Ramos v Plaza Condominium
2022 NY Slip Op 32893(U)
August 25, 2022
Supreme Court, New York County
Docket Number: Index No. 156898/2019
Judge: Sabrina Kraus
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.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. SABRINA KRAUS **PART** 57TR

Justice

----------X

EDUARDO RAMOS,

Plaintiff,

- v -

THE PLAZA CONDOMINIUM, FIRSTSERVICE RESIDENTIAL NEW YORK, INC., and BOARD OF MANAGERS OF THE PLAZA CONDOMINIUM.

Defendants.

----------X

INDEX NO. 156898/2019

MOTION DATE 08/12/2022

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91

were read on this motion to/for JUDGMENT - SUMMARY.

BACKGROUND

Plaintiff commenced this action seeking damages for personal injuries he alleged he suffered on March 11, 2019, when he crashed his bike into a warning sign/barrier Defendants had placed in the loading zone in front of its premises.

PENDING MOTION

On June 28, 2022, Plaintiff moved for an order pursuant to CPLR §3212 granting Plaintiff partial summary judgment against the Defendants on the issue of liability. On August 12, 2022, the motion was marked submitted and the court reserved decision.[1]

For the reasons set forth below, the motion is denied.

[1] Exhibit F (the video of the accident NYSCEF DOC 73) was not submitted with the motion papers but was emailed to the court, at the court's request on August 22, 2022.

ALLEGED FACTS

At the time of the accident the sun was out, and it was light outside. Plaintiff was coming from his apartment on St. Nicholas Avenue, on his way to work, and was running a few minutes late. He was on 59th Street for approximately half a block before the accident occurred in front of the Oak Room of the Plaza in the third lane where Ubers temporarily park.

Tomas Padilla (Padilla) was employed with First Service Residential as the general manager of the Plaza Condominium at the time of the alleged incident. FirstService Residential manages the property. The Plaza Condominium owns 1 Central Park South.

On the date of the incident, ice had come off the building on the 59th Street side by the entrances to the residential part of the condominium. Padilla went outside and observed what appeared to be snow had fallen into the loading zone between the two entrances. After learning about the ice falling from the building, he went to the residential section entrance and observed ice on the roadway in the loading zone.

Padilla instructed his handyman to set up falling snow danger signs to warn people of the danger. The sign, which was owned by the condominium, said "Danger falling ice snow." They also placed cones and a safety bar in the roadway. The safety bar had two loops that went on top of the cones. It was eighteen inches off the ground.

The sign that had white and red colors to make it pop. The safety pole was orange so that it was visible. Padilla did not receive complaints about the placement of the danger sign, the cones or the orange safety stick. Nor did he receive any violations from the City of New York regarding the placement of the danger sign, cones or the safety stick. There were no other accidents involving the danger zone sign, cones or safety stick.

The loading zone is located directly in front of the residential entrances on the 59th Street side of the building. It is used for the dropping off and picking of residents by cabs, Ubers and private drivers and the unloading and loading of cars for the residents. It runs the length of the block toward 6th Avenue and is used by another hotel for that same purpose. At the time of the accident and prior to 2020 when the Department of Transportation reduced the size of the loading zone, the loading/unloading zone was approximately two lanes wide. The loading zone is not a lane of travel.

While Plaintiff was traveling on 59th Street between 5th Avenue and 6th Avenue, he noticed a black car and a black truck or SUV to his right. No cars had pulled out of that third lane near the curb while he was traveling that half block on 59th Street before the accident. When he was 25 feet from the accident location, he was looking straight ahead, and the accident location was in his view. He did not observe the 3 feet tall, 24-inch-wide black and white sign that warned of falling ice, until he was half a car length away. He never saw the orange pole or either of the two orange cones at any point in time before the accident.

Video taken off the accident shows other cyclists, and people on scooters passing the area without incident both before Plaintiff's accident, and after it, when Plaintiff sat in the road where he had fallen and waited for an ambulance to arrive.

DISCUSSION

Summary Judgment is a "drastic remedy" and will only be granted in the absence of any material issues of fact. To prevail on a motion for Summary Judgment, the movant must make a *prima facie* showing of entitlement, tendering sufficient admissible evidence to demonstrate the absence of any material issues of fact (*Zuckerman v City of NY*, 49 NY2d 557 [1980]; *Jacobsen v New York City Health and Hospitals Corp.*, 22 NY3d 824 [2014]; *Alvarez v Prospect Hosp.*, 68

NY2d 320,[1986]). A failure to make a *prima facie* showing requires the Court to deny the motion, regardless of the sufficiency of opposing papers. *Alverez v. Prospect Hosp*. at 324; *Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 853 [1985). In deciding summary judgment motions, the courts will draw all reasonable inferences in favor of the nonmoving party. *See, Vega v. Restani Constr. Corp*., 18 N.Y.3d 499, 503 (2012).

The role of the court is to make determinations as to the existence of *bona fide* issues of fact and not to delve into or resolve issues of credibility. *Id*. Summary judgment is improper if the facts are in dispute, or if there are issues of credibility, or if conflicting inferences can be drawn from the evidence, as is the case here. *Baker v. D.J. Stapleton Inc*., 43 A.D.3d 839 (2nd Dept. 2001); *Lacagnino v. Gonzalez*, 306 A.D.2d 250 (2nd Dept. 2003).

A plaintiff in a negligence action moving for summary judgment on the issue of liability must establish, as matter of law, that the defendant breached a duty owed to the plaintiff and that the defendant's negligence was a proximate cause of the alleged injuries. *Rodriguez v City of New York*, 31 NY3d 312 (2018); *Tsyganash v Auto Mall Fleet Management, Inc*., 163 AD3d 1033 (2d Dept 2018).

Plaintiff Has Failed to Meet Its Burden in Establishing the Right to Judgment as a Matter of Law

Plaintiff has not established his *prima facie* entitlement to summary judgment on the issue of liability as Plaintiff has failed to demonstrate that Defendants were negligent as a matter of law based on a statutory violation. *Van Gaasbeck v. Webatuck Cent. School Dist. No. 1*, 21 N.Y.2d 239 (1967); *Sapienza v Harrison*, 191 AD3d 1028 (2d Dept 2021).

The only statutes pled by Plaintiff are Vehicle and Traffic Law ("VTL") §§ 1219(b) and 1220(c). VTL §§1219(b) and 1220(a) are inapplicable to the instant matter. Plaintiff does not cite

any case supporting the application of §§ 1219(b) and 1220(a) to the Defendants or the facts herein.

VTL §1219 is entitled "Putting glass or other injuries substances on a highway is prohibited", such as snow and ice as specified in §1219(d) or glass or other injurious substances from a wrecked or damaged vehicle as stated in §1219(c). §1219(b) states that "[a]ny person who drops, or permits to be dropped or thrown, upon any highway any destructive or injurious material or material which interferes with the safe use of the highway shall immediately remove same or cause it to be removed". This section does not apply to the placement of a danger sign, two cones and an orange pole by Defendants in its loading and unloading zone – not a moving lane of traffic - to warn users of that lane of the danger of falling ice and snow. Case law holds that this section relates to dirt, sand and gravel spilled upon a street. *See eg Nielson v. New York* 38 AD2d 592 [2d Dept 1971]).

VTL §1220, entitled "Throwing Refuse on Highways and Adjacent Lands Prohibited", states as follows:

> (a) No person shall throw, drop, deposit or place or cause to be thrown dumped, deposited or placed upon any highway, or within the limits of the right of way of such highway, or upon private lands adjacent thereto, any refuse, trash, garbage, rubbish, litter or and nauseous or offensive matter.

Again, this section is in applicable to the case at bar.

Whether the Warning Sign, Cones and Pole Created A Dangerous Condition Is A Question of Fact

Whether a condition qualifies as dangerous or defective is usually a question of fact for the jury to decide. *Przybyszewski v Wonder Works Constr., Inc*., 303 AD2d 482 (2d Dept 2003); *Haxhia v Varanelli*, 170 AD3d 679 (2d Dept 2019). Whether a condition is inherently dangerous "depends on the totality of the specific facts of each case." (*Powers v 31 E 31 LLC*, 123 A.D.3d

421, 422 [1st Dept 2014], *quoting Russo v Home Goods, Inc.*, 119 AD3d 924, 925 [2d Dept 2014]).

The cases relied upon by Plaintiff, *Petito v City of NY*, 95 AD3d 1095 [2d Dept 2012]) and *Golisano v Keeler Constr. Co.*, 74 AD3d 1915 [4th Dept 2010]), are distinguishable from the facts herein. In *Petito* a motorcycle driver collided with a barrier during emergency road work. The plaintiff alleged that the accident occurred as a result of defendant's negligence in placing the barrier in the roadway without providing adequate warning of its presence. The court denied defendant summary judgment holding there was a triable issue of fact as to whether the barrier, when placed in the roadway without the traffic barrels, constituted a force or instrument of harm "launched" by the contractor which rendered the roadway less safe than before the emergency repair project. In the instant matter, Defendants did place warning signs in the roadway, which Plaintiff failed to observe.

In *Golisano*, plaintiff tripped while crossing the street on construction debris, a two-inch stone. Summary judgment was denied as there were issues of fact as to whether the stone used constituted a force or instrument of harm, or otherwise made the area less safe than before the construction project began.

In fact, both these cases support the denial of the Plaintiff's motion here, as they hold it was for the jury to decide whether the alleged conditions were dangerous. The totality of the circumstances here creates an issue of fact for the jury to decide as to whether Defendants caused or created a dangerous condition.

CONCLUSION

WHEREFORE it is hereby:

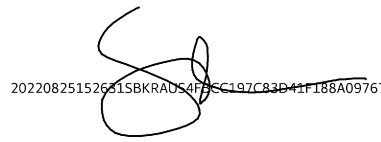
ORDERED that Plaintiff's motion for partial summary judgment as to liability is denied; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh);]; and it is further

ORDERED that any relief not expressly addressed has nonetheless been considered and is hereby denied; and it is further

ORDERED that this constitutes the decision and order of this court.



8/25/2022
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	X DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE