

Hoffmann v Speedway, LLC
2025 NY Slip Op 35404(U)
January 24, 2025
Supreme Court, Dutchess County
Docket Number: Index No. 2022-53845
Judge: Maria G. Rosa
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

Present:

Hon. Maria G. Rosa, Justice

JOHN HOFFMANN,

Plaintiff,

DECISION AND ORDER

-against-

Index No.: 2022-53845

SPEEDWAY, LLC,

Motion Sequence: 1

Defendant.

The following papers were read and considered on Defendant's motion for summary judgment:

<u>Document:</u>	<u>NYSCEF Doc. No(s):</u>
NOTICE OF MOTION	25
MEMORANDUM OF LAW	24
STATEMENT OF MATERIAL FACTS	25
AFFIRMATION IN SUPPORT and EXHIBITS A-J	26-37
AFFIRMATION IN OPPOSITION	39
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This is an action for personal injuries arising out of an alleged trip-and-fall accident that occurred on June 29, 2021 at a store owned and/or operated by Defendant. Plaintiff was delivering cases of beer to the store in the course of his employment, specifically into a walk-in beer cooler. He alleges that as he was moving cases of beer into the cooler on a hand truck he was pushing in front of him, the hand truck got caught on boxes or box debris that was on the floor, causing him to fall to his left and into shelving along the wall. As a result of this incident, Plaintiff alleges that he sustained severe and permanent injuries to his left hand, wrist and arm.

Plaintiff commenced this action on December 2, 2022, alleging a single cause of action for negligence. Following the close of discovery, Defendant now moves for summary judgment to

dismiss the complaint. Defendant argues that the allegedly hazardous condition of boxes and debris in the cooler is not actionable as a matter of law, either as an open and obvious condition or as a trivial defect. Defendant argues in the alternative that it did not create the alleged condition or have notice of it.

On a motion for summary judgment “[t]he movant ‘must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient admissible evidence to demonstrate the absence of any material issues of fact’” (*Bazdaric v Almah Partners LLC*, 41 NY3d 310, 316 [2024], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). If the movant has met this threshold burden, to defeat the motion the opposing party must “produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*Alvarez*, 68 NY2d at 320; CPLR 3212[b]; see also *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

In deciding a motion for summary judgment, “the trial court must afford the party opposing the motion every inference which may be properly drawn from the facts presented, and the facts must be considered favorable to the nonmovant” (*Szczerbiak v Pilat*, 90 NY2d 553 [1997]). The function of the Court on such a motion is issue finding, rather than issue determination (*Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957]). Where there is any doubt about the existence of a material and triable issue of fact, summary judgment must not be granted (*Rotuba Extruders, Inc. v Ceppos*, 46 NY2d 223, 231 [1978]). Since it deprives litigants of their day in court, summary judgment is considered a drastic remedy which should only be employed when there is no doubt as to the absence of triable issues (*Andre v. Pomeroy*, 35 NY2d 361 [1974]). “It is not the function of a court deciding a summary judgment motion to make credibility determinations or findings of fact, but rather to identify material triable issues of fact (or point to the lack thereof)” (*Vega v Restani Const. Corp.*, 18 NY3d 499, 505 [2012]).

An owner or possessor of real property “has a duty to maintain that property in a reasonably safe condition” (*Shermazanova v AmeriHealth Med., P.C.*, 173 AD3d 796, 797 [2d Dept 2019], citing *Basso v Miller*, 40 NY2d 233, 241 [1976]). Generally, “[a] defendant moving for summary judgment in a [premises liability] case may establish its *prima facie* entitlement to judgment as a matter of law by submitting evidence that it neither created the hazardous condition that allegedly caused the plaintiff’s injuries nor had actual or constructive notice of that condition for a sufficient length of time to discover and remedy it” (*Belton v Gemstone HQ Realty Assoc., LLC*, 145 AD3d 840, 841 [2d Dept 2016]). “The [defendant], however, has no duty to protect against an open and obvious condition provided that, as a matter of law, the condition is not inherently dangerous” (*Espinosa v Fairfield Props. Group, LLC*, 160 AD3d 927, 927 [2d Dept 2018], quoting *Salomon v Prainito*, 52 AD3d 803, 805 [2d Dept 2008]).

