

Cruz-Paz v Incorporated Vil. of Freeport
2024 NY Slip Op 35703(U)
April 24, 2024
Supreme Court, Nassau County
Docket Number: Index No. 608835/21
Judge: Randy Sue Marber
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

Present: **HON. RANDY SUE MARBER**
JUSTICE

TRIAL/IAS PART 2

EMERITA CRUZ-PAZ,

Plaintiff,

Index No...608835/21
Motion Sequence...02, 03
Motion Date...11/17/23

-against-

THE INCORPORATED VILLAGE OF FREEPORT,
129 SOUTH MAIN STREET CORP., 133 SOUTH
MAIN STREET LAUNDROMAT, INC. and
PAUL'S AUTO REPAIR SHOP, INC.,

Defendants.

	X
Papers Submitted:	
Notice of Motion (Seq. 02).....	x
Affirmation in Opposition.....	x
Reply Affirmation.....	x
Notice of Motion (Seq. 03).....	x
Affirmation in Opposition.....	x
Reply Affirmation.....	x

Upon the foregoing papers, the motion (Seq. 02) by the Defendant, 129 SOUTH MAIN STREET CORP. (“129 SOUTH”), seeking an Order, pursuant to CPLR § 3212, granting summary judgment in its favor dismissing the Plaintiff’s Complaint and all cross-claims; and the motion (Seq. 03) by the Defendant, PAUL’S AUTO REPAIR SHOP, INC. (“PAUL’S AUTO”), seeking an Order, pursuant to CPLR 3212, granting summary judgment in its favor dismissing the Plaintiff’s Complaint and all cross-claims, are consolidated for disposition and decided as provided herein.

This premises liability action was commenced as a result of the Plaintiff's slip and fall accident on snow that allegedly occurred on February 20, 2021 on the "driveway, walkway, sidewalk, and/or pathway adjacent to the premises known as 133 South Main Street, Freeport, New York (the "premises"). 129 SOUTH was the owner of the premises, and a portion of the premises was leased to co-Defendant 133 SOUTH, which operated as a laundromat. The Plaintiff alleges that the Defendants were negligent in the ownership, operation, maintenance and control of the premises, including the driveways, walkways, sidewalks, pathways and other common areas located thereat, relating to snow and ice conditions allegedly present at the time of the accident.

In support of its motion, 129 SOUTH proffered a sworn affidavit and the deposition transcript of David Ramdayal (*See* Exhibits "I" and "F", respectively). Ramdayal is the principal of **both** 129 SOUTH (the landlord) and 133 SOUTH (the tenant). Ramdayal verified the lease agreement that was in effect on the date of the accident, pursuant to which 129 SOUTH leased the laundromat to 133 SOUTH (*See* Lease Agreement, annexed as Exhibit "1" to Ramdayal Affidavit). Pursuant to the terms of the lease, 133 was responsible for the maintenance and repair of the premises, and in particular, was solely responsible for snow and ice removal in the parking areas, yards, common areas, and the exterior of the premises where the Plaintiff's slip and fall accident allegedly occurred. The lease also has a specific provision regarding the placement of snow once removed by the tenant which provides, in pertinent part:

Specific to the 133 store due to location of southern side of building which has access to and shares Thelma Ct along with Paul's Auto Repair. Any snow removal by tenant can be stored

along side of building whereby is strict “no-standing” due to commercial gas lines and commercial 3 phase electrical power supply. Snow placed along this area of no-standing cannot cover the parking concrete parking stops. Parking stops must be clear of all snow including the Thelma Ct “shared” paved road.” NOTE: about 15” from building wall to concrete parking stops is NO-STANDING area.

(Exhibit “I”, at Exhibit “1”, Amendment to Lease at ¶6)

The Plaintiff’s slip and fall accident occurred in the driveway area between the laundromat (133 SOUTH) and PAUL’S AUTO which is for “all the cars to enter” (*See* Plaintiff’s 50-h Transcript at pp. 50-51, annexed to 129 SOUTH Motion as Exhibit “D”).

It is 129 SOUTH’s contention that the only entity responsible for the maintenance of the exterior portion of the premises where the Plaintiff’s accident occurred was the tenant, 133 SOUTH. With respect to the snow removal duties performed in the days leading up to the accident, Ramdayal performed such duties himself only in his capacity as the principal of 133 SOUTH. From the first time Ramdayal shoveled the snow until the date of the accident, he testified that he returned to the premises probably three times.

129 SOUTH now moves for summary judgment on the ground that it is merely an out-of-possession landlord with respect to the subject premises, with no responsibility for the day-to-day maintenance of the premises, including snow and ice removal from the exterior of the premises adjacent to 133 SOUTH. Pointing to the lease agreement, 129 SOUTH argues that it was not contractually obligated to perform snow and ice removal duties, maintenance or repairs to the exterior of the premises.

Only the Plaintiff submits opposition to 129 SOUTH's motion, wherein the sole argument is that 129 SOUTH's motion should be denied because its principal, Ramdayal, had "actual notice" of the snow and ice condition at the premises prior to and on the date of Plaintiff's incident. The Plaintiff's opposition is silent as to the issue of whether 129 SOUTH had a duty to the Plaintiff. Nor does the opposition address the lease agreement and pertinent provisions pertaining to maintenance, repair and snow and ice removal.

PAUL'S AUTO also moves for summary judgment¹ on the ground that it did not own or maintain the portion of the premises where the Plaintiff fell, nor was it responsible for the maintenance or repair of the subject area. PAUL'S AUTO also argues that the Plaintiff's own conduct was the sole proximate cause for her injuries.

The Plaintiff does not oppose the arguments by PAUL'S AUTO that it did not own or maintain the portion of the premises where the Plaintiff was caused to slip and fall. This Defendant also confirms that the premises was owned by 129 SOUTH and partially leased to 133 SOUTH. The only substantive opposition to PAUL'S AUTO's motion is in response to the argument that the Plaintiff was the sole proximate cause of her injuries.

¹ This motion was admittedly untimely filed, having been filed 25 days late. Counsel for PAUL'S AUTO sets forth a reasonable excuse for the delay, and good cause for the untimely filed motion. It is noted that the Plaintiff takes no position on the untimeliness of the motion. Given the meritorious nature of the motion, and the showing of good cause for the untimeliness of the motion, the Court shall overlook the delay and shall consider the motion on its merits.

Legal Analysis:

A party moving for summary judgment bears the initial burden of demonstrating *prima facie* entitlement to judgment as a matter of law by proffering proof, in admissible form, which establishes the absence of material issues of fact (*Zuckerman v City of New York*, 49 NY2d 557 [1980]). However, once the proponent of the motion establishes a *prima facie* showing, the burden shifts to the opposing party to come forth with admissible proof to establish triable issues of fact, the existence of which precludes summary judgment and necessitates a trial of the action (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]). “[A] motion for summary judgment ‘should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility’” (*Chimbo v Bolivar*, 142 AD3d 944, 945 [2d Dept 2016] quoting *Ruiz v Griffin*, 71 AD3d 1112, 1115 [2d Dept 2010]). When entertaining a motion for summary judgment, the function of the court “is issue finding, not issue determination” (*Trio Asbestos Removal Corp. v Gabriel & Sciacca Certified Pub. Accountants, LLP*, 164 AD3d 864, 865 [2d Dept 2018]; *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]).

Motion by 129 SOUTH:

Here, the Court finds that the landlord, 129 SOUTH, established its *prima facie* entitlement to summary judgment by proffering a copy of the lease agreement which demonstrates that only the tenant, 133 SOUTH, was responsible for the maintenance and repair of the subject area where the Plaintiff fell, as well as responsible for snow and ice removal thereat (*Valenti v 400 Carlls Path Realty Corp.*, 52 AD3d 696 [2d Dept 2008]).

In opposition, the Plaintiff failed to raise an issue of fact. In sum, the Defendant, 129 SOUTH, established that it had no duty to perform snow and ice removal functions in the area of the Plaintiff's fall. Indeed, the tenant, 133 SOUTH, which is the party responsible for the maintenance and repair of the subject premises, did not move for summary judgment.

Motion by PAUL'S AUTO:

The Court also finds that the Defendant, PAUL'S AUTO, established its prima facie entitlement to summary judgment by demonstrating that it did not own or maintain the subject area where the Plaintiff fell and that it was not responsible for snow and ice removal thereat. There being no opposition by the Plaintiff, PAUL'S AUTO's motion is granted on this ground.

Accordingly, it is hereby

ORDERED, that the motion (Seq. 02) by the Defendant, 129 SOUTH MAIN STREET CORP., seeking an Order, pursuant to CPLR § 3212, granting summary judgment in its favor dismissing the Plaintiff's Complaint and all cross-claims, is **GRANTED**; and it is further

ORDERED, that the motion (Seq. 03) by the Defendant, PAUL'S REPAIR SHOP, INC., seeking an Order, pursuant to CPLR 3212, granting summary judgment in its favor dismissing the Plaintiff's Complaint and all cross-claims, is **GRANTED**; and it is further

ORDERED, that the Clerk of the Court is hereby directed to amend the caption to reflect the deletion of the dismissed Defendants therefrom as follows:

EMERITA CRUZ-PAZ,

Plaintiff,

Index No...608835/21

-against-

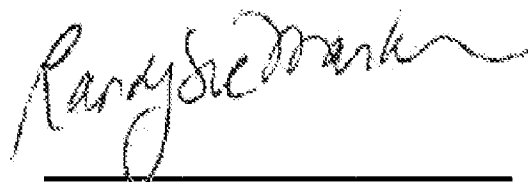
133 SOUTH MAIN STREET LAUNDROMAT, INC.,

Defendant.

X

This constitutes the decision and Order of this Court.

Dated: Mineola, New York
April 24, 2024



Hon. Randy Sue Marber, J.S.C.

ENTERED

Apr 24 2024

NASSAU COUNTY
COUNTY CLERK'S OFFICE