

Kohei Funaki v Starbucks Corp.

2024 NY Slip Op 33332(U)

September 23, 2024

Supreme Court, New York County

Docket Number: Index No. 153275/2020

Judge: Judy H. Kim

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JUDY H. KIM PART 04

Justice

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KOHEI FUNAKI,

Plaintiff,

- v -

STARBUCKS CORPORATION D/B/A STARBUCKS
COFFEE COMPANY,

Defendant.

-----X

INDEX NO. 153275/2020

MOTION DATE 07/28/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69

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

Upon the foregoing documents, defendant Starbucks Corporation’s motion for summary judgment is granted and plaintiff’s cross-motion for summary judgment is denied, for the reasons set forth below.

Plaintiff’s complaint alleges that, at approximately 6:40 a.m. on November 29, 2019, he attempted to open the door at the entrance to the Starbucks coffee shop at 280 Park Avenue, New York, New York when that door fell on him, causing serious injuries (NYSCEF Doc. No. 13 [Am. Compl. at ¶¶15-16). Plaintiff asserts that Starbucks was negligent in allowing this door to remain in place while off its hinges and in failing to adequately warn customers of this dangerous condition (Id. at ¶17).

Starbucks now moves for summary judgment on the grounds that the undisputed facts establish that it satisfied its duty to warn customers of dangerous conditions. In support of its motion, Starbucks submits photos taken immediately of the two glass doors at the main entrance

to its premises prior to the accident, documenting that three signs were placed on the left-hand door reading “Caution Caution Caution,” and “Stop!!! Door Broken. Use side door” and “Please use side door” (NYSCEF Doc. No. 42). The latter two of these signs also include arrows pointing to the right (Id.). This photo also documents that yellow standing signs reading “Caution Attention” (with the symbol of person slipping) were placed in front of each door (Id.).

Starbucks also submits the affidavit of Richard Antigua, a barista at the subject Starbucks location on the day in question. Antigua attests that:

When I arrived to Starbucks on the morning of the incident, I initially approached the front entrance. As I approached the door, a coworker who had already arrived to the store shouted out to me that I should use the side entrance because there was an issue with one of the front entrance doors. Upon further inspection of the front entrance, I realized that the door on the right was slightly dislodged from its frame at the top hinge. I entered the store through the side entrance and began my shift.

Shortly after I arrived, a customer attempted to use the dislodged door at the front entrance, causing the door to separate even further from the frame. To prevent any other customers from trying to use the door, my coworkers and I taped handwritten paper signs to the left door of the front entrance directing customers not to touch the doors and to use the side entrance. We also placed two yellow standing caution signs in front of the front entrance to alert customers to be attentive. We did not place any signs directly on the dislodged door because it was leaning over and we did not want to touch it and make it worse or cause it to fall.

After we placed the handwritten and standing signs at the front entrance, we took pictures of the area ... Shortly after the pictures were taken, I noticed a male customer (who turned out to be Mr. Funaki) approaching the front entrance. At the time, I was standing behind the customer counter, with a clear and direct view to the front doors. The doors were made of all glass, so I was able to see clearly through the doors and to the exterior of the store. I watched Mr. Funaki step past the yellow caution signs that we placed in front of the doors. I specifically recall that Mr. Funaki had a cell phone in his hand. Once he stepped past the standing caution signs, he stopped and appeared to read the caution signs we had placed on the door. At the same time, a coworker named Alexis and I started yelling out to him not to touch the door and to use the side entrance instead. It appeared that Mr. Funaki heard us because he looked up at us. As we continued to yell out to him, we used our arms and fingers to motion and point toward the side entrance. It appeared that Mr. Funaki was watching us as we signaled toward the side entrance, but he did not follow our directions. Instead, he looked up at the door again, then looked down at his phone for a few seconds, and then tried to open the right side door that

was already off its hinge and leaning down. As soon as he pulled it, the door immediately started to fall down on top of him.

(NYSCEF Doc. No. 52 [Antigua Aff. at ¶¶12-35])

Plaintiff opposes defendant's motion and cross-moves for summary judgment, arguing that the signs did not satisfy its duty to warn, as they were ambiguous and plaintiff reasonably understood these signs as directing him to use the right-hand door. Plaintiff adds that the yellow caution signs were inadequate because they showed a man slipping and did not warn of the danger presented by the unhinged door.

DISCUSSION

“[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. 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] [internal citations omitted]).

Starbucks has met its burden here. “[P]roperty owners and business proprietors have a duty to maintain their premises in reasonably safe condition, which duty includes eliminating, protecting against, or warning of dangerous, defective, or otherwise hazardous conditions” (Pinero v Rite Aid of New York, Inc., 294 AD2d 251, 252 [1st Dept 2002] [internal citations omitted], affd., 99 NY2d 541 [2002]) and Starbucks has established that it did so, through undisputed proof that it placed signs by the broken door directing customers to use a different entrance.

Contrary to plaintiff's contention, these signs were not ambiguous. The case principally relied on by plaintiff in support of this position, Walter v State, 185 AD2d 536, 538-39 (3d Dept 1992), presents an instructive contrast. In that case signs placed on a fence enclosing a wooded area which read "Danger Keep Inside Rail Watch Your Children" and "Caution People Walking Below Do Not Throw Anything Over Cliff" were ambiguous as they did not adequately warn of an "abrupt" cliff edge thirty feet into the woods, which was "impossible to see through the trees and foliage" from the fence (Walter v State, 150 Misc 2d 352, 352-53 [Ct Cl 1991], affd, 185 AD2d 536 [3d Dept 1992]). Here, by contrast the signs clearly conveyed that the doors in question presented a hazard and were not to be used (See e.g., Arsenault v State, 96 AD3d 97, 101-03 [3d Dept 2012] [defendant's motion for summary judgment dismissing plaintiffs' negligence claim for death of husband from falling rocks in state park granted as no duty to warn breached where multiple signs warning park visitors of falling rocks in area in which plaintiff's family traveled]). Although they perhaps could have been even more clearly phrased, this is of no moment—" [w]hen determining whether defendant fulfilled its duty to warn claimants, 'the issue is not whether another type or configuration of warning sign—one that was larger in size, brighter in color or stronger in tone—would have persuaded claimants . . . [against entering] but rather "whether the signs that were provided by defendant . . . sufficiently conveyed the specific danger to which claimants . . . would be exposed . . ."' (Carol S. v State, 185 AD3d 1385, 1387 [4th Dept 2020] [emphasis added] quoting Arsenault v State of New York, 96 AD3d 97, 102 [3d Dept 2012]). This standard has been satisfied here.

Accordingly, it is

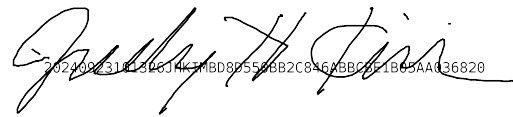
ORDERED that Starbucks Corporation's motion for summary judgment is granted and this action is dismissed in its entirety; and it is further

ORDERED that Starbucks Corporation shall, within ten days of the date of this decision and order, serve a copy of this decision and order with notice of entry on plaintiff

ORDERED that Starbucks Corporation shall, within ten days of the date of this decision and order, serve a copy of this decision and order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the amended caption pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk’s Office 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/suptmanh)).

This constitutes the decision and order of the Court.



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HON. JUDY H. KIM, J.S.C.

9/23/2024

DATE

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT REFERENCE