Defendant supports its motion with the pleadings, the transcripts of Plaintiff’s deposition and of Defendant’s employee at the store at the time of the incident, surveillance footage within the beer cooler and another walk-in cooler around the time of the incident, a daily checklist for the store, and unsworn statements of Defendant’s employees that they were unaware of an alleged incident at the store on June 29, 2021. Defendant’s submissions demonstrate, and Plaintiff does not dispute, that the only direct evidence of a hazardous condition in the specific location where Plaintiff claims he was injured is Plaintiff’s deposition testimony. Plaintiff testified that in that

location, there were “four to five [beer] boxes on the floor in the area,” that some were empty and others full, and that some were “flats,” *i.e.* one-inch tall open-topped boxes that hold two twelve-packs of beer. He further testified that he did not see the boxes prior to the incident, that there was insufficient room to push the hand truck through, and that no one else was present in the cooler at the time.

The surveillance footage within the beer cooler shows the door of the cooler and a certain portion of the interior. The area where the incident allegedly occurred is not within the field of view. The footage shows, in relevant part and as authenticated by Plaintiff at his deposition, Plaintiff entering the cooler at approximately 9:05 a.m. (per the video time stamp) pushing a hand truck loaded with beer cases to approximately chest height, turning to the left pushing the truck, leaving the field of view for approximately nine seconds, returning to the field of view pushing an empty hand truck and looking at his left pinky finger, then leaving the cooler.

The facts of this case are analogous to those in *Benjamin v Trade Fair Supermarket Inc.*, ([N.Y. Sup Ct, Queens County 2013], *revd*, 119 AD3d 880 [2d Dept 2014]). In that case, the facts were described as follows:

This is a negligence action commenced by the plaintiff . . . to recover for injuries allegedly sustained when she tripped and fell in the defendants' premises. Specifically, on or about December 12, 2011, when plaintiff walked to the meat counter to pick up a ham. Plaintiff testified at her deposition that after she pick up a ham, she turned around and fell over boxes that were in the aisle. Plaintiff averred that she did not see the boxes prior to her fall.

While the trial court held that these facts failed to demonstrate a non-actionable condition, the Appellate Division, Second Department disagreed, holding that “the defendants established their *prima facie* entitlement to judgment as a matter of law by demonstrating that the subject boxes in the supermarket aisle were open and obvious (*i.e.*, readily observable by the reasonable use of one’s senses), and not inherently dangerous” (*Benjamin v Trade Fair Supermarket, Inc.*, 119 AD3d 880, 881 [2d Dept 2014]).

Here, Plaintiff’s deposition testimony is, in sum and substance, that there were beer boxes on the floor of the walk-in beer cooler, and that those boxes were in the path of where he needed to push his hand truck to make a delivery. He did not testify, and Plaintiff has submitted no other evidence, that he could not see the boxes prior to the alleged incident, or that they were in any manner obscured from his vision. Based on this evidence, Defendant has established, *prima facie*, that the condition of the floor as alleged by Plaintiff was not inherently dangerous (*Id.*; *see also Sosa v RS 2001, Inc.*, 106 AD3d 720 [2d Dept 2013]; *Speirs v Dick's Clothing & Sporting Goods, Inc.* [N.Y. Sup Ct, Dutchess County 1998], *affd*, 268 AD2d 581 [2d Dept 2000]).

In opposition, Plaintiff fails to rebut Defendant’s *prima facie* showing. The fact that he did not personally observe the condition prior to the incident, without more, is insufficient to raise a triable issue of fact (*Benjamin*, 119 AD3d at 881; *Speirs*, 268 AD2d at 582). Additionally, Plaintiff

fails to explain the inconsistency of his allegations with what is depicted in the surveillance footage. The footage shows that Plaintiff entered and exited the cooler during an approximately twenty-five second time span without any indication of any difficulty in moving the hand cart, or of a significant fall or injury. It further shows that during the nine-second period when Plaintiff was off camera, the hand truck came to be unloaded and turned around to be promptly walked back out of the cooler—presumably by Plaintiff, given his testimony that he was alone in the cooler at that time. Accordingly, as Plaintiff has not submitted any evidence to show that an *actionable* hazardous condition existed, this action must be dismissed.

ORDERED that Defendant's motion is granted, and this action is dismissed.

The foregoing constitutes the decision and order of the Court.

Dated: January 24, 2025
Poughkeepsie, New York

ENTER:



MARIA G. ROSA, J.S.C.

Pursuant to CPLR §5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

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