Dalton v North Ritz Club
2015 NY Slip Op 32712(U)
July 27, 2015
Supreme Court, Nassau County
Docket Number: 602651-13
Judge: Jerome C. Murphy

SUPREME COURT : STATE OF NEW YORK
COUNTY OF NASSAU

PRESENT:
HON. JEROME C. MURPHY,
Justice.

CONCETTA DALTON and JAMES DALTON,

Plaintiffs,

-against-

THE NORTH RITZ CLUB and KGP REALTY LLC,

Defendants.

TRIAL/IAS PART 22
Index No. 602651-13
Motion Date: 5/11/15
Sequence Nos. 002, 003

DECISION AND ORDER

The following papers were read on this motion:

Sequence No. 2:
Notice of Motion, Affirmation and Exhibits..... 1

Sequence No. 3:
Notice of Cross-Motion, Affirmation in Opposition and Exhibits..... 2
Reply Affirmation..... 3
Affirmation in Opposition and in Reply..... 4

PRELIMINARY STATEMENT

In Sequence No. 2, defendants noticed this application for an order: (1) pursuant to CPLR § 3212 granting defendant, Livadi, Inc. d/b/a North Ritz Club s/h/a The North Ritz Club and KGP Realty, LLC, summary judgment dismissing the plaintiffs' complaint on the ground that defendant cannot be held liable as the alleged defect was apparently open and obvious and not inherently dangerous; (2) alternatively, defendant did not have notice of the alleged defective and/or dangerous condition; and (3) for such other and further relief as this Court may deem just and proper.

In Sequence No. 3, plaintiffs bring this application for an order: (1) denying the summary judgment motion of defendants; (2) granting plaintiffs partial summary judgment on the issue of liability and lack of comparative negligence against defendants; or in the alternative, should an issue of fact preclude the grant of partial summary judgment in plaintiffs' favor, plaintiffs request

that this Court grant an order: (3) deeming the condition at issue to be inherently dangerous; and/or (4) deeming that notice of the subject condition existed; and/or (5) deeming that the dangerous condition complained of was the proximate cause of plaintiffs' injuries; and/or (6) deeming that defendants owed a duty of care to the public, to invited guests, and to the plaintiffs at the subject premises and that defendants breached their respective duties of care; and (7) for such other and further relief as to this Court may be deemed just and proper.

BACKGROUND

Plaintiff Concetta Dalton sustained injuries on June 1, 2013, while walking near the staircase in the lobby of The North Ritz Club. She bumped into a table which was on the floor in the lobby area, and fell while she was at the premises for a wedding reception.

Gus Nerantzinis, the owner and manager of The North Ritz Club, testified at his deposition that the premises consisted of three floors. The lower level has a coat check and restrooms. The cocktail room and ballroom are on the main level, and the upper level contains the bridal suite and management office. The lobby in which the table was located, separated the cocktail room from the ballroom. The side table over which plaintiff fell, was placed flat against the staircase railing, and he observed it on the day in question, both prior to, and throughout the reception. It was purposely placed there for the convenience of the bride and groom to deposit arrangements they may be carrying.

Plaintiff testified that she had come up the stairs from the lower level, and was moving toward the reception room, her right knee struck the table, she lost her balance, and fell onto her left hip. The episode was caught on surveillance tape, and still shots taken from the video were shown to plaintiff during the course of her deposition. She identified herself as walking up the stairs behind her cousins. She was able to identify the photograph of her as she was extending her right arm onto the table in an effort to avoid falling. She denied ever seeing the table prior to her falling onto it. She was transported from the facility by ambulance.

Plaintiff opposes defendants' motion for summary judgment, and cross-moves for denial of defendants' motion, and for summary judgment in her favor on the issue of liability. Alternatively, she requests partial summary judgment deeming the condition to be inherently dangerous, deeming that defendants had notice of the condition, deeming that the dangerous condition was the proximate cause of plaintiff's injuries, and deeming that defendants had a duty of care to the public, to invited guests and to plaintiffs, and that they breached their duty.

In support of the cross-motion, plaintiffs submit a report by William Maletta, the

principal of William Maletta Safety Consultants (Exh. 1). He holds a doctorate in Occupational Safety and Health from New York University, and a Masters degree in Occupational Safety and Health from the same institution. He conducted an onsite inspection on October 18, 2014, but the table involved was not observed.

Dr. Maletta expresses his professional opinion that conditions are ripe for a trip and fall when the walking conditions are contrary to one's expectation. He asserts that the existence of a walking surface obstruction is a hazardous condition since it does not fall within the cone of vision of a person who is looking straight ahead. The normal cone of vision for the 99 percentile human has a horizontal sight line of 0° with a resting sight line of 15° below horizontal. Thus, a person traveling through the lobby may not have a low-lying table within their normal cone of vision.

