Kelly-Newhouse v Chase Meadows Farm, LLC
2021 NY Slip Op 33562(U)
September 28, 2021
Supreme Court, Westchester County
Docket Number: Index No. 63436/2019
Judge: Charles D. Wood
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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.

To commence the statutory time period for appeals
as of right (CPLR 5513[a]), you are advised to serve a copy
of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
---x
STEPHANIE KELLY-NEWHOUSE, JAMES NEWHOUSE,

Plaintiffs,

-against-

DECISION & ORDER
Index No. 63436/2019
Sequence Nos. 2,3&4

CHASE MEADOWS FARM, LLC, RHIANNON LLC and PETER MARTINI & ASSOCIATES LLC.,

Defendants.
---x
WOOD, J.

New York State Courts Electronic Filing ("NYSCEF") Document Numbers 46-90 were read regarding separate motions for summary judgment to dismiss the complaint and all cross claims, brought by defendants Peter Martini & Associates LLC. ("Martini") (Seq 2); Rhiannon LLC ("Rhiannon") (Seq 3); and Chase Meadows Farm, LLC, ("Chase Meadows") (Seq 4).

Plaintiffs seek damages for personal injuries sustained on October 29, 2016. On that date, plaintiff Stephanie Kelly-Newhouse ("plaintiff"), was riding her horse in an outside ring on the equestrian facility owned by Chase Meadows and leased to Rhiannon, with which she boarded her horse. Plaintiff alleges that she fell off her horse, which was allegedly spooked by objects allegedly being thrown off a building owned by Chase Meadows on which Martini was allegedly performing work.

NOW, upon the foregoing papers, the motions are decided as follows:

As a preliminary procedural matter, pursuant to the Trial Readiness Referee Report & Order by the court (Lefkowitz, J.), summary judgment motions or cross motions for summary judgment must be served via NYSCEF within 90 days following the filing of the Notice of Issue; opposition papers must be served via NYSCEF within 30 days of service of motion papers, and reply papers, if any, must be served via NYSCEF within 10 days following service of any opposition papers (NYSCEF#44). Due to tardy cross motions by plaintiff, Judge Lefkowitz denied plaintiff's cross-motions (Seq 5,6, and 7). This also holds true for the opposition to defendants' motions contained in plaintiff's cross motions, which are also not timely pursuant to the Trial readiness Order, and will not be considered by this court, as they were served more than 30 days from the service of the motion papers.

Turning to the merits of the motions, it is well settled that a proponent of a summary judgment motion must 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 Hospital, 68 NY2d 320, 324 [1986]; Orange County-Poughkeepsie Ltd. Partnership v Bonte, 37 AD3d 684, 686-687 [2d Dept 2007]; Rea v Gallagher, 31 AD3d 731 [2d Dept 2007]). Failure to make such a prima facie showing requires a denial of the motion, regardless of the sufficiency of the motion papers (Winegrad v New York University Medical Center, 64 NY2d 851, 853 [1985]; Jakabovics v Rosenberg, 49 AD3d 695 [2d Dept 2008]; Menzel v Plotkin, 202 AD2d 558, 558-559 [2d Dept 1994]). Once the movant has met this threshold burden, the opposing party must present the existence of triable issues of fact (Zuckerman v New York, 49 NY2d 557, 562 [1980]; Khan v Nelson, 68 AD3d 1062 [2d Dept 2009]). In deciding a motion for summary judgment, the court is "required to view the evidence presented in the light most favorable to the party opposing the motion and to draw every reasonable inference from the pleadings and the proof

submitted by the parties in favor of the opponent to the motion" (Yelder v Walters, 64 AD3d 762, 767 [2d Dept 2009]; Nicklas v Tedlen Realty Corp., 305 AD2d 385, 386 [2d Dept 2003]). Summary judgment is a drastic remedy and should not be granted where there is any doubt as to existence of a triable issue (Alvarez v Prospect Hospital, 68 NY2d 320,324 [1986]).

In support of its motion (Seq 2), Martini offers the deposition testimonies of the parties, including plaintiff, who testified that in October 2016, she was boarding one of her horses at Chase Meadows Farm for about a month prior to the accident. Rhiannon was running the equestrian program at Chase Meadows. While she was riding the horse in the ring, an unknown roofer that she cannot identify, purportedly threw building debris off the roof while she was on the horse, which made a very loud sound, causing the horse to be startled and she leapt sideways (NYSCEF#53).

Peter Martini, the sole member of Martini, asserts that Martini was hired by Chase Meadows as an independent contractor to renovate an indoor riding ring and to convert it into a nine-stall barn and replace the roof at Chase Meadows which was performed during the fall of 2016. When performing construction work at the farm, he asserts that he, along with anyone working with him have always been respectful of the equestrian activities. Martini attests that he was present every day while the roof replacement work was being performed, and only worked Monday through Friday. Martini did not work on the subject roof on Saturdays or Sundays. On the date of plaintiff's accident, which was a Saturday, October 29, 2016, at approximately 1:00 pm, he was not present performing any work at Chase Meadows, and neither were any of his workers. Martini had completed their work for the week on the Friday before the accident, and at the time of the accident, it had no ladders erected and no construction vehicles at Chase Meadows. Peter

Martini also notes that he and his assistants, never threw panels, debris, or other materials from the roof onto the ground.

The other defendants, including Chase Meadows, also claim that it did not create this condition. Rhiannon claims it was not contractually responsible for roofing work and was also not a party to the agreement for that work. Also, on the date of the accident, Rhiannon was not on either actual or constructive notice of items being thrown from the roof. Even if something was thrown off the roof prior to the plaintiff's accident, there is no proof that Rhiannon was on either actual or constructive notice that anything was going to be thrown off the roof. Rhiannon raises that pursuant to §10 of the Boarding and Facilities Agreement between Chase Meadows and Rhiannon. Chase Meadows was responsible for all maintenance and upkeep of the facility including the structures and roofs. Chase Meadows hired Martini to perform roof repair which was ongoing in October of 2016. Rhiannon LLC was not involved in any way with the repair of the roof.

Other relevant testimony includes that plaintiff's husband, James Newhouse, was seated in a car near the riding ring at the time of the plaintiff's accident, and did not recall whether he saw anyone throw anything off the roof (NYSCEF#89).

Helen Murphy (then-Rhiannon employee) was in the riding ring with plaintiff when the accident when it occurred. Significantly, Ms. Murphy testified that she witnessed plaintiff's horse bucked plaintiff after plaintiff attempted a maneuver called a lead change while cantering, and that there was no construction happening during the time of the accident:

"Q. All right. And tell me what you saw in terms of her falling off.
A. She was cantering and she went across the diagonal to change directions and did something called a lead change, where the horse changes its leading leg and her horse jumped in the air when she did it and then she came back around to execute the same thing again and the horse did something called bucking where they kick their back legs up and she fell off.
Q. Wait a minute. You said she was doing, what did you call it, a crossover or something?

A. A lead change.
Q. And then you said she went around the ring?
A. Yep. 23
Q. Oh, she went around the ring 24 and then when she got back to the spot
A. She did it again and the horse bucked and she fell off.
Q. And you said the horse bucked?
A. Um-hum.
Q. And she fell off; is that correct?
A. Correct" (NYSCEF#88 at 73-74).

The elements of common law negligence are: "(1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, and (3) a showing that the breach of that duty constituted a proximate cause of the injury" (Ingrassia v Lividikos, 54 AD3d 721, 724 [2d Dept 2008]). A threshold question in tort cases is whether the alleged tortfeasor owed a duty of care to the injured party (Darby v Compagnie Natl. Air France, 96 NY2d 343 [2001]). " '[A] contractual obligation, standing alone, will generally not give rise to tort liability in favor of a third party' " (Szulinska v Elrob Realty, LLC, 190 AD3d 777 [2d Dept 2021]).

From these submissions, there is no factual basis to demonstrate that Peter Martini or his workers were present on the roof of the barn near the riding ring at the time of plaintiff's accident; or that that one of them threw a bucket of debris from the roof of the barn; or that Peter Martini or his workers were a proximate cause of the plaintiff's accident.

Not a single witness, other than plaintiff, testified that an unidentified roofer dumped a bucket of debris from the roof causing a loud noise that startled her horse. All of the remaining testimony and evidence indicates that there was no construction or roofing activity ongoing at the time of the accident and that no loud noises startled plaintiff's horse. Further, there is no competent evidence that any of the defendants created a condition which caused the material to be allegedly thrown from the roof; and was also not on either actual or constructive notice that it

was going to be thrown. Accordingly, summary judgment is warranted under these circumstances, as defendants have eliminated all triable issues of fact.

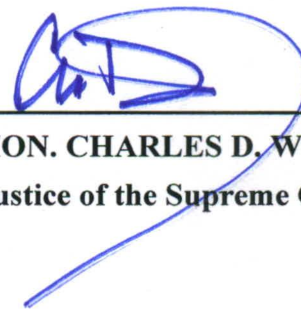
All matters not herein decided are denied. This constitutes the Decision and Order of the court.

NOW, therefore, it is hereby

ORDERED, that the motions for summary judgment brought by moving defendants- Peter Martini & Associates LLC., ") (Seq 2); Rhiannon LLC ("Rhiannon") (Seq 3); and Chase Meadows Farm, LLC, ("Chase Meadows") (Seq 4) are granted. Complaint is dismissed.

The Clerk shall mark his records accordingly.

Dated: September 28, 2021
White Plains, New York



HON. CHARLES D. WOOD
Justice of the Supreme Court

To: All Parties by NYSCEF