Quezada v 3850 Broadway Holding LLC
2024 NY Slip Op 32754(U)
August 7, 2024
Supreme Court, New York County
Docket Number: Index No. 151965/2018
Judge: James d'Auguste
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **Hon. James E. d'Auguste** **PART 55**

Justice

----------X

IRMA QUEZADA,

Plaintiff,

- v -

3850 BROADWAY HOLDING LLC, BARBERRY ROSE MANAGEMENT CO INC, BLADIS DELI CORP, LOS AMIGOS FLOWERS WHOLESALE,

Defendants.

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INDEX NO. 151965/2018

MOTION DATE 07/18/2023

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62

were read on this motion to/for SUMMARY JUDGMENT.

In Motion Sequence 002, defendants 3850 Broadway Holding, LLC ("3850 Broadway"), Barberry Rose Management Co., Inc. ("Barberry"), and Bladi's Deli Corp. ("Bladi's") (collectively "defendants"), move, pursuant to CPLR 3212, for summary judgment and dismissal of plaintiff Irma Quezada's ("Quezada") complaint, in this action arising from a trip and fall on a sidewalk.

Quezada alleges that on March 8, 2015, at approximately 9:30pm, she tripped and fell on a 4' x 4' wooden pallet on the sidewalk at or near 3856/3858 a/k/a 580/590 West 161st Street on a dark street with faint lights in the distance. She asserts that she was not looking down when she was walking, but in the direction she was heading as she approached the corner. Also, Quezada notes while it was neither raining nor snowing, and she was wearing sneakers at the time of the accident, the street was dark. She claims she never saw pallets laying on the sidewalk before the accident, and did not see the pallet in the middle of the sidewalk before she fell over it

and landed on top of it. Quezada asserts she suffered serious injuries from the hazardous condition and tripping hazard on the sidewalk due defendants' negligence (NYSCEF Doc. Nos. 40, 49, 56, 57).

Bladi's is a tenant at the premises under a lease with Gilanco Inc. ("Gilanco"), who sold the building to 3850 Broadway, and managed by property management company, Barberry. Barberry's Chief Operating Officer, Christopher Sciocchetti, testified on behalf of 3850 Broadway and Barberry, and claims he visited the property once per week. He indicated the property manager for the subject location was Jose Diaz, and the superintendent was Neftali Rivera, who lived in the building's basement and while his hours were 8:00am to 4:00pm, a "superintendent technically works 24/7." Los Amigos Flowers Wholesale ("Los Amigos") rented a portion of Bladi's and used wooden pallets (NYSCEF Doc. Nos. 40, 41, 56, 57, 60).

Pursuant to the parties' lease, Bladi's is responsible for maintaining the sidewalk. Sciocchetti testified a pallet was not permitted to remain on the sidewalk for any time frame, and an empty pallet would need to be removed immediately, noting there is no formal loading or unloading zone for the subject premises. Bladi's owner, Bladimir Evangelista, confirmed in his deposition that Bladi's rented a portion of the deli to Los Amigos, and both Bladi's and Los Amigos were open 24 hours a day, every day. Evangelista asserts he could not recall the last time the sidewalk surrounding the deli was inspected before the date of the subject accident, and claims the video cameras in front of the outside of Bladi's were not functioning in 2015, including on the date of the accident. He admitted Bladi's was responsible for the front of the sidewalk adjacent to the deli, noting the wooden pallets were brought by a delivery company to Los Amigos twice per week with flowers on top of the pallets, and the delivery normally left on

the sidewalk. Yet, Evangelista asserts Los Amigos' employees would unpack the pallets and place the empty ones on the side (NYSCEF Doc. Nos. 40, 41, 49, 53, 54, 56, 57, 60).

Defendants assert entitlement to summary judgment and dismissal of Quezada's complaint entirely, arguing she fails to demonstrate liability or negligence by defendants. 3850 Broadway and Barberry assert that as an out of possession landlord, and its management company, they have no duty to maintain the sidewalk as the lease obligated tenant Bladi's to do so. Defendants also claim Evangelista testified he was at the store daily and performed daily inspections of the premises, inside and outside. Additionally, Evangelista argues once the flower delivery was made to Los Amigos, the pallets would be picked up by a garbage truck, that came daily (NYSCEF Doc. Nos. 41, 51, 54, 60).

Defendants further argue entitlement to summary judgment is warranted as they did not cause or create the alleged condition that caused Quezada's fall, nor had actual or constructive notice of the alleged condition. Additionally, defendants assert the alleged condition was open and obvious, and not an inherently dangerous condition, thus was readily observable by the reasonable use of one's senses. As such, defendants assert they did not breach any duty to Quezada. Also, defendants maintain Quezada fails to demonstrate that defendants caused the allegedly dangerous condition to remain for an unreasonable amount of time, nor that a dangerous condition even existed (NYSCEF Doc. Nos. 39, 40, 41, 60).