He takes the further position that the placement of obstructions, particularly tables, which do not contrast with surroundings have been recognized as a potential trip hazard to guests. So too, is the failure to place anything on the table, such as a tall vase, flower pot or other visual cue, leads to the table being undetected. Other tables in the area were noted to be taller with vases and large planted displays. Also allegedly contributing to the happening of the event was a lack of contrasting colors between the table and the floor surface.

The witness further claims that the size of the table 48" x 48", coupled with its low height, and similar color to the floor contributed to the event.

Defendants submit an Affirmation in Opposition and in Reply. They there contend that the table in question was an open, obvious and not inherently dangerous condition. The point to the still frames from the video surveillance which indicate that plaintiff was not looking where she was walking, and tripped at a point when the bride was descending the staircase in her vicinity.

They point to ¶ 36 of the Affirmation in Support of the Motion to Dismiss in which they recited a litany of objects which Courts have ruled are open, obvious, readily observable and not inherently dangerous. These include items of furniture, tables, chair legs, sink vanities, portable clothing racks, parking lot dividers and concrete parking stops.

They assert that, contrary to the claims of plaintiffs, defendants owed no duty to her to protect her against the conditions presented, which were not inherently dangerous, and were readily observable by reasonable use of her senses.

In their Reply, plaintiffs respond to two specific points. First, they contend that

defendants' conclusory assertion that the facts present a clear situation of an open, obvious and not inherently dangerous condition is insufficient to raise a triable issue of fact in opposition to plaintiffs' cross-motion for summary judgment. They contend that the facts point to a trap-like and hazardous condition given the surrounding circumstances.

They also contend that the condition complained of was not open, obvious, or readily observable to plaintiff on the evening of the accident, and defendants owed her an obligation of duty of care.

DISCUSSION

"While a landowner must act as a reasonable person in maintaining his or her property in a reasoanably safe condition in view of all the circumstances (*see Basso v. Miller,* 40 N.Y.2d 233 [1976], there is 'no duty to protect or warn against an open and obvious condition which, as a matter of law, is not inherently dangerous.' " (*Capozi v. Huhne,* 14 A.D.3d 474 [2d Dept. 2005]). In *Capozi,* the Court determined that a decorative concrete slab incorporated into a gravel walkway was readily observable to those employing the reasonable use of their senses and did not present an undue risk of harm. Rather, the injury resulted from the course of conduct of plaintiff's coworker pursued while moving a heavy object.

In *Marchetti v. Modica,* 65 A.D.3d 1095 (2d Dept. 2009), the Court determined that defendants established their entitlement to judgment as a matter of law by demonstrating that the placement of furniture at the site of the subject accident was open and obvious, and was not inherently dangerous. In *Daniels v. Rite Aid Corp.,* 2010 WL 2236142 (Sup.Ct., Nass.Co. [Winslow, J.]), the trial court dismissed plaintiff's complaint in which asserted that as she was walking between two approximately waist-high discount display tables in the vicinity of the cashier, her left foot came into contact with the base of one of the tables, causing her to fall to the floor. Plaintiff testified that the base of the display table was neither obscured nor hidden in any sense.

The thrust of plaintiff's cross-motion is that the table, which was approximately knee-high, since it was plaintiff's knee which came in contact with it, is outside the line of sight of a typical person who is looking forward, and is therefore a hazardous condition. If this were sufficient to raise a factual question of fact, the myriad of cases cited by defendants in which individuals tripped and fell over curbs, parking lot dividers, tree stumps, concrete wheel stop or chair leg, would seemingly fall into the same category. Yet, as cited by defendants at ¶ 36 of their Affirmation in Support, they have been judicially determined not to constitute hazardous

conditions. While the object over which plaintiff fell was a table, it may well have been a seating bench, which is no less open and obvious to one's reasonable exercise of their senses.

Defendants' motion to dismiss the Complaint is granted. Plaintiffs' cross-motion for summary judgment, or, alternatively, that the landowner had an obligation to plaintiff, which was violated by the placement of a dangerous instrumentality, and that this was the proximate cause of plaintiff's injuries, is denied.

This constitutes the Decision and Order of the Court.

Dated: Mineola, New York
July 27, 2015

ENTER:

Jerome C. Murphy

JEROME C. MURPHY
J.S.C.

ENTERED

AUG 04 2015

NASSAU COUNTY
COUNTY CLERK'S OFFICE