Koran v Starrett City, Inc.
2015 NY Slip Op 32620(U)
July 13, 2015
Supreme Court, Kings County
Docket Number: 15621/12
Judge: Ellen M. Spodek
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At an IAS Term, Part 76J, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 13th day of July 2015

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF KINGS

JOSEPH KORAN

Plaintiff,

-against-

Index No. 15621/12
DECISION/ORDER

STARRETT CITY, INC. and STARRETT CITY ASSOCIATES, L.P.,

Hon. Ellen M. Spodek
Justice, Supreme Court

Defendants

Papers	**Numbered**
Notice of Motion and Affidavit.....	____1____
Notice of Cross Motion and Affidavit.....	_____
Answering Affidavits	____2____
Replying Affidavits	____3____
Exhibits	_____
Other	_____

Upon the foregoing papers, defendants STARRETT CITY, INC. and STARRETT CITY ASSOCIATES L.P. move for summary judgment, pursuant to CPLR 3212. Plaintiff JOSEPH KORAN opposes the motion.

This case arises out of a bicycle accident that took place on June 8, 2012, outside 1500 Hornell Loop, a building owned by STARRETT CITY (defendants). Plaintiff was riding his bicycle on the walkway in front of the building when an employee of defendants opened the fire exit door and struck plaintiff's left handlebar. Plaintiff subsequently fell, sustained temporary and permanent injuries, and commenced this suit. Plaintiff argues that the fire door is both inherently dangerous and poorly maintained. As such, plaintiff argues that there are material issues of fact still in question and defendants have not established a prima facie case for summary judgment.

Defendants argue that the complaint should be dismissed. First, they argue that the fire door is open, obvious, and not inherently dangerous. The door is painted red and the width of the door opening is demarcated by the white cement contrasted from the Z-pattern of the rest of the walkway. Defendants contend that there is enough room to bike on the walkway without interfering with the opening of the fire door. Second, they argue that there have been zero violations resulting from the fire door since its construction in 1974. There are yearly and monthly inspections and no defect was noted. In addition, they argue that there have been zero complaints regarding the fire door, most notably nothing from the plaintiff, who has frequently passed the fire door on his bicycle.

"The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tending sufficient evidence to demonstrate the absence of any material issues of fact." *Alvarez v. Prospect Hospital*, 68 NY2d 320 (1986). In this case, the Court finds that defendants made a prima facie showing supporting the granting of summary judgment. Plaintiff failed to establish that there are any genuine issues of fact. If the condition that created the injury is both open and obvious and not inherently dangerous as a matter of law, negligence cannot be the cause of the injury. *Cupo v. Karfunkel*, 1 A.D.3d 48, 52 (2d Dep't 2003). There is no question that the fire door was an open and obvious condition; it was painted red and the contrasted concrete floor to the rest of the walkway clearly illustrates the width of the door when opened.

Plaintiff argues that the condition being open and obvious is relevant for comparative negligence, but does not remove a duty on the part of the defendants. Plaintiff provided an affidavit of an expert witness who testified that the condition was inherently dangerous by not having a vision light in the door. Defendants objected to the admission of plaintiff's expert testimony due to lack of notice. However, plaintiff reserved the right to supplement his response and have an expert witness testify on their behalf. The Court does not believe eight months is long enough to be considered untimely when plaintiff reserved the right to supplement his response. As such, the affidavit is admissible. The plaintiff's expert witness does not point to any code or rule violation which required the need for a vision light in a fire door. The reference provided by the expert witness only discussed the need for defendants to maintain the building in accordance with the safety requirements. There is no mention of any source that deems a fire door without a vision light an unsafe condition. Additionally, in this case, there is adequate room provided by defendants for bicycles to travel on the walkway without being within reach of the fire door opening. Lastly, there is no indication that a vision light in the door would have made any difference in preventing the accident. A vision light would only give the person opening the door a view of directly in front of them. Here, plaintiff was coming from the right and the door hit the handlebar.

Plaintiff further argues that the fire door was poorly maintained. However, as indicated by the affidavit of Orlando Palmieri, Director of Maintenance of the complex in question, there have been zero violations issued by the Department of Buildings or the Fire Department of the City of New York regarding the fire exit door in question. There have been no complaints filed about the fire door. Most notably, plaintiff himself has passed the fire door numerous times without issue or complaint. As such, plaintiff failed to provide any evidence supporting the claim that the door was poorly maintained.

Lastly, plaintiff argues that defendants' motion for summary judgment is invalid due to the lack of affidavits provided by someone other than defendants' attorney. However, as already discussed,

defendants submitted the affidavit of Orlando Palmieri regarding the maintenance of the door. This in turn complies with the requirement of the admission of evidence supporting a claim for summary judgment.

The Court finds that plaintiff has failed to provide any evidence to demonstrate that there are outstanding issues of material fact. Defendants' motion for summary judgment is granted. Plaintiff's complaint against the defendants is dismissed.

This constitutes the decision and order of the Court.

ENTER,

JSC

Hon. Ellen M. Spodek

FILED

JUL 24 2015

KINGS COUNTY CLERK'S OFFICE