

Lafergola v Collins Build. Serv., Inc.

2007 NY Slip Op 34480(U)

October 17, 2007

Sup Ct, New York County

Docket Number: 112483/10

Judge: Saliann Scarpulla

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. SALIANN SCARPULLA

PART 19

FILED
ustice

Index Number : 112483/2010
LAFERGOLA, RICHARD
vs.
COLLINS BUILDING SERVICES
SEQUENCE NUMBER : 003
SUMMARY JUDGMENT

OCT 21 2013

COUNTY CLERK'S OFFICE
NEW YORK

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ **No(s).** _____
 Answering Affidavits — Exhibits _____ **No(s).** _____
 Replying Affidavits _____ **No(s).** _____

Upon the foregoing papers, it is ordered that this motion is

decided per the memorandum decision dated 10/17/13
which disposes of motion sequence(s) no. 003

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Dated: 10/17/13

Saliann Scarpulla J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 19

-----X

RICHARD LAFERGOLA,

Plaintiff,

-against-

FILED

Index No.: 112483/10
Submission Date: 5/29/13
OCT 21 2013

COUNTY CLERK'S OFFICE
NEW YORK
DECISION AND ORDER

COLLINS BUILDING SERVICES, INC., FACILITY
MANAGEMENT NORTHEAST/CHASE/JPMORGAN
and NEW YORK & HARLEM R.R. CO.,

Defendants.

-----X

For Plaintiff:
Jonathan D'Agostino & Associates, P.C.
3309 Richmond Avenue
Staten Island, New York 10312

For Defendant:
Cartafalsa, Slattery Turpin & Lenoff
165 Broadway, 28th Floor
New York, NY 10006

Papers considered in review of this motion for summary judgment (motion seq. no. 003):

Notice of Motion.....	1
Affirm. in Opp.	2
Reply	3

HON. SALIANN SCARPULLA, J.:

In this action to recover damages for personal injuries, defendant Collins Building Services, Inc. ("Collins") moves for summary judgment dismissing the complaint of plaintiff Richard Lafergola ("Lafergola") pursuant to CPLR § 3212.

Lafergola worked as an administrative officer for JP Morgan at 270 Park Avenue, New York, NY (“the premises”). In his complaint, Lafergola alleges that he fell and suffered personal injuries while working at the premises on October 11, 2007.

On September 22, 2010, Lafergola commenced this action against Collins, Facility Management Northeast/Chase/JPMorgan, and New York & Harlem R.R. Co., seeking to recover damages for the injuries that he sustained.¹

At his deposition, Lafergola testified that, on the morning of his accident, he received an assignment to bring a report to a trader on the sixth floor. After receiving the assignment, Lafergola printed the report and headed towards the staircase between the sixth and the eighth floors.

As Lafergola traveled down the staircase between the sixth and the seventh floors, he testified that the toe of his shoe “got wedged between the carpet and the plastic rug runner” at the edge of the stair, which caused him to trip and fall down the staircase. Lafergola described the plastic rug runner as a two-inch wide plastic strip that covered the nose and length of each step.²

¹ This action was discontinued as against defendants Facility Management Northeast/Chase/JP Morgan and New York & Harlem R.R. Co. pursuant to a stipulation of discontinuance filed on August 9, 2011.

² The parties also refer to the plastic runner as “nosing.”

Lafergola testified that he fell from the upper part of the staircase and then crashed into a wall on the landing. As a result of his fall, Lafergola sustained injuries to his neck, back, right shoulder, right knee, and right hip.

Collins is a contractor hired by JPMorgan to clean the premises. Collins' project manager, Antuono Cuomo ("Cuomo"), testified that Collins swept the staircases four times per week and vacuumed once per week. Cuomo testified that he inspected the staircases every other day. Cuomo also testified that he never observed any defect in the staircase and that he never received any complaints related to the staircase. According to Cuomo, Collins did not keep any logbooks or records regarding the work it performed.

Cuomo further testified that another contractor Stateside was responsible for repairs at the premises. Cuomo testified that Stateside installed stainless steel nosing approximately six months after Lafergola's accident. Cuomo also stated that the staircases did not have any nosing at the time of Lafergola's accident.

Collins moves for summary judgment dismissing Lafergola's complaint on two grounds. First, Collins argues that, as a contractor, it does not owe a duty of care to Lafergola because he is not a party to the contract between Collins and JP Morgan. Second, Collins argues that even if it owed a duty of care to Lafergola, it did not create or have notice of any hazardous condition on the staircase where the accident occurred.

