

Parrelli v Norwegian Christian Home & Health Ctr.

2024 NY Slip Op 33709(U)

October 10, 2024

Supreme Court, Kings County

Docket Number: Index No. 523364/2019

Judge: Carolyn E. Wade

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This opinion is uncorrected and not selected for official publication.

The Plaintiffs commenced this action to recover damages for injuries allegedly caused by a dangerous condition on Defendant's premises. Plaintiff Joseph Parrelli testified at his deposition that on March 7, 2018, he was walking on a path to the entrance to the nursing home when his foot contacted a root and slid into a depression, causing him to sustain injuries when he fell to the ground. This dangerous condition was obscured by snow.

The Defendant moved for summary judgment, for an Order dismissing the complaint. This Court granted the motion by order dated December 6, 2023. The instant motions ensued.

Summary judgment is a "drastic remedy" that should be granted "only where the moving party has 'tender[ed] sufficient evidence to demonstrate the absence of any material issues of fact'" (*Vega v. Restani Constr. Corp.*, 18 NY3d 499, 503 [2012], quoting *Alvarez v. Prospect Hosp.*, 68 NY2d 320, 324 [1986]; see CPLR § 3212 [b]). Such relief should be granted "only if, upon the moving party's meeting of this burden, the non-moving party fails 'to establish the existence of material issues of fact which require a trial of the action'" (*Vega*, 18 NY3d at 503, quoting *Alvarez*, 68 NY2d at 324). Issue finding, not issue deciding, is the court's purpose at the summary judgment stage (see *id.* at 505, citing *Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). The court must view the facts "in the light most favorable to the non-moving party" (*Ortiz v. Varsity Holdings, LLC*, 18 NY3d 335, 339 [2011]). "Where the court entertains any doubt as to whether a triable issue of fact exists, summary judgment should be denied" (*Daltendo v. Johnson*, 147 AD2d 312, 317 [2d Dept 1989] [citations omitted]).

The Second Department has found that "landowners will not be held liable for injuries arising from a condition on the property that is inherent or incidental to the nature of the property, and that could be reasonably anticipated by those using it" (*Torres v. State*, 18 AD3d 739, 739 [2d Dept 2005]). However, "[c]ontrary to defendants' contentions, a jury could reasonably find that a tree root is not necessarily an inherent feature of a path adjacent to trees" (*Weller v. Colls. of the*

Senecas, 217 AD2d 280, 284 [4th Dept 1995]; *Riff v. Staten Is. Univ. Hosp.*, 2010 NY Slip Op 33139[U], *5 [Sup Ct, Richmond County 2010] [“the court can not conclude that the wooden nub or stump was incidental to the nature of the property that should have been reasonably anticipated by the plaintiff, thereby absolving the defendant from any liability”]. In addition, “[t]o the extent that [the injured plaintiff’s] view of the terrain was obstructed by snow, this Court finds there is an issue of fact as to whether [he] could have ‘reasonably anticipated’ that which [he] claims [he] could not see” (*Cox v. Walgreen Store #11808*, 2021 NY Slip Op 32936[U], *3 [Sup Ct, Queens County 2021]).

In the instant case, Plaintiffs present evidence that a dangerous condition was on the path. This evidence includes the testimony of Defendant’s employees that they used the same path, observed others using the same path, and that it could have been used by up to a hundred people per week. Indeed, non-party witness Louis Iacobucci attested that, prior to the accident, he recommended to the facilities manager of the nursing home that a larger plant or tree be placed in front of the path to deter people from using it. Similarly, Elise Dann, R.A., C.L.A. opined that the Defendant “should have eliminated access to the hazardous uneven condition at the tree root where pedestrians were known to take the subject shortcut to the Norwegian Home’s main entrance” (pg. 10, Section G of the Architect’s Report).

Turning to the storm in progress doctrine, a “property owner who undertakes snow removal efforts during an ongoing storm must act with reasonable care so as to avoid creating a hazardous condition or exacerbating a natural hazard created by a storm” (*Lindquist v. Scarfogliero*, 129 AD3d 789, 790 [2d Dept 2015]). The storm in progress doctrine does not apply to pre-existing conditions such as a tree root (*see Cassino-Sharp v. Whispering Hills Home Owners Assn., Inc.*, 219 AD3d 457, 459 [2d Dept 2023]).

In the instant case, there is a triable issue of material fact as to whether Defendant’s snow removal efforts, prior to the accident, created or exacerbated the allegedly hazardous condition which caused the Plaintiff’s accident. Mr. Gibbons testified that he pushed snow onto the subject area (*see Witherspoon v. Columbia Univ.*, 7 AD3d 702, 703 [2d Dept 2004]) [the “presence of an alternate route [. . .] did not relieve the defendant of the duty to maintain the courtyard in a reasonably safe condition as a matter of law”)].

Accordingly, based upon the above, Plaintiffs’ Motion to Reargue is granted, and upon reargument, (motion seq. #4) is **granted**. Defendant’s underlying motion for summary judgment is now **denied**. Plaintiffs’ Motion to Renew (motion seq. #5) is **denied as moot**.

This constitutes the Decision and Order of the Court.

ENTER



HON. CAROLYN E. WADE, JSC
HON. CAROLYN E. WADE
JUSTICE OF THE SUPREME COURT

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