SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 21

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JENNIFER HANGAN,

Plaintiff, DECISION and ORDER

-against- 31819/2019E

EDGEWATER PARK OWNERS COOPERATIVE, INC., et al.,

Defendants.

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AND A THIRD-PARTY ACTION

Adrian Armstrong, J.

In this persona injury action, the defendant DeBartolo Landscaping Inc. ("DeBartolo") moves to reargue that portion of the Court's decision, dated January 13, 2023, which denied Debartolo's motion for summary judgment against the plaintiff. Movant contends that reargument is warranted in that the Court overlooked and/or misapprehended material issues of fact and law in rendering its decision.

A motion for leave to reargue a prior motion pursuant to CPLR § 2221 is addressed to the sound discretion of the Court and may be granted upon a showing that the Court overlooked or misapprehended the relevant facts or misapplied any controlling principle of law (*Oparaji v. Yablon*, 159 A.D.3d 539, 70 N.Y S.3d 44 (1st Dept. 2018).

In this Court's aforementioned decision denying movant's request for summary judgment against the plaintiff, this Court did not address DeBartolo's argument premised upon the absence of a duty to the plaintiff. As such, DeBartolo's motion for reargument shall be granted.

Plaintiff was allegedly injured when she tripped and fell in the evening hours on August 31, 2019, within a field at a location known as the Edgewater Park Community in the County of the Bronx, City and State of New York. Plaintiff claims she was caused to trip and fall in some type of drain, ditch, hole, and/or depression, that the lighting in the area was poor, and that as a result, she sustained personal injuries. The grassy field at Edgewater Park is owned by Edgewater Park Owner's Cooperative, Inc. ("EPOC").

All inspection, maintenance, and repair obligations for the grassy field at the Edgewater Park are the responsibility of EPOC. DeBartolo was contracted to mow the field and blow the trimmings in the area of this alleged incident. These facts are undisputed.

A contractor's limited contractual undertaking to provide landscaping services generally does not give rise to a duty of care in tort to persons not a party to the contract, absent evidence that the contractor assumed a comprehensive and exclusive maintenance obligation, that the contractor launched a force or instrumentality of harm, or that the plaintiff detrimentally relied on the

contractor's continued performance of its obligation (*see George v Marshalls of MA, Inc.*, 61 AD3d 925, 928, 929 [2nd Dept 2009]).

Here, the landscaping contract was not the type of comprehensive and exclusive property maintenance obligation that could provide a basis for liability. Merely blowing and mowing the field areas required by a contract is insufficient for a factual finding that the work either created or exacerbated a dangerous condition and is also insufficient to impose a duty of care toward a third person. Here, EPOC, as the owner in possession, had the duty to maintain the premises in safe condition. In *Espinal v Melville Snow Contrs.*, 98 NY2d 136 [2002]), the Court of Appeals found that a snow removal contractor owed no duty of care to a person who slipped and fell on an icy parking lot that the contractor failed to properly clear of snow. Although the *Espinal* Court acknowledged that a contractor who created or exacerbated a dangerous condition might be liable, as in the case here, plaintiff has not offered any support for the allegations that DeBartolo's activities increased the hazardous condition of the field.

The defendant DeBartolo established its prima facie entitlement to judgment as a matter of law *(see Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]). In opposition, the plaintiff, and co-defendant Edgewater Park Athletic Association (EPAA") both failed to submit evidence sufficient to raise a triable issue of fact. A limited contractual undertaking to provide landscaping services generally does not

render the contractor liable in tort for the personal injuries of third parties (*Boddie v New Plan Realty Trust*, 304 AD2d 693, 694 [2nd Dept 2003]).

The evidence also established, prima facie, that DeBartolo did not launch a force or instrumentality of harm at the premises (*Espinal v Melville Snow Contrs.*, at 140). In opposition the plaintiff failed to raise a triable issue of fact as to whether DeBartolo undertook a duty to her by its having launched a force or instrumentality of harm at the premises (*see Georgotas v Laro Maintenance Corp.*, 55 AD3d 666, 667 [2nd Dept 2008]).

Accordingly, it is hereby

ORDERED, that DeBartolo Landscaping Inc.'s motion to reargue is granted; and it is further

ORDERED, that DeBartolo's motion for summary judgment dismissing the plaintiff's complaint against it is granted.

This constitutes the Decision and the Order of the Court.

Dated: 4/13/2023

Hon. Adrian Armstrong, A.J.S.C.