

Parra v Yeung

2021 NY Slip Op 33690(U)

December 23, 2021

Supreme Court, Bronx County

Docket Number: Index No. 30066/2018E

Judge: Kim Adair Wilson

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART IA-12

PARRA, DILAIRA

Index No. 30066/2018E

-against-

Hon. KIM ADAIR WILSON

YEUNG, SERENA Y.

Justice Supreme Court

The following papers numbered 36 to 59 in NYSCEF were read on these motions (Seq. # 002) to SUMMARY JUDGMENT noticed on SEPTEMBER 15, 2021.

Table with 2 columns: Document Type and Status. Rows include: Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed (No(s). ✓), Answering Affidavit and Exhibits (No(s). ✓), Replying Affidavit and Exhibits (No(s). ✓)

Upon the foregoing papers, it is ordered that, this motion is decided in accordance with the annexed Decision and Order.

Motion is Respectfully Referred to Justice:
Dated:

Dated: DECEMBER 23, 2021

Hon. [Signature]
KIM ADAIR WILSON, J.S.C.

- 1. CHECK ONE.....
2. MOTION IS.....
3. CHECK IF APPROPRIATE.....
CASE DISPOSED IN ITS ENTIRETY X CASE STILL ACTIVE
GRANTED X DENIED GRANTED IN PART OTHER
SETTLE ORDER SUBMIT ORDER SCHEDULE APPEARANCE
FIDUCIARY APPOINTMENT REFEREE APPOINTMENT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, NEW YORK : Part IA-12

-----X

DILAIRA PARRA,
Plaintiff,

-against-

SERENA Y. YEUNG,
Defendant.

-----X

DECISION AND ORDER
Index No. 30066/2018E
Motion Seq. #002

HON. KIM ADAIR WILSON
J.S.C.

Kim Adair Wilson, J.:

“NOTICE OF MOTION,” dated and filed August 6, 2021, by Christopher D. Devanny, Esq. (Kent & McBride, P.C.), seeks an “Order granting summary judgment in favor of the defendant, Serena Y. Yeung, as against plaintiffs, on the grounds that there are no material issues of fact with respect to the liability of defendant Serena Y. Yeung...” Plaintiff’s counsel, Martin J. Moskowitz, Esq. (Gorayeb & Associates, P.C.) opposes defendant’s motion by way of an “AFFIRMATION IN OPPOSITION,” dated and filed October 22, 2021. Defendant’s counsel submits a “REPLY AFFIRMATION,” dated and filed October 26, 2021 (NYSCEF Line #s 36-59). The defendant’s motion is determined as set forth below.

Plaintiff Dilaira Parra, a tenant who resided in the basement of defendant Serena Y. Yeung’s property, described as 3315 Sedgewick Avenue, Bronx, New York 10463 (“subject premises”), commenced the underlying personal injury action against the defendant alleging that, on January 10, 2018, the defendant’s negligence caused her to slip on ice at the subject premises, fall and sustain serious injuries.

Previously, by Notice of Motion, dated and filed, March 16, 2020, defendant’s counsel moved for summary judgment (Motion Seq. #001), the same relief sought in the instant motion. Plaintiff’s counsel opposed the motion by Affirmation In Opposition, dated and filed July 8, 2020. By Decision and Order dated January 15, 2021, the Honorable Donna M. Mills denied defendant’s motion, stating the following in pertinent part:

Following a conference on January 14, 2021, Defendant’s motion seeking summary judgment is denied at this time, as there are facts that still need to be established, with leave to refile.

Now, in the instant motion, defendant’s counsel moves to re-file his motion for CPLR 3212 summary judgment in defendant’s favor on the basis that there are no triable issues of fact. Given Justice Mills’ Decision and Order wherein she unequivocally allowed defendant to re-file, plaintiff Parra’s opposition to the herein motion asserting that the defendant’s

motion was previously denied is to no avail. Accordingly, under these circumstances, this Court shall hear and determine the defendant's motion for summary judgment.

