

Rand v Cornell Univ.
2010 NY Slip Op 33955(U)
November 18, 2010
Sup Ct, New York County
Docket Number: 101796/2006
Judge: Jane S. Solomon
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SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 55

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RAND, ETHAN

Index No.: 101796/2006

Plaintiff,

DECISION & ORDER

-against-

CORNELL UNIVERSITY,

FILED

Defendant.

NOV 22 2010

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JANE S. SOLOMON, J.:

NEW YORK
COUNTY CLERK'S OFFICE

Plaintiff Ethan Rand (Rand) seeks money damages for injuries he suffered on the campus of defendant Cornell University (Cornell), in Ithica, New York, where he was a student. Cornell moves for summary judgment under CPLR 3212 on the ground that Rand's accident occurred during a "storm in progress."

On Sunday, February 23, 2003, at 3:00 P.M., Rand slipped and fell on a patch of ice outside the main entrance to Barton Hall, one of Cornell's most heavily used buildings (Affidavit of Michael H. Goodwin, ¶ 3). According to Jessica Rennells (Rennells), a climatologist, the week prior to the incident saw freezing temperatures and snowfall. The day of the incident was initially above freezing and rainy, but cooled to below freezing and snowy by the afternoon (Rennells Affidavit, ¶ 5-8).

Rand stated that the ice he slipped on was a "thick sheet of ice occupying approximately 2/3 of the width of the

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sidewalk" (Rand affidavit, ¶ 9), and that the ice was not sanded or salted at the time he fell (Id., ¶ 10). He contends that this constitutes a hazardous condition which Cornell negligently failed to remedy.

To establish negligence here Rand must demonstrate that the defendant created the condition which caused the accident, or that it had actual or constructive notice of the condition (*Uhlich v. Canada Dry Bottling Co. of New York*, 305 AD2d 107, 107 [1st Dept., 2003]). To constitute 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.).

Cornell argues that it had no constructive or actual notice of the hazard and that even if it did, the "storm in progress" doctrine suspends "the duty of a landowner to take reasonable measures to remedy a dangerous condition caused by a storm . . . while the storm is in progress, and does not commence until a reasonable time after the storm has ended" (*Espinell v. Dickson*, 57 AD3d 252, 253 [1st Dept., 2008]). The doctrine is not limited to severe weather, and has been applied to "less severe, yet still inclement, winter weather (*Camacho v. Garcia*, 273 AD2d 835 [4th Dept., 2000]).

Rand does not challenge that the weather was inclement when he fell. He argues that the doctrine is inapplicable

because the storm did not cause the hazardous condition. He claims that the "thick sheet of ice" was present on the sidewalk 52 hours before he fell. In support he supplies the affidavit of his expert witness, George Wright (Wright), a Certified Consulting Meteorologist. Wright's research of weather data provided by national weather reporting services and data collected from several regional airports led to his opinion that

[O]n February 18, 2003, there were 11 inches of snow and ice present on exposed, undisturbed (not shoveled, plowed, walked upon, etc.) and untreated (not salted) ground outside the east (Garden Avenue) entrance of Barton Hall
(Wright Affidavit, ¶ 6).

He states that, assuming that 11 inches of snow remained undisturbed at the entrance to Barton Hall, it could have melted and refroze as the "thick sheet of ice" Rand slipped on (Id., ¶ 8-10), and, therefore, the hazard predated the storm, making the doctrine inapplicable.

However, Wright also noted that on the day Rand fell:

[L]ight rain developed between 4:45 a.m. and 5:15 a.m. . . . The temperature at 7:00 a.m. was 43 [degrees] and the wind . . . sustained speeds of 5 to 10 mph The temperature cooled to 32 [degrees] by 10:30 a.m. and the rain changed to light snow by 11:00 a.m.
(Id., ¶ 11)

[A]t approximately 3:00 p.m. . . . light snow was falling, the temperature was 19 [degrees] and the wind was blowing . . . at average speeds of 15 to 25 mph, with gusts to 35 mph.
(Id., ¶ 12).

Wright's findings of the temperature and weather

conditions on the date Rand fell are consistent with the existence of a storm in progress. Moreover, Rand presents no evidence that, in fact, there remained exposed, undisturbed and untreated ground outside the east entrance of Barton Hall--a key assumption of Wright's opinion--in the week proceeding his fall. Indeed, Wright's assumption is belied by the affidavit of Michael H. Goodwin (Goodwin), the Facilities Manager for Barton Hall (Goodwin affidavit, ¶ 8), which establishes Cornell's standard maintenance practices. At the time of Rand's injury, Goodwin was the lead custodian for Barton Hall. He stated that Cornell shovels and salts its grounds twice per weekday (5 a.m. and 12:30 p.m.), at a minimum, and that "[w]e simply do not allow snow to accumulate anywhere so close to the main entrance to [Barton Hall]" (Id). Under these circumstances, the storm in progress doctrine defeats Rand's claim.

Accordingly, it hereby is

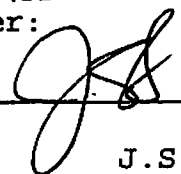
ORDERED that defendant's motion for summary judgment dismissing the complaint is granted, and the Clerk is directed to enter judgment accordingly with costs and disbursements to defendant as taxed.

FILED

NOV 22 2010

Dated: November 18, 2010

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J.S.C.