical College.

Discussion:

It is well settled that an out-of-possession landlord is not liable for injuries occurring on a premises unless it has retained control of the premises, is contractually obligated to perform maintenance and repairs, or is obligated by statute to perform such maintenance and repairs (*see Alnashmi v. Certified Analytical Group, Inc.*, 89 A.D.3d 10, 929 N.Y.S.2d 620; *Tragale v. 485 Kings Corp.*, 39 A.D.3d 626, 627, 834 N.Y.S.2d 256; *Knipfing v. V & J, Inc.*, 8 A.D.3d 628, 628–629, 779 N.Y.S.2d 244; *Denermark v. 2857 W. 8th St. Assocs.*, 111 A.D.3d 660, 661, 974 N.Y.S.2d 533, 535). It is also well settled that to be held liable for common-law negligence for

injuries arising from the manner in which work is performed, a defendant must have authority to exercise supervision and control over the means and methods of the plaintiff's work (*see Rojas v. Schwartz*, 74 A.D.3d 1046, 1046, 903 N.Y.S.2d 484; *Chowdhury v. Rodriguez*, 57 A.D.3d 121, 127–128, 867 N.Y.S.2d 123; *Gallello v. MARJ Distribs., Inc.*, 50 A.D.3d 734, 735, 855 N.Y.S.2d 602; *Jenkins v. Walter Realty, Inc.*, 71 A.D.3d 954, 954, 898 N.Y.S.2d 56, 57).

It is axiomatic that to succeed on a motion for summary judgment, the moving party must first "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 N.Y.2d 320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572, citing *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642; *see also* CPLR 3212[b]). If the movant makes such a showing, in order to defeat the motion "the burden shift[s] to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (*Alvarez*, 68 N.Y.2d at 324, 508 N.Y.S.2d 923, 501 N.E.2d 572). If the movant fails to make such a showing, the motion must be denied regardless of the sufficiency of the opposing papers" (*Vega*, 18 N.Y.3d at 503, 942 N.Y.S.2d 13, 965 N.E.2d 240 [internal quotation marks and alterations omitted]).

Here, defendant's submissions established that it was an out-of-possession landlord that had no control over the premises where plaintiff's accident occurred and that it was neither contractually or statutorily obligated to perform maintenance and repairs of the premises. The evidence presented demonstrated that Weill Cornell Medical College was in exclusive possession of the pathology laboratory, as well as the autoclave machine, and that NYPH had no involvement in the maintenance and repair of the autoclave machine (*see, Kinner v. Corning*,

Inc., 190 A.D.2d 977, 594 N.Y.S.2d 75; *Marchese v. Fresh Meadows Assocs.*, 207 A.D.2d 871, 616 N.Y.S.2d 767, 767). Defendant's submissions further established that it did not have the authority to exercise supervision and control over the means and methods of the plaintiff's work. Accordingly, defendant established its prima facie entitlement to summary judgment.

In opposition to the motion, the plaintiff failed to raise a triable issue of fact. The Court rejects that argument that the plaintiff was involved in abnormally dangerous or ultrahazardous activity. Plaintiff's reference to violations of 10 NYCRR 70-3.2 and 70.3.4 are inapplicable as they pertain to the owners and operators of autoclave equipment. Defendant was neither. Even if the defendant employed security guards in the building, a claim defendant refutes, such would not be insufficient to demonstrate that the defendant had control over the pathology laboratory, the location of the accident.

The court has considered the remaining arguments raised by the plaintiff in opposition to the motion and find them to be without merit.

Accordingly, it is hereby

ORDRED that defendant's motion for summary judgment dismissing the complaint is **GRANTED** and plaintiff's cross-motion is **DENIED.**

This constitutes the decision and order of the Court.

Dated: October 21, 2020

PETER P. SWEENEY, J.S.C.
Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020