CPLR 3212 provides that summary judgment is warranted if the movant shows through the submission of admissible evidence that the opposing party has no defense to the cause of action or that the cause of action or defense has no merit (CPLR 3212[b]). "Since summary judgment is the equivalent of a trial, it has been a cornerstone of New York jurisprudence that the proponent of a motion for summary judgment must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law" (*Ostrov v Rozbruch*, 91 AD3d 147 [1st Dept 2012] citing *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316, 476 NE2d 642 [1985]). Once the movant meets his or her burden, the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of a material issue of fact that precludes summary judgment and requires a trial (*Ostrov v Rozbruch*, 91 AD3d 147, *supra*, citing (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324, 508 NYS2d 923, 501 NE2d 572 [1986])).

In support of his instant motion, defendant's counsel submits the pleadings and the deposition transcripts of plaintiff Parra and defendant Yeung. Ms. Yeung testified that she owns the subject premises and has rented out the basement apartment to the plaintiff since July 2016. Ms. Yeung stated that after a snowstorm, she would shovel the area in front of the house, the sidewalk, and the driveway, including a path leading up to plaintiff's basement door; her boyfriend would assist her. In January 2018, Ms. Yeung worked from 8:00AM to 4:00PM and would shovel as soon as she could. She would pile the snow toward the back of the house. She was unsure as to whether she ever noticed water from the melted snow roll down the driveway. After shoveling, she would apply salt and "backtrack" to ensure that all areas were covered. She stated that when she would leave the house, she would check to see if the ice melted and re-froze. She then testified however, that she would check if, after the salt melted the ice, whether the water refroze, if she "felt it was a possibility," of occurring; she could not recall whether she checked between January 4, 2018 and January 10, 2018. Notably, she testified that she was aware of the possibility of water from the melted snow refreezing at least once. Ms. Yeung also stated that "if [the ice] was significant," she would tell the tenant to be careful when exiting the apartment but was never occasioned to do so; she never used tape or barriers to warn of icy conditions; and she had no concerns about the tenant's safety by leaving the snow at the top of the driveway. On January 10, 2018, she checked the area where the plaintiff allegedly slipped and fell and found the area to be clear and without ice. During deposition, defendant Yeung was shown photographs of the accident location taken on the date of plaintiff's accident, which were not provided by defendant in the instant motion. She testified that "it looks like it might be [ice] on the path."

"A defendant who moves for summary judgment in a slip-and-fall action has the initial burden of making a prima facie demonstration that [he or she] neither created the

hazardous condition, nor had actual or constructive notice of its existence" (*Pfeuffer v New York City Hous. Auth.*, 93 AD3d 470 [1st Dept 2012] citing *Rodriguez v 705-7 E. 179th St. Hous. Dev. Fund Corp.*, 79 AD3d 518, 519 [2010] [internal quotation marks omitted]). Defendant Yeung seeks summary judgment but has failed to meet her prima facie burden that she neither created the hazardous condition nor had actual notice of its existence. She was aware of the possibility of water melting from the snow piles placed on the sloped driveway into the pathway that she created for the plaintiff, and refreezing. She stated that she checked for ice on January 9, 2018, but then stated that could not recall whether she checked for ice between January 4, 2018 and January 10, 2018.

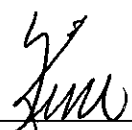
Upon review and the analysis of statutory authority, relevant case law, the papers submitted and the record, this Court determines that since the defendant failed to meet her burden of proof, she failed to shift the burden to the plaintiff. Based on the foregoing, this Court denies the defendant's motion.

Accordingly, defendant Yeung's motion for summary judgment is **DENIED** as stated herein.

The movant is directed to serve a copy of this Order with Notice of Entry, upon the parties within thirty (30) days of entry of this Order and file proof of service with the Court.

This constitutes the Decision and Order of this Court.

Dated: December 23, 2021
Bronx, New York



Hon. Kim Adair Wilson, J.S.C.