Quezada points out that negligence cases do not generally lend themselves to resolution by summary judgment as such a drastic remedy is only appropriate where the negligence, or lack of negligence, is established as a matter of law. *Chahales v. Garber*, 195 A.D.2d 585 (2d Dept. 1993); *Gramble v Precision Health, Inc.*, 267 A.D.2d 66 (1st Dept. 1999). Here, Quezada maintains defendants were negligent in the placement, and lack of cleaning of the sidewalk

adjacent to their premises, resulting in her trip and fall, and subsequent injuries. At the very least, Quezada contends there is a question of fact as to defendants' notice, arguing when a landowner has actual knowledge of the tendency of a particular dangerous condition to reoccur, it may be charged with constructive notice of each specific reoccurrence of that condition. *Schubert-Fanning v Stop & Shop Supermarket Co., LLC*, 118 A.D.3d 862 (2d Dept. 2014). Evangelista testified the cameras in front of Bladi's were not operating in 2015, including the date of the accident. He also did not recall the last time flowers were delivered on or before March 8, 2015, nor the last time the sidewalk surrounding Bladi's was inspected before the incident date. Further Evangelista stated he had no paperwork to show which employees worked on the subject date, nor paperwork indicating when flower deliveries were made in March of 2015. However, Quezada asserts that after tripping and falling she saw two employees in front of Los Amigos/Bladi's, but could not identify whether they worked for the deli or flower shop (NYSCEF Doc. Nos. 41, 49, 54, 57, 60). As such, she maintains these facts create questions of fact of whether Bladi's had actual or constructive notice of the dangerous and defective condition.

Additionally, 3850 Broadway owned the building, and had an unambiguous non-delegable duty, imposed by New York City Administrative Code Section 7-210 on real property owners, to maintain the sidewalk abutting their land in a reasonably safe condition. *Xiang Fu He v. Troon Management, Inc.*, 34 N.Y.3d 167 (2019). Quezada argues that 3850 Broadway's non-delegable duty under Administrative Code Section 7-210 applies with full force despite an owner's transfer of possession to a lessee or a maintenance agreement with a non-owner. *Id.* Also, the *Schubert-Fanning* Court held that defendants in a trip-and-fall case have constructive notice of a defect when it is visible and apparent, as defendants claim here the pallet was open

and obvious, and existed for a sufficient length of time before the accident such that it could have been discovered and corrected. *Schubert-Fanning v Stop & Shop Supermarket Co., LLC*, 118 A.D.3d 862 (2d Dept. 2014), *supra*. Also, an open and obvious condition only relieves a property owner of its duty to warn, and not the duty to ensure that the premises is maintained in a reasonably safe condition. *Martinez v. Contreras*, 216 A.D.3d 532 (1st Dept. 2023). Moreover, an open and obvious condition of a sidewalk does not absolve owners of liability, but presents an issue of fact as to plaintiff's comparative fault. *Cupo v. Karfunkel*, 1 A.D.3d 48 (2d Dept., 2003).

While 3850 Broadway contends it did not create nor have notice of the allegedly dangerous condition, it fails to provide a witness with personal knowledge to confirm 3850 Broadway did not have actual knowledge of the reoccurring flower deliveries twice a week, made in the middle of the sidewalk on wooden pallets. Also, Sciocchetti testified there was no formal unloading or loading zone area for the incident address, yet, he also testified he visited the property once per week. Yet, no testimony was proffered from defendants indicating the last time the sidewalk adjacent to the building was last inspected before Quezada's accident. Section 7-210 of the Administrative Code imposes liability upon a property owner abutting a sidewalk for any injury proximately caused by the owner's failure to maintain the sidewalk in a safe manner. *Xiang Fu He v. Troon Management, Inc.*, 34 N.Y.3d 167 (2019), *supra*. Thus, "while an owner can shift the work of maintaining the sidewalk to another, the owner cannot shift the duty, nor exposure and liability for injuries caused by negligent maintenance, imposed under section 7-210." *Id*. However, despite 3850 Broadway's and Barberry's claims of not being responsible for the subject sidewalk pursuant to the lease with Bladi's, 3850 Broadway had a non-delegable duty to maintain the sidewalk in a reasonably safe condition and arguably failed to do so.

Therefore, questions of fact, best left for a jury, exist of whether defendants had actual or constructive notice of a reoccurring hazardous condition – wooden pallets being left on the sidewalk – and whether defendants had a responsibility to maintain the location where the incident occurred, precluding summary judgment. The Court has considered the parties' remaining arguments and finds them unavailing. "A court need not address, in its decision, every argument raised by a party..." *Ctr. For Jud. Accountability, Inc. v. Cuomo*, 167 A.D.3d 1406, 1408 (3d Dept. 2018).

Accordingly, it is hereby

ORDERED that defendants' motion for summary judgment and dismissal of Quezada's complaint is denied.

This constitutes the decision and order of the Court.

8/7/2024
DATE

James d'Auguste, 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**