

Lynch v Howard

2018 NY Slip Op 30314(U)

January 29, 2018

Supreme Court, Bronx County

Docket Number: 305927/13

Judge: Elizabeth A. Taylor

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FEB 08 2018

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 2
EUGENE LYNCH,

C

Index No. 305927/13

Plaintiff,

DECISION/ORDER

- against -

Present:
HON. ELIZABETH A. TAYLOR

WILLIAM HOWARD,

Defendant.

The following papers numbered 1 to ___ read on this motion, _____

No ___ On Calendar of _____	PAPERS NUMBERED
Notice of Motion-Order to Show Cause - Exhibits and Affidavits Annexed-----	1-2
Answering Affidavit and Exhibits-----	3-4
Replying Affidavit and Exhibits-----	5
Affidavit-----	_____
Pleadings -- Exhibit-----	_____
Stipulation -- Referee's Report --Minutes-----	_____
Filed papers-----	_____

Upon the foregoing papers and due deliberation thereof, the Decision/Order on this motion is as follows:

The branch of the motion pursuant to CPLR 3212, for an order granting summary judgment dismissing plaintiff's cause of action under GML § 205 - a, is granted.

Plaintiff, a New York City Firefighter, commenced this personal injury action to recover damages for injuries, allegedly sustained on January 2, 2013, when he slipped and fell on ice in the street in front of the premises located at 3021 Tiemann Avenue, Bronx, New York. Plaintiff alleges a cause of action for common law negligence and a cause of action based upon GML § 205 - a.

On January 2, 2013, plaintiff was responding to a fire at defendant's single-family dwelling. Plaintiff was tasked with reporting the firefighting operations at the fire scene. During the firefighting operations, plaintiff entered a fire truck to call in a "second alarm." As plaintiff was exiting the truck, he slipped and fell on a patch of ice that was in the street, between the curb and the fire truck. Plaintiff contends that defendant violated numerous provisions of the New York City Administration Code, the New York City Fire Code and the Housing Maintenance Code, by failing to keep his property in a reasonably safe condition. Specifically, plaintiff argues that the accumulation of debris in defendant's home caused the fire to reach a severity requiring plaintiff to call a "second alarm," which led to plaintiff's injuries.

Defendant moves for summary judgment arguing that: 1) even if defendant failed to keep his home in a reasonably safe condition, there is no direct or indirect connection between the alleged violations and plaintiff's injuries; 2) defendant had no duty to prevent a dangerous condition on the public thoroughfare; 3) the alleged dangerous condition was not the proximate cause of plaintiff's injuries; and 4) defendant did not create or have notice of water and ice on the public thoroughfare.

On a motion for summary judgment to dismiss a GML § 205 - a claim, the defendant bears the initial burden of showing "either that defendant did not negligently violate any relevant government provision or that, if it did, the violation did not directly or indirectly cause plaintiff's injuries" (*Giuffrida v Citibank Corp.*, 100 NY2d 72, 82). An indirect cause does not require the same degree of proximate cause as required in a common-law negligence action, rather, an indirect cause is established by demonstrating a "practical or reasonable connection" between the statutory or regulatory violation and the claimed injury (*Giuffrida*, 100 NY2d 72, 81 [2003]).

In the instant matter, defendant argues that even if he violated the New York City Administration Code, the New York City Fire Code and the Housing Maintenance Code, there was no "practical or reasonable connection" between the statutory or regulatory violation and the claimed injury. Movant submits the deposition transcripts of plaintiff and defendant.

Plaintiff testified that he was responding to a fire at the subject premises and that he was responsible for staying near the "chief" to communicate progress reports and directives to FDNY personnel. Plaintiff further testified that he did not enter defendant's home during the fire. Plaintiff described the premises as a "Collyer's Mansion" with "debris all