

Scamardella v A. Duie Pyle, Inc.
2025 NY Slip Op 35632(U)
January 3, 2025
Supreme Court, Richmond County
Docket Number: Index No. 150635/2021
Judge: Jr., Orlando Marrazzo
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

PART C-2

SOPHIE SCAMARDELLA,

Present:

Plaintiff(s),

Hon. Orlando Marrazzo, Jr.

-against-

DECISION AND ORDER

A. DUIE PYLE, INC., NEW YORK CITY
DEPARTMENT OF EDUCATION, CITY OF NEW
YORK, and NEW YORK CITY BOARD OF
EDUCATION,

Index No. 150635/2021

Motion Nos. 004, 005

Defendant(s).

X

The following papers numbered 1 to 5, including e-filed documents listed on NYSCEF document numbers 86 - 144 were marked fully submitted on the 13th day of November, 2023.

Pages
Numbered

Notice of Motion for Summary Judgment by Defendant A. DUIE PYLE, INC., With Supporting Papers and Exhibits (dated September 27, 2024).....	1
Notice of Motion for Summary Judgment by Defendants NEW YORK CITY DEPARTMENT OF EDUCATION, CITY OF NEW YORK, and NEW YORK CITY BOARD OF EDUCATION, With Supporting Papers and Exhibits (dated September 27, 2024)	2
Affirmation in Opposition by Plaintiff SOPHIE SCAMARDELLA to both Motions for Summary Judgment by Defendant A. DUIE PYLE, INC., and Defendants NEW YORK CITY DEPARTMENT OF EDUCATION, CITY OF NEW YORK and NEW YORK CITY BOARD OF EDUCATION (dated October 16, 2024)	3
Reply Affirmation by Defendant A. DUIE PYLE, INC. (dated November 12, 2024).....	4
Reply Affirmation by Defendants NEW YORK CITY DEPARTMENT OF EDUCATION, CITY OF NEW YORK, and NEW YORK CITY BOARD OF EDUCATION (dated November 12, 2024)	5

Upon the foregoing papers, the motion (004) by defendant A. DUIE PYLE, INC. for summary judgment dismissing the complaint and any cross-claims against it is granted. The motion (005) by defendants THE CITY OF NEW YORK and NEW YORK CITY DEPARTMENT OF EDUCATION, also s/h/a NEW YORK CITY BOARD OF EDUCATION is denied.

FACTS

Plaintiff SOPHIE SCAMARDELLA (hereinafter “plaintiff”) commenced this action to recover damages for injuries she sustained when she tripped and fell on a pallet on the floor in the hallway of PS 65 located in Staten Island. According to the papers submitted to the Court, PS 65 was completely shut down due to the COVID-19 pandemic and the school was empty except for the custodian and school safety agent, both assigned by the NEW YORK CITY DEPARTMENT OF EDUCATION (hereinafter “DOE”), and a handyman (who is also a firefighter) who was responsible for the heat, air conditioning and for keeping the school clean.

On the day of the subject incident, plaintiff, who was the principal of the school, had entered the school briefly, with permission, to pick up some supplies. During that time, the hallways were filled with stacked desks and chairs because the classrooms were being deep cleaned. There were also cleaning supplies stacked on a pallet on the floor which had been delivered one day prior to the subject incident by defendant A. DUIE PYLE, INC. (hereinafter “DUIE PYLE”). Plaintiff was walking towards the elevator and looking straight ahead when she tripped and fell on the pallet which was protruding from the stack of desks in the hallway. Plaintiff claims that she did not see the pallet on the floor until afterwards when the safety agent came to help her.

As a result of said fall, plaintiff alleges to have sustained, *inter alia*, a traumatic brain injury; a concussion; hearing loss; tinnitus on left ear; left knee medial meniscal tear; cervical

herniation and disc bulges. She further alleges to suffer dizziness; fatigue; confusion; mood disturbance and nausea. These injuries are claimed to affect the surrounding muscles and tissues, ligaments, blood vessels and nerves. In addition, it is alleged that the injuries have affected plaintiff's ability to pursue her normal daily activities due to pain, disability, and discomfort. Accordingly, she commenced the within action against the above-named defendants alleging, *inter alia*, negligence in creating and/or allowing a dangerous condition to exist on the floor in the hallway at the subject school and failing to correct the condition in spite of actual and/or constructive notice of the condition.

Following the completion of discovery, DUIE PYLE moves (004) for summary judgment and contends that there are no material issues of fact in regard to any negligence on its part and, accordingly, it is entitled to dismissal of the complaint and any cross claims against it. According to well-established caselaw, DUIE PYLE argues that it owed no duty to plaintiff since it neither owned, leased, maintained, controlled, or made special use of the premises in question or the area where plaintiff fell. Thus, it cannot be held liable for injuries sustained by plaintiff when she tripped and fell on the pallet left in the hallway at the subject school.

