

Feldman v Port Auth. of N.Y. and N.J.

2018 NY Slip Op 33212(U)

December 13, 2018

Supreme Court, New York County

Docket Number: 156869/2018

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 32

Justice

-----X
ISAAC FELDMAN, Individually and as Voluntary Administrator of
the ESTATE OF LAEL FELDMAN, and MARLA MASE, INDEX NO. 156869/2018
MOTION DATE 12/04/2018
Plaintiffs, MOTION SEQ. NO. 001

- v -

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY,

Defendant.

DECISION AND ORDER

-----X
The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 11,
12
were read on this motion to/for DISMISSAL

The motion to dismiss by defendant is granted.

Background

This action arises out of the untimely death of Lael Feldman. On the night of July 26, 2017, Ms. Feldman was walking along the south walkway of the George Washington Bridge when she jumped off the railing into the Hudson River below. Plaintiffs claim that defendant knew of the serious risk posed by the low railing next to the walkway and the potential for people to commit suicide. Plaintiffs point out that in the five-week period between July and August 2017, five people died after jumping off the bridge. Plaintiffs argue that defendant failed to take necessary steps to address the obvious risk of people attempting to commit suicide at the George Washington Bridge. Plaintiffs question why defendant did not install suicide prevention

fencing and argue that the failure to do so makes defendant liable. Plaintiffs argue that defendant had a duty to the public to ensure a safe crossing.

Defendant moves to dismiss on the ground that it cannot be held liable for Ms. Feldman's self-inflicted injury. Defendant argues that plaintiffs failed to state a cause of action for wrongful death because the suicide in this case was not reasonably foreseeable and it is not a mental health professional equipped to detect potential suicides. Defendant stresses that it does not owe a duty to those who commit suicide on the bridge.

In opposition, plaintiffs posit that defendant ignored an obvious danger and that it was reasonably foreseeable that the failure to install suicide prevention barriers would result in suicides. Plaintiffs observe that they do not seek relief under the attractive nuisance doctrine.

Discussion

"On a CPLR 3211 motion to dismiss, the court will accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Nonnon v City of New York*, 9 NY3d 825, 827, 842 NYS2d 756 [2007] [internal quotations and citation omitted]).

Plaintiffs rely heavily on *Ginsburg v City of Ithaca* (839 F.Supp2d 537 [ND NY 2012]), a case where plaintiffs alleged that Ithaca created an unreasonably dangerous condition by failing to install safeguards on a bridge to prevent Cornell students from committing suicide. The federal court found that defendants had a duty to maintain the bridge in a reasonably safe condition to prevent suicides and denied, in part, defendants' motion to dismiss (*id.* at 542-43).

This Court respectfully disagrees with the federal court's decision. Instead, this Court embraces the holding of Justice Sweeney in Kings County, who found that defendant had no duty to a plaintiff who jumped off the George Washington Bridge (*Perlov v The Port Auth. Of the State of New York*, Index No. 501644/2017 [Sup Ct, Kings County, April 9, 2018] [dismissing a wrongful death claim]). Although plaintiffs point out that there are numerous suicides and suicide attempts at the George Washington Bridge, the fact is that the cause of action arose from an intentional, intervening act (deciding to jump off the bridge). A dangerous condition cannot be created simply because someone makes it dangerous for herself. For instance, a pedestrian cannot create a dangerous condition by running across Park Avenue without the walk sign and hold the city liable, or jump in front of a subway train and hold the transit authority liable. The wrongful death action claimed here did not arise because of a dangerous condition on the bridge; the cause of action arose out of Ms. Feldman's decision to jump off the bridge and commit suicide. And there was no special relationship between Ms. Feldman and defendant. Defendant had no reason to suspect what was about to happen on the night of July 26, 2017.

Summary

Although it might be good public policy to put up suicide prevention guards on bridges and rooftops and subway stations and river banks, that fact does not mean that defendant is liable for not putting up such safeguards. To hold otherwise would require property owners to assess the ways people might attempt to commit suicide on their property and implement preventative strategies or face potential liability. This Court will not impose that burden. Property owners are not held to have the duty of a mental health professional. Most property owners have no idea

about the mental state of the people who traverse their properties. They cannot be held liable because someone makes the tragic decision to take her own life.

Accordingly, it is hereby

ORDERED that defendant's motion to dismiss is granted and the complaint is dismissed in its entirety, with costs and disbursements to defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of defendant.

12-13-18

DATE



ARLENE P. BLUTH, J.S.C.

HON. ARLENE P. BLUTH

CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE