

Mauro v SCI Funeral Servs. of N.Y., Inc.

2025 NY Slip Op 35347(U)

January 22, 2025

Supreme Court, Rockland County

Docket Number: Index No. 033271/2020

Judge: Hal B. Greenwald

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

GUISEPPINA MAURO,

Plaintiff,

- against -

SCI FUNERAL SERVICES OF NEW YORK, INC.,
D/B/A MICHAEL J. HIGGINS FUNERAL
SERVICES INC.,

Defendant.

DECISION AND ORDER

Index No: 033271/2020
Motion Date: March 19, 2024
Sequence No.: 2

GREENWALD, J.S.C.

The following papers filed electronically were read and considered on the motion by Defendant, SCI Funeral Services of New York, Inc. d/b/a Michael J. Higgins Funeral Services Inc., for summary judgment pursuant to New York Civil Practice Law and Rules (“CPLR”) Rule 3212:

Notice of Motion, Affirmation, Expert Affidavit,	
Statement of Facts, Exhibits A-T	28-51
Opposition Affirmation, Response to Statement of Facts,	
Memorandum, Exhibit A	58-61
Reply Affirmation, Supplemental Affidavit	63-64

Plaintiff commenced this action to recover damages for personal injuries sustained after a trip and fall accident “as a result of a raised steel base plate of the wrought iron handrail” “located by the side exterior stairs” at Defendant’s Michael J. Higgins Funeral Service [NYSCEF No. 39, Plaintiff’s First Supplemental Verified Bill of Particulars, ¶¶ 15, 17].

Defendant established its prima facie entitlement to judgment as a matter of law, however Plaintiff has raised triable issues of fact in opposition. Therefore, Defendant's motion for summary judgment is DENIED.

Procedural History

Plaintiff commenced this action by the filing of a Summons with Verified Complaint against Defendants Michael J. Higgins Funeral Service, Inc. and Higgins Funeral Services Inc [sic] on July 28, 2020. Following a Stipulation to Serve Amended Complaint substituting the correct Defendant entity, dated March 15, 2021, Plaintiff filed a Second Amended Verified Complaint against Defendant SCI Funeral Services of New York, Inc. d/b/a Michael J. Higgins Funeral Services Inc., on March 16, 2021. Defendant filed its Verified Answer to Second Amended Complaint on March 18, 2021. Note of Issue was filed on January 24, 2024. Defendant filed its motion for summary judgment on March 19, 2024.

Background

On August 10, 2018, a sunny day with no precipitation, Plaintiff was exiting the Defendant funeral home located at 73 North Liberty Drive, Stony Point, New York, at approximately 2:30pm after paying her respects to a friend's son. The funeral home has an open porch that wraps around the southeast corner of the standalone building. The porch has a white PVC railing running along the edges and has two exterior staircases leading up to the porch, one on the east side of the building aligned with the main entrance of the funeral home, and one on the south side of the building. The white PVC railing extends down the exterior staircase on the east side of the building and connects to a black wrought iron handrail extending down the exterior staircase on the south side of the building. Plaintiff was intending to descend the exterior staircase on the south side of the funeral home when her right foot contacted the base flange connecting the black wrought iron handrail on

the southside staircase to the porch deck at the top of the staircase, and Plaintiff subsequently tripped and fell.

Standard of Review

Pursuant to CPLR Rule 3212(b), a motion for summary judgment “shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party[, and] the motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact.”

In other words, the proponent of a motion for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law with proof in admissible form sufficient to establish the lack of any material issues of fact (*see Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Once a showing of entitlement to summary judgment has been made, 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 (*see CPLR Rule 3212(b); Alvarez v Prospect Hospital, supra; Zuckerman v City of New York, supra*).

The court’s function on a motion for summary judgment is “to determine whether material factual issues exist, not to resolve such issues,” and 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” (*Ruiz v. Griffin*, 71 A.D.3d 1112, 1115 [2d Dept. 2010] [internal citations omitted]).

“In determining a motion for summary judgment, evidence must be viewed in the light most favorable to the nonmoving party, and all reasonable inferences must be resolved in favor of the nonmoving party” (*Adams v Bruno*, 124 AD3d 566, 567 [2d Dept 2015]).

Argument

Defendant argues that no duty was breached because the base flange of the black wrought iron handrail was not a dangerous or defective condition on the premises. Defendant cites and discusses factually on point case law regarding Defendant’s expert’s determination that the base flange was located directly beneath the handrail and was not located within any walking area, and argues that the base flange is, at best, a trivial and non-actionable condition. In support of its motion for summary judgment, Defendant submits the Affidavit of Douglas W. Peden and his expert report, along with Plaintiff’s expert report, pleadings, party deposition transcripts and exhibits, photographs, and a contemporaneous statement prepared by an employee of Defendant on the date of Plaintiff’s accident.

In opposition, Plaintiff primarily argues that Defendant failed to meet its initial burden for summary judgment because it failed to demonstrate when the base flange was last inspected to establish it had no constructive notice. Plaintiff continues that Defendant failed to establish the “triviality” of the condition, and argues instead that, in fact, the condition is not trivial based upon the determinations of Plaintiff’s expert. Plaintiff concludes that stark factual questions remain in light of the “battle of the experts” at bar. In support of her opposition to the motion for summary judgment, Plaintiff submits the Expert Affirmation of Adam C. Cassel and refers to exhibits submitted by Defendant on the moving papers.

In reply, Defendant argues that Plaintiff failed to raise any triable issue of fact. Defendant argues that Plaintiff failed to address the factually on point case law cited by Defendant, instead citing case law regarding trivial defects that pertain to sidewalk mis-leveling only. Defendant also asserts that Plaintiff's expert does not address whether the base flange at issue was actually a dangerous and defective condition. In further support of its motion for summary judgment, Defendant submits the Supplemental Affidavit of Douglas W. Peden in response to Plaintiff's Expert Affirmation of Adam C. Cassel.

Analysis

“[T]he trivial defect doctrine is best understood with our well-established summary judgment standards in mind. In a summary judgment motion, the movant must make a prima facie showing of entitlement to judgment as a matter of law before the burden shifts to the party opposing the motion to establish the existence of a material issue of fact (*see Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572 [1986]). A defendant seeking dismissal of a complaint on the basis that the alleged defect is trivial must make a prima facie showing that the defect is, under the circumstances, physically insignificant and that the characteristics of the defect or the surrounding circumstances do not increase the risks it poses. Only then does the burden shift to the plaintiff to establish an issue of fact.” (*Hutchinson v Sheridan Hill House Corp.*, 26 NY3d 66, 79 [2015]; *see Trincere v County of Suffolk*, 90 NY2d 976 [1997]). In other words, under *Trincere*, a defect alleged to have caused injury may be trivial and non-actionable as a matter of law, but a finding of triviality is based upon the specific facts and circumstances presented, not simply upon size alone.

Here, Defendant has established its prima facie entitlement to judgment as a matter of law. Defendant's expert, Douglas W. Peden, who reviewed, *inter alia*, the party deposition transcripts and Plaintiff's Expert Affirmation of Adam C. Cassel, and performed a site inspection, opines that the "base flange is parallel to the railing and aligns vertically with the handrail above," and that the "base flange is part of the support structure for the railing and is a necessary component to attach the railing to the porch structure" [NYSCEF No. 30, Affidavit of Douglas W. Peden, and/or NYSCEF No. 48, Defendant's Expert Witness Disclosure]. Mr. Peden concludes that the base flange, which Mr. Peden measured as 2 inch x 3¾ inch x ¼ inch thick, "was not a hazardous condition and was not an obstruction in the walkway" [NYSCEF No. 30 and/or NYSCEF No. 48]. "Considering the location of the alleged defect, which was not on a walking surface of the stairway, together with all other relevant surrounding circumstances, the defendant established, prima facie, that the alleged defect was trivial" (*Stanley v New York City Hous. Auth.*, 161 AD3d 1128, 1129 [2d Dept 2018] [internal citations omitted] [alleged defect located directly underneath handrail]).

However, in opposition, Plaintiff raised triable issues of fact. Preliminarily, Plaintiff's argument that Defendant failed to establish that the condition complained of was trivial/non-actionable falls flat in light of Mr. Peden's Affidavit and report. However, Plaintiff's expert, Mr. Cassel opines that because the base flange "projects into and is within an area of foreseeable foot contact along the walking surface it poses a tripping hazard" for persons exiting the funeral home from the door on the southside of the building, which a jury may find renders the base flange an actionable condition.

To this end, in addition to conflicting determinations made by the parties' respective experts, neither party affirmatively establishes from which door Plaintiff exited the funeral home. Mr. Cassel reports that the door on the southside of the funeral home was "sealed shut and was no

longer operational; an action that was reportedly taken after Ms. Mauro's accident" but fails to establish where he obtained this information [NYSCEF No. 47, fn. 2], and Plaintiff testified to entering and exiting the funeral home via the door on the southside of the funeral home [NYSCEF No. 41, Plaintiff's deposition transcript, pg. 24:14---25:22; and NYSCEF No. 46, exhibit marked DFT E1], while both witnesses for Defendant testified that the door on the southside of the funeral had not been used in years [NYSCEF No. 43, Defendant by T. Brown deposition transcript, pg. 17:5---18:19; and NYSCEF No. 44, Defendant by J. Damonti deposition transcript, pg. 11:5---12:4]. This is an issue of fact upon which the positions of the experts and circumstances surrounding Plaintiff's accident turn. "A defect underneath a handrail (*see Puma*, 55 A.D.3d at 585-586, 865 N.Y.S.2d 630) will presumably not be on the walking surface, but a defect in a place where a person may in the normal course of events place the weight of his or her body, resting on a foot, may be on the walking surface" (*Hutchinson v Sheridan Hill House Corp.*, 26 NY3d 66, 82 [2015]).

As such, upon the record presented to the Court, including party testimony, photographs and expert analysis, and examination of all evidence, facts and the circumstances of the accident in the light most favorable to Plaintiff, while the base flange may physically be a trivial condition, whether the particular circumstances of this case rendered the base flange an actionable condition cannot be resolved on summary judgment, and are issues of fact and credibility for a jury to decide.

Accordingly, it is hereby

ORDERED that the motion for summary judgment by Defendant is **DENIED**; and it is further

ORDERED that the Parties are directed to appear for a conference on February 26 2025, at 9:30 a.m. at the Rockland County Courthouse, Supreme Court, located at 1 South Main Street, New City, New York 10956, New York.

The Parties' remaining contentions not specifically addressed herein have been considered and found to be without merit or rendered moot in light of this decision.

The foregoing constitutes the Decision and Order of the Court.

E N T E R:

Dated: January 22, 2025
New City, New York

Hal B. Greenwald
HON. HAL B. GREENWALD, J.S.C.