DUIE PYLE also submits EBT testimony of various witnesses who worked at the school and confirmed that DUIE PYLE did not own, maintain, or control the premises or, more specifically, the area where plaintiff fell. Instead, it was the employees hired by the school, *e.g.*, the school custodian, the school safety agent and the handyman who inspected the school daily for debris, safety hazards and/or dangerous conditions, who maintained and inspected the area in question, and who documented said inspections in a daily logbook.

These witnesses also confirmed that when DUIE PYLE made its delivery to the school, the delivery person was specifically instructed by the school custodian where to place the delivered goods. In this case, DUIE PYLE was instructed to leave the subject pallet on the right side of the

hallway against the wall. Based on this proof, DUIE PYLE contends that it did not create the dangerous condition but followed the school employee's instructions. Accordingly, there are no triable issues of fact regarding its negligence, and it is entitled to dismissal of the complaint and any cross claims against it.

Defendants THE CITY OF NEW YORK, the DOE and NEW YORK CITY BOARD OF EDUCATION (hereinafter collectively "CITY defendants"), also move for summary judgment seeking dismissal of the complaint and contend that (1) the premises was in reasonably safe condition; (2) the subject pallet was open and obvious; and (3) the pallet was not inherently dangerous as a matter of law. Accordingly, CITY defendants cannot be held liable for plaintiff's injuries.

In support, the CITY defendants also submit a plethora of cases to support its position that it cannot be held liable where the alleged condition was readily visible and placed in a wide-open hallway, at least 10 feet wide, and that it was easy to move around the pallet freely. The defendants further contend that there is nothing about the subject pallet that would constitute a trap or a snare. Also, there is no proof of any prior complaints regarding the placement of the pallet in the hallway.

The CITY defendants further contend that it would be purely speculative for a jury to conclude that any action or inaction by them proximately caused plaintiff's injuries. In this regard, it is argued that plaintiff showed up at the school that day wearing flip-flops and she was carrying a bag full of paperwork at the time of her fall. Moreover, plaintiff admits that she did not see anything on the floor prior to falling and did not know how or why she fell. Accordingly, it would be improper/speculative to conclude that any action or non-action by the CITY defendants caused her to fall, or that plaintiff would not have fallen had the pallet not be in the hallway. Thus, the CITY defendants request that its motion for summary judgment be granted.

In opposition to both motions, plaintiff contends that the motions must be denied since none of the defendants established their own freedom from liability but, instead, merely blame each other for plaintiff's fall. Also, plaintiff submitted the affidavit of an expert, Keith Watkins, the Director of Facilities for the City of New Rochelle School District who opined that the supplies on the pallet should have been timely and properly unloaded and removed from the location and not left in an already congested hallway with less than 36" of walking space. This expert further opined that the area should have been temporarily barricaded and appropriately identified while the supplies were being unloaded. Also, the CITY defendants should not have instructed DUIE PYLE to place the pallet in front of a fire exit which created an unsafe environment by blocking ingress and egress to the building.

Plaintiff further contends that while she is familiar with the subject hallway, chairs and desks are not normally present, neither is the presence of a large pallet of cleaning supplies. Obviously, her attention was drawn to the height of the stacked chairs and desks, instead of looking down at the pallet on the ground. Plaintiff further argues that DUIE PYLE created the condition as confirmed by the EBT testimony of its delivery person who admitted to placing the pallet in the location where plaintiff was caused to fall. Also, the delivery person confirmed that it was the school employer who told him where to place the pallet.

Insofar as the CITY defendants argue that the presence of the pallet was open and obvious, plaintiff contends that whether an open and obvious condition exists, is a question for a jury. Moreover, an open and obvious condition may be a trap for the unwary if the condition is obscured. In addition, plaintiff contends that two of the CITY defendants' witnesses agreed that the presence of the subject pallet was unsafe and a tripping hazard. Finally, in contrast to the CITY defendants' arguments, plaintiff did identify the cause of her fall in her 50-h testimony which is confirmed by

the video taken at the time of her fall. Based on the above contentions, plaintiff argues that both motions must be denied.

DISCUSSION

It is well settled that a 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 (*see Alvarez v. Prospect Hosp.*, 68 NY2d 320 [1986]). The failure to make that initial showing of entitlement to judgment as a matter of law requires denial of the summary judgment motion, regardless of the sufficiency of the opposing papers (*see Winegrad v. New York University Med. Ctr.*, 64 NY2d 851, 853 [1985]). Once that initial burden has been satisfied, it is incumbent upon the party opposing the motion to adduce sufficient evidence of the existence of triable issues of fact (*id.*). Consequently, the court's only role in deciding a motion for summary judgment is to determine whether any triable issues of fact exist. "[I]ssue-finding, rather than issue-determination, is the key to the procedure" (*Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957] [internal quotation marks omitted]). Since summary judgment represents the procedural equivalent of a trial, the presence of any significant doubt as to whether or not there is a material issue of fact, or where an issue of fact is merely "arguable," the motion must be denied (*see Philips v. Kantor & Co.*, 31 NY2d 307, 311 [1972]).

However, "only the existence of a bona fide issue raised by evidentiary facts and not one based on conclusory or irrelevant allegations will suffice to defeat summary judgment" (*Rotuba Extruders v. Ceppos*, 46 NY2d 223, 231 [1978]). Thus, mere conclusions, expressions of hope or unsubstantiated allegations are insufficient to raise a triable issue of fact (*see Zuckerman v. City of New York*, 49 NY2d 557 [1980]).

With particular regard to premises liability, the obligation to respond in damages for a dangerous condition is generally predicated on ownership of the premises (*see Breland v. Bayridge Air Rights, Inc.*, 65 AD3d 559, 560 [2nd Dept. 2009]). In this regard, it is well settled that the owner of property has a duty to maintain its premises in a reasonably safe condition (*see Kellman v. 45 Tiemann Assoc.*, 87 NY2d 871, 872 [1995]). Where ownership is not present, a party cannot be held liable for injuries caused by the dangerous or defective condition of the property (*see Alexopoulos v. City of New York*, 33 AD3d 828 [2nd Dept. 2006]).

Here, in the opinion of this Court, DUIE PYLE has submitted sufficient proof that it did not own, operate, or control the premises or specific location where plaintiff alleges to have fallen (*see Hindin v. Maffei*, 251 AD2d 545 [2nd Dept. 1998]). Thus, it owed no duty to plaintiff and, accordingly, it cannot be held liable for plaintiff's injuries and is entitled to dismissal of the complaint on such grounds. Even assuming, *arguendo*, that DUIE PYLE did owe a duty to plaintiff, there is no proof establishing that it created the condition. In this regard, uncontested proof including, *e.g.*, EBT testimony of witnesses for the respective parties as well as a recorded video of the incident confirms that DUIE PYLE was directed by the school custodian to place the pallet on the floor of the hallway next to a stack of desks. Said proof also indicates that DUIE PYLE lacked any authority or control regarding the location where the pallet was to be placed. In addition, it is without question that DUIE PYLE had no obligation insofar as maintaining the premises but that it was the school staff, including the custodian, the handyman and the safety agent, who were responsible for inspecting and maintaining the premises during the COVID shutdown. In opposition, plaintiff has failed to raise a triable issue of fact.

The same cannot be said, however, in regard to the CITY defendants. Based on the EBT testimony submitted by the parties, it is without question that the CITY defendants were responsible for maintaining and inspecting the premises. Accordingly, liability for the existence

of any dangerous condition in the school would fall on the CITY defendants. Moreover, proof indicates that it was the CITY defendants who instructed DUIE PYLE's delivery person to place the pallet in the location of where the plaintiff fell. Thus, questions exist regarding the CITY defendants' liability for creating a dangerous condition.

There are also triable issues of fact as to whether the subject condition was open and obvious. Whether a dangerous or defective condition exists depends on the peculiar facts and circumstances of each case and is generally a question of fact for a jury (*see Guierrieri v. Summa*, 193 AD2d 647 [2nd Dept. 1993]) and there is no per se rule as to the nature or dimensions of an actionable defect (*see Herrera v. City of New York*, 262 AD2d 120 [1st Dept. 1999]). In making this determination, the Court will consider, *e.g.*, the "width, depth, elevation, irregularity and appearance of the [purported] defect," along with the "time, place and circumstances of the injury" (*Trincere v. County of Suffolk*, 90 NY2d 976, 978 [1997]). Also, the presence of an "edge" which poses a tripping hazard has generally been held to raise a jury question (*see Nin v. Bernard*, 257 AD2d, 417, 417-418 [1st Dept. 1999]).

Here, while the CITY defendants attempt to characterize the pallet as open and obvious and therefore not inherently dangerous, the Court has considered, again, the EBT testimony of witnesses regarding the size and location of the pallet, along with a video recording of the fall itself which reveals the pallet protruding from the stack of items piled against the wall. Accordingly, it cannot be said as a matter of law that the presence of the pallet was open and obvious and not inherently dangerous. Moreover, whether plaintiff's ability to take notice of the pallet was skewed by the fact that desks and chairs were stacked around the pallet, is, again, a question for the trier of fact. Considering all of these circumstances, the CITY defendants' motion must be denied (*see Zuckerman v. City of New York*, 49 NY2d 557 [1980]).

CONCLUSION

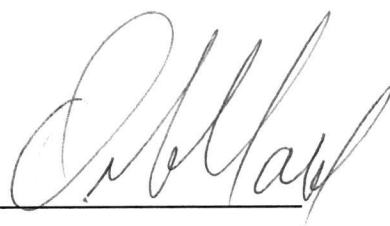
Accordingly, it is hereby

ORDERED that the motion (004) by defendant A. DUIE PYLE, INC. for summary judgment is granted and the complaint and any cross-claims against it are hereby severed and dismissed; and it is further

ORDERED that the motion (005) by defendants THE CITY OF NEW YORK, NEW YORK CITY BOARD OF EDUCATION and also s/h/a NEW YORK CITY DEPARTMENT OF EDUCATION for summary judgment is denied; and it is further

ORDERED that the Clerk enter judgment accordingly.

E N T E R,



J.S.C.

Dated:

Jan. 3rd, 2025

Hon. Orlando Marrazzo, Jr.
Supreme Court Justice