Martinez v JRL Food Corp.
2022 NY Slip Op 35057(U)
December 15, 2022
Supreme Court, Bronx County
Docket Number: 32111/2018E
Judge: Adrian Armstrong
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 21
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ODILE ALTAGRACIA MARTINEZ,

Plaintiff,

-against-

DECISION and ORDER
32111/2018E

JRL FOOD CORP. D/B/A KEYFOOD SUPERMARKET and WEINBERG JEROME LLC,

Defendants.

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Adrian Armstrong, J.

Plaintiff brings this personal injury case against JRL Food Corp., D/B/A Keyfood Supermarket ("JRL Food Corp.") and Weinberg Jerome LLC, ("Weinberg Jerome" or collectively "Defendants"). Defendants now move for summary judgment pursuant to CPLR 3212, dismissing the plaintiff's complaint against them.

Plaintiff seeks damages for injuries she allegedly sustained on August 5, 2016, when she was caused to fall at the premises located at 3515 Jerome Avenue, Bronx, New York (hereinafter "Subject Premises"). Plaintiff claims that while shopping at the Subject Premises she was carrying two heavy bottles of juice and as she attempted to place the bottles inside her aunt's shopping cart, she tripped and caught her right foot on a black crate. This caused her to lose her balance, hook her foot, and to fall upon the shopping cart. Plaintiff maintains that she never saw the crate prior to her accident occurring and the black crate on the floor of the supermarket was not open and obvious.

Plaintiff maintains that Defendants' employees left the black crate in the

aisle and failed to remove it after using it to restock shelves. Defendants' employee Rafael Hernandez did testify in his deposition to have stocked shelves the morning of the subject incident, and claims to have never left a black crate in any supermarket aisle. Plaintiff brought suit against the owner of the Subject Premises, Weinberg Jerome and the commercial tenant, JRL Food Corp.

Defendants contend that the condition of which plaintiff complains, to wit black container located in the middle of an aisle adjacent to the shelves at Defendants' supermarket was open and obvious and not inherently dangerous. Defendants' also contend that even if it can be found that it has some culpable conduct for the placement of this container, any negligence attributable to it was not the proximate cause of plaintiff's accident, as plaintiff's own conduct in attempting to walk over the black container, was the sole proximate cause of the accident. Finally, Weinberg Jerome claims that it cannot be held liable for plaintiff's alleged injuries as it was merely an out-of-possession landlord for the subject premises. Weinberg further maintains that even if it did not qualify as an out-of-possession landlord with respect to the subject premises, there is no evidence that can be adduced that would indicate that Weinberg Jerome had any notice, actual or constructive, of any box, container, or carton on the floor of the subject premises on the date of plaintiff's accident.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence in admissible form to demonstrate the absence of any material issues of fact. *Winegrad v. New York University Medical Center, 64 N.Y.2d 851, 487 N.Y.S.2d 316, 476 N.E.2d 642* (1985). Failure to make such prima facie showing

requires a denial of the motion, regardless of the sufficiency of the opposing papers. The burden on the movant is a heavy one, and the facts must be viewed in the light most favorable to the non-moving party (*Jacobsen v. New York City Health & Hosps. Corp., 22 N.Y.3d 824 [2014]*). Once this showing has been made, however, the burden shifts 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 v Prospect Hosp., 68 NY2d 320, 324 [1986])*.

A landowner has a duty to maintain its premises in a reasonably safe manner (*see Basso v Miller*, 40 NY2d 233[1976]). However, a landowner has no duty to protect or warn against an open and obvious condition, which, as a matter of law, is not inherently dangerous *(see Scalfani v Washington Mut.*, 36 AD3d 682 [2nd Dept 2007]; *Espinoza v Hemar Supermarket, Inc*. 43 AD3d 855 [2nd Dept. 2007]). In *Espinoza*, the plaintiff tripped and fell over empty milk crates in the aisle of a supermarket. The court held that the presence of the empty milk crates in the aisle was an open and obvious condition which was not inherently dangerous. Similarly, here the plaintiff allegedly tripped and fell over a black crate on the floor of an aisle in the Defendants' store. The crate was at least 12 inches wide and 5 to 6 inches high, and the surveillance video of the incident shows the aisle uncluttered.

"While the issue of whether a hazard is latent or open and obvious is generally, fact-specific, and thus usually a jury question, a court may determine that a risk was open and obvious as a matter of law when the established facts compel that conclusion and may do so on the basis of clear and undisputed evidence (*Tagle v Jakob*, 87 NY2d 165, 169 [2001]). As such, Defendants

established, prima facie, their entitlement to judgment as a matter of law by showing that the crate which allegedly caused the plaintiff to fall was readily observable by the reasonable use of one's senses, was not inherently dangerous and not a proximate cause of the accident (*see Vergara v A & S Twins Constr. Corp.*, 41 AD3d 588 [2nd Dept 2007]). In opposition, the plaintiff failed to submit evidence sufficient to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]).

Additionally, "[a]n out-of-possession landlord is not liable for injuries sustained on the premises unless a duty to maintain the premises in a reasonably safe condition is "imposed by statute or assumed by contract or a course of conduct" (*Alnashmi v Certified Analytical Group, Inc.*, 89 AD3d 10 [2nd Dept 2011]). Here, where the complaint sounds in common-law negligence and does not allege the violation of a statute, the defendant, Weinberg Jerome established, prima facie, that it was an out-of-possession landlord which was not bound by contract or course of conduct to maintain the premises in a reasonably safe condition. In opposition, the plaintiff failed to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]).

The parties' remaining contentions have been considered, but do not alter the outcome of this motion.

Accordingly, it is hereby

ORDERED that the motion of Defendants JRL Food Corp. and Weinberg Jerome, LLC seeking summary judgment dismissing the Complaint in this action is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This is the Decision and Order of the Court.

Dated: December 15, 2022

Adrian Armstrong, A.J.S.C.

HON. ADRIAN N. ARMSTRONG, J.C.C.