

Alexander v Young
2021 NY Slip Op 31967(U)
March 8, 2021
Supreme Court, Richmond County
Docket Number: 151936/2018
Judge: Judith N. McMahon
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND**

IAS PART 6

ORDER

_____ x
RICKY J. ALEXANDER JR.,

Plaintiff(s),

- against -

Index Number: 151936/2018

PAUL YOUNG and DORAN YOUNG,

Hon. Justice
Judith N. McMahon

Defendants.
_____ x

Plaintiff, Ricky J. Alexander Jr.'s motion for partial summary judgment (sequence # 002) seeking a finding that Defendants Paul Young and Doran Young were negligent and are liable under Section 205-e of the General Municipal Law for the bodily injuries alleged by Plaintiff Alexander is denied as detailed herein.

This is an action seeking recovery for personal injuries allegedly sustained by Plaintiff, a New York City police officer, while executing a search warrant at Defendants' residence, but not on Defendants, on March 6, 2018. Plaintiff alleges he suffered injuries as a result of Defendants' failure to comply with local statutes and regulations.

In his Amended Complaint, Plaintiff alleges that Defendants violated New York Multiple Dwelling Law § 78 and New York City Administrative Code § 27-2005. The structure of 21 Castleton Avenue, Staten Island, New York 10301 is a two-family home owned by Defendants. Defendants reside in one part of the home and rent out the other section. The search warrant concerned the second floor of the residence, which was rented to Julien Kettley, and not to the portion of the residence occupied by Defendants.

Plaintiff appeared for a deposition on July 29, 2019. In pertinent part, Plaintiff testified that he was in the course of his employment on March 6, 2018. At the time of the accident he was wearing pants, heavy vest, a helmet, holster, gun, handcuffs, boots or sneakers. He also had a shield in his hands at the

time of the accident. Plaintiff's team was called to the house to execute a search warrant. As they entered the house, they went straight to the second floor and he was the "first shield up." They cleared rooms upstairs and then someone called for a shield downstairs. At that point, he proceeded to turn around and go back downstairs, at which point in time his left leg hit the folding chair. As he tripped on the chair, he was caused to miss the first one or two stairs.

Plaintiff testified that, "I was walking -- I was upstairs, I came back down and my left leg tripped on a -- there was a folding chair leaned down on its side at the top of the steps and I caught my left leg on it and it caused me to trip down the steps...The banister was on my left side only because when I tripped I tried to grab onto the banister on the right side and there was nothing there, and then I was like losing my footing because the steps were really steep and just not evenly across and I just continued to fall down."

Plaintiff alleges that, pursuant to New York General Municipal Law § 205-e, Defendants are liable for his injuries due to the fact that as a police officer he was injured in the course of his duty as a result of statutory violations at the premises.

"In addition to any other right of action or recovery under any other provision of law, in the event any accident, causing injury, death or a disease which results in death, occurs directly or indirectly as a result of any neglect, omission, willful or culpable negligence of any person or persons in failing to comply with the requirements of any of the statutes, ordinances, rules, orders and requirements of the federal, state, county, village, town or city governments or of any and all their departments, divisions and bureaus, the person or persons guilty of said neglect, omission, willful or culpable negligence at the time of such injury or death shall be liable to pay any officer...injured, or whose life may be lost while in the discharge or performance at any time or place of any duty...a sum of money." *N.Y. Gen. Mun. Law § 205-e.*

In support of the motion for partial summary judgment, Plaintiff submitted an Affidavit from Anthony S. Di Properzio, A.I.A., a registered architect in the State of New York.

In support of the motion, Mr. Di Properzio stated that,

Based upon my review of the documents, photos, applicable codes and my site visit I hereby state with a reasonable degree of certainty as a registered architect that the existing interior stair which provides

emergency egress from the second floor to the attic (third floor) with inadequate lighting, mis-proportioned risers and treads, uneven treads which are out of plumb, inadequately maintained stairway and absence of a handrail were, and remain in a hazardous and dangerous state, were in violation of the City of New York Building Code and the City of New York Housing Maintenance Code at the time of the accident which resulted an hazardous and dangerous condition and substantially contributed to the injuries sustained by Mr. Alexander.

Defendants opposed the motion and submitted an Affidavit from John J. Kron, Jr., a registered Professional Engineer in the State of New York.

In opposition to the motion, Mr. Kron stated,

Mr. Di Properzio completely disregarded the opening sentence of Article 7 of the 1938 NYC Code as it is a clear exception to Article 7 in its entirety for structures which are residential in occupancy, are 3 stories or less above any basement in height, and occupied by two families or less. The structure of 21 Castleton Avenue, Staten Island, New York 10301 fits under all of those categories and is unequivocally exempt from any citation of requirement contained within Article 7 of the 1938 City of New York Building Code... it should be noted that the building had a Certificate of Occupancy issued in 1951 and no subsequent Certificate of Occupancy has ever been issued. In my professional opinion, within a reasonable degree of professional engineering, the premises of 21 Castleton Avenue, Staten Island, New York was "grand-fathered" in based on the 1951 Certificate of Occupancy and the rules and regulations of that time.

At oral argument it became clear to this Court that there are questions of fact based on the evidence submitted by the parties. Neither side was able to definitively establish that the 1938 version of the City of New York Building Code is applicable to the structure in question.

Plaintiff argued that the 1938 version of the Code is applicable but that the exemption referenced by Defendants, by its specific wording, only applies to structures erected after January 1, 1938, which is not the case here. Defendants argued that the Certificate of Occupancy issued in 1951 and the fact that there are no subsequent events which would have required issuance of another Certificate is proof that there are no violations.

Plaintiff was unable to explain how the 1951 Certificate of Occupancy would have been issued if the structure was in violation of the 1938 version of the Code and Defendants were unable to explain how a Certificate of Occupancy could be issued based on an exemption that specifically states it only applies to structures erected after 1938, which the home in question was not.

There are also questions of fact as to Plaintiff's common law negligence allegations.

In order to prevail on a motion for Summary Judgment, the proponent must make a prima facie showing of entitlement to judgment as a matter of law, through admissible evidence demonstrating the absence of any material issue of fact. *See Klein v. City of New York*, 89 N.Y.2d 833, 652 N.Y.S.2d 723 (1996); *Ayotte v. Gervasio*, 81 N.Y.2d 1062, 601 N.Y.S.2d 463 (1993); *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986).

In opposition to the motion, Defendants argued that "The firefighter's rule bars a police officer or firefighter from bringing a common-law negligence cause of action where the performance of the police officer's or firefighter's duties increased the risk of the injury happening, and did not merely furnish the occasion for the injury. Thus, recovery for damages in common-law negligence may not be had where some act taken in furtherance of a specific police or firefighting function exposed the officer to a heightened risk of sustaining the particular injury." *Byrnes v. City of New York*, 249 A.D.2d 352, 671 N.Y.S.2d 483 (N.Y.A.D. 2nd Dept. 1998); *See also Zanghi v Niagara Frontier Transp. Commn.*, 85

N.Y.2d 423, 649 N.E.2d 1167 (1995). As evidence of the heightened risk of injury, Defendants make reference to the fact that Plaintiff was wearing body armor and carrying a shield while executing a search warrant related to potential drug offenses.

Defendants also argued that there was no notice as to the alleged defects. Defendants assert that Plaintiff has not submitted any evidence to establish Defendants had notice. Defendants testified that the chair in question was placed on the stairs by the tenant living in the upper portion of the residence, and Defendants argue that there have never been any complaints as to the condition of the stairs, nor did they ever have occasion to have inspected the stairs in question.

ORDERED that Plaintiff's motion is denied; and it is further

ORDERED that all parties shall appear for a conference, to be held remotely via Microsoft Teams on May 10, 2021 at 2:00 p.m.; and it is further

ORDERED that any and all other requested relief is denied; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly.

THIS IS THE DECISION AND ORDER OF THE COURT.

Dated: March 8, 2021

So Ordered.



ENTER: _____

J.S.C

Hon. Judith N. McMahon, J.S.C.