Collins submits a copy of the contract it entered into with JP Morgan, under which Collins agreed to clean the premises (“the contract”). The contract specifically required Collins to “sweep and police” the interior stairwells on a daily basis and to “[r]eport any plumbing problems and mechanical deficiencies” to JPMorgan.³

In opposition, Lafergola argues that Collins owed a duty of care to Lafergola. Lafergola claims that even though he is not a party to the contract, Collins acquired a duty of care to Lafergola because Collins launched an instrument of harm by failing to exercise reasonable care in its cleaning and inspection of the staircase.

Lafergola also argues that Collins failed to demonstrate that it did not create or have notice of the defective condition in the stairs. Lafergola points out that Collins did not provide any logs showing that it inspected the staircase prior to the accident.

In reply, Collins contends that it did not acquire a duty of care to Lafergola because it could not have launched an instrument of harm by vacuuming or sweeping the stairs. Collins also argues that it did not have a duty to repair the plastic runner or nosing on the staircase because the duty of repair belonged to JP Morgan and Stateside.

³ The agreement defines “policing” as “keeping an area free from trash.”

Discussion

A movant seeking summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law and offer sufficient evidence to eliminate any material issues of fact. *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985). Once a showing has been made, the burden shifts to the opposing party to demonstrate the existence of a triable issue of fact. *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986); *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980).

Under New York law, a “contractor does not owe a duty of care to a non-contracting third party.” *Timmins v. Tishman Constr. Corp.*, 9 A.D.3d 62, 66 (1st Dep’t 2004); *Espinal v. Melville Snow Contrs., Inc.*, 98 N.Y.2d 136, 138 (2002).

However, a contractor’s duty of care to a non-contracting third party may arise out of a contractual obligation in three excepted circumstances: (1) when a contractor fails to exercise reasonable care in the performance of his duties and thereby “launches a force or instrument of harm”; (2) when the plaintiff detrimentally relies on the continued performance of the contracting party’s duties; and (3) when the contractor has entirely displaced the other party’s duty to maintain. *Espinal*, 98 N.Y.2d at 140; *Powell v. HIS Contractors, Inc.*, 75 A.D.3d 463, 464 (1st Dep’t 2010).

Collins demonstrates that it is entitled to summary judgment dismissing the complaint. Collins establishes that it does not owe a duty of care to Lafergola because he is a non-contracting party, and Collins did not acquire a duty of care to Lafergola under the excepted circumstances enunciated in *Espinal*.

Lafergola does not dispute that he is not a party to the contract between Collins and JPMorgan. He argues, however, that Collins acquired a duty of care under the first *Espinal* exception by failing to exercise reasonable care and thereby launching an instrument of harm.⁴

I find that Collins does not owe a duty of care to Lafergola because it did not launch an instrument of harm by cleaning and policing the stairs. Through the deposition testimony, Collins established that it performed its duties of cleaning and inspecting the staircase. Collins project manager, Antuono Cuomo, testified that his staff members vacuumed and swept the stairs multiple times per week, and that he inspected the staircases every other day. Collins further demonstrated that its duties were janitorial in nature, and it therefore could not have created any defective condition related to the staircase or plastic runner by merely cleaning or inspecting the stairs.

Lafergola argues that a triable issue of fact exists as to whether Collins launched an instrument of harm by failing to perform its duties with reasonable care. However, Lafergola does not introduce any evidence to raise a triable issue of fact as to how Collins

⁴ Lafergola does not argue that the second or third *Espinal* exceptions apply.

launched an instrument of harm. Although Lafergola testified that his foot became wedged between the plastic runner and the stair, he never identified any defective condition in the staircase. In fact, Lafergola testified that he did not observe any loose runners, or any liquid or debris on the stairs.

Moreover, even if Collins owed a duty of care to Lafergola, Collins did not have actual or constructive notice of any defect in the staircase. Cuomo testified that he never received any complaints about the staircase, and he never observed any defective condition in the stairs. Furthermore, both Lafergola and Cuomo's deposition testimony establishes that there was no visible or apparent defect in the staircase that Collins should have discovered and remedied. To establish 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 to discover and remedy it. *Dombrower v. Maharia Realty Corp.*, 296 A.D.2d 353, 353 (1st Dep't 2002).

For the reasons stated above, I grant Collins' motion for summary judgment dismissing the complaint.

In accordance with the foregoing, it is hereby

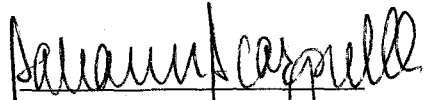
ORDERED that the defendant Collins Building Services, Inc.'s motion for summary judgment dismissing plaintiff Richard Lafergola's complaint is granted, and the complaint is dismissed; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the decision and order of the Court.

Dated: New York, New York
October 7, 2013

ENTER:


Saliann Scarpulla, J.S.C.

FILED
OCT 21 2013
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NEW YORK