

Maio v St. Rose of Lima R.C. Church
2025 NY Slip Op 35450(U)
January 27, 2025
Supreme Court, Nassau County
Docket Number: Index No. 616979/2022
Judge: Lisa A. Cairo
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU
PRESENT: HON. LISA A. CAIRO, J.S.C.**

-----X
ALEX MAIO,

Plaintiff,

-against-

**ST. ROSE OF LIMA R.C. CHURCH and
NEWTON SHOWS, and ATLAS
INTERNATIONAL SERVICES,**

Defendants.

-----X

TRIAL/IAS PART 22

**DECISION AND ORDER
ON MOTION**

**INDEX No. 616979/2022
MOTION Seq. No. 1, 2, 3**

XXX

The following papers were read on this motion

DOCS NUMBERED

Notice of Motion (MS 1), Affidavits, Affirmations, Exhibits, Memos.....	51-68
Opposition Papers.....	80-81
Reply Papers.....	88

Notice of Motion (MS 2), Affidavits, Affirmations, Exhibits, Memos.....	70-76
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Notice of Motion (MS 3), Affidavits, Affirmations, Exhibits, Memos.....	92-112
Opposition Papers.....	117-118, 120
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Defendants St. Rose of Lima R.C. Church, Newton Shows, and Atlas International Services each move by notice of motion for an order granting summary judgment and dismissing the claims as against them. Plaintiff opposes the motions.

BACKGROUND

Plaintiff commenced this action to recover for injuries allegedly sustained as the result of a trip and fall on the property of St. Rose of Lima RC Church on July 20, 2022. At his deposition, Plaintiff testified that on the evening of the accident, he was a patron at the St. Rose of Lima carnival. When he arrived at approximately 8pm, he entered from Bayview Avenue by walking over what he identified as an orange mesh type grading on the floor of the entryway. He walked

over the orange mesh to enter the carnival with no issue as did many other people. He was present for about 12 to 15 minutes to purchase a zeppole and then attempted to exit the carnival in the same way that he entered. This time, his foot became caught in the orange mesh and he fell forward, injuring his head.

Kathy Ruhle testified on behalf of St. Rose of Lima Church. She was a parent volunteer at the carnival, which ran for 8 days and began each night at 6:30pm. There are two entranceways to the carnival one on Merrick Road and one on William Street. Ms. Ruhle was shown a photograph of the accident site (Plaintiff's Exhibit B, NYSCEF Doc. 68) and indicated that it was not a fair and accurate representation of the area prior to the accident as the orange netting is flat to the ground in the photograph. Ms. Ruhle indicated that the netting was put up by volunteers before the start of the carnival and not lowered at any point. Defendant Atlas International Services supplied security services for the carnival and she observed personnel at their stations or walking around.

Michael Newton testified on behalf of Newton Shows, which company provided outdoor amusements for the carnival. Mr. Newton testified that he was present on the day of the accident from 4pm to 11pm and he did not observe the orange netting lying on the ground at any time prior to the incident. Mr. Newton testified that even following the accident, the orange netting was not in the position as depicted in Plaintiff's Exhibit B.

Aryanna Johnson was an eyewitness employee of Newton Shows who was working as a game operator on the evening of Plaintiff's accident. She testified that she witnessed Plaintiff's fall just after the carnival opening. Ms. Johnson testified that she observed the Plaintiff trying to walk over the orange mesh netting and his foot got stuck in one of the holes. He attempted to take it out and retry but got caught and he fell face first. She indicated that the mesh netting was drooped like a U but was not sufficiently low to the ground to step over prior to the accident. The area where the accident occurred was not an entrance or exit and she did not see other people coming or going out of that area before the incident.

Joseph Pallisco also testified on behalf of Atlas International Services. On the day of the accident Atlas had seven employees present, including himself. He was present from 5:30pm to 11:15pm and walked around to the locations where security personnel were stationed. When shown the photograph marked as Plaintiff's Exhibited B he indicated that at no time prior to the accident did he see the orange netting in the down position. When he walked past the area at about 6:10pm to 6:15pm, the orange netting was erect and in place. He was not aware of any complaints having been made about the netting.

The court notes that the incident report annexed to Motion Seq. No. 1 (NYSCEF Doc. No. 68) indicates that the time of the accident was 6:48pm. The Massapequa Fire Department call form (NYSCEF Doc. No. 67) indicates that the call was received at 6:51pm.

DISCUSSION

“The 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.” (*Alvarez v. Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Upon a prima facie showing, “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*, 68 NY2d at 324). Significantly, “[t]he facts must be viewed in the light most favorable to the non-moving party [but] bald, conclusory assertions or speculation and a shadowy semblance of an issue are insufficient to defeat summary judgment.” (*Stonehill Capital Management, LLC v. Bank of the West*, 28 NY3d 439 [2016] [internal quotations omitted]; see also *Fairlane Financial Corp. v. Longspough*, 144 AD3d 858 [2d Dept 2016]; *Phillip v. D&D Carting Co., Inc.*, 136 AD3d 18 [2d Dept 2015]).

As a general matter, landowner has a duty to maintain its premises in a reasonably safe condition in view of all the circumstances. (*Cupo v. Karfunkel*, 1 AD3d 48 [2d Dept 2003]). That duty also includes the obligation to warn of a dangerous condition. (*Id.* at 51-52). The court may grant summary judgment to a landowner “on the ground that the condition complained of by the plaintiff was both open and obvious and, as a matter of law, was not inherently dangerous.” (*Id.* at 52 [“In such circumstances, the condition which caused the accident cannot fairly be attributed to any negligent maintenance of the property.”]; see also *Rant v. Locust Valley High School*, 123 AD3d 686, 687 [2d Dept 2014]).

Where a dangerous condition exists a defendant moving for summary judgment has the initial burden of establishing that it neither created the dangerous condition nor had actual or constructive notice thereof. (*Kramer v. SBR&C*, 62 AD3d 667 [2d Dept 2009]). “To provide constructive notice, a defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit defendant’s employees to discover and remedy it.” (*Id.* at 669 [quotations omitted]).

Next, an independent contractor will be liable to a third party only if: (1) the contract is so comprehensive and exclusive that the contractor entirely displaces the owner’s duty to safely maintain the premises; (2) the plaintiff detrimentally relies on the continued performance of the contract; or (3) the contractor launches a force or instrument of harm. (*Espinal v. Melville Snow Contractors, Inc.*, 98 NY2d 136 [2002]; *Abramowitz v. Home Depot USA, Inc.*, 79 AD3d 675 [2d Dept 2010]). In *Church ex rel Smith v. Callanan Indus, Inc.*, 99 NY2d 104 [2002], the Court reiterated the three *Espinal* bases of liability: “The first is where the promisor, while engaged affirmatively in discharging a contractual obligation, creates an unreasonable risk of harm to others, or increases that risk The second . . . is where the plaintiff has suffered injury as a result of reasonable reliance upon the defendant’s continuing performance of a contractual obligation Third, . . . “where the contracting party has entirely displaced the other party’s duty to maintain the premises safely.” (*Church*, 99 NY2d at 111-112 [emphases added, quoting *Espinal*, 98 NY2d at 140]).

In support of the motion, St. Rose of Lima acknowledges that its volunteers installed the orange mesh netting but argues that it was not defective or dangerous when installed and the Defendant had neither actual or constructive notice of the defect alleged by the Plaintiff. Even accepting Plaintiff's description of the orange netting having been left on the ground and presenting a hazard, Plaintiff must establish that the property owner had actual or constructive notice of that condition. Plaintiff has shown neither. The Newton witnesses and the Atlas witness testified that the that the orange netting was erect minutes prior to the accident. Plaintiff counters that he passed over the downed netting upon his entry approximately twelve minutes prior to attempting to leave. Viewing these facts in a light favorable to the Plaintiff, elapse of twelve minutes to detect and correct the condition alleged herein is insufficient to support constructive notice thereof. (See *Loper v. Stop & Shop Supermarket Co., LLC*, 206 AD3d 641 [2d Dept 2022]; *Payen v. Western Beef Supermarket*, 106 AD3d 710 [2d Dept 2013]; *Freiser v. Stop & Shop Supermarket Co., LLC*, 84 AD3d 1307 [2d Dept 2011]; *Alami v. 215 East 68th Street, LP*, 88 AD3d 924 [2d Dept 2011]).

For its part, Defendant Newton establishes that it did not own the property or install the orange netting. Rather, the orange netting was owned by St. Rose of Lima and set up around the property by church volunteers. Plaintiff asserts, without support, that Newton positioned orange cones on each side of the orange mesh and "failed to place orange cones in front of the orange mesh to prevent people for walking into the Carnival. Plaintiff offers no proof that it was Newton's duty to prevent attendees from entering the carnival in those areas. Likewise, Plaintiff asserts, without authority that Atlas was negligent in the happening of the accident by allowing the orange netting to be flush with the ground without any security personnel preventing patrons from going to or from that part of the carnival. In both instances Plaintiff fails to establish applicability of any of the *Espinal* exceptions. (See *Hagan v. City of New York*, 166 AD3d 590 [2d Dept 2018]).

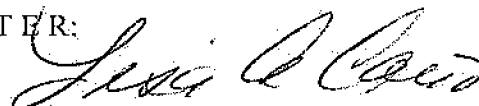
For the foregoing reasons, it is hereby

ORDERED, that the motions for summary judgment by St. Rose of Lima R.C. Church, Newton Shows, and Atlas International Services are **granted**.

The foregoing constitutes the decision and order of this court. All applications not specifically addressed herein are denied.

Dated: Mineola, NY
January 27, 2025

ENTER:



HON. LISA A. CAIRO, J. S. C.

ENTERED

Jan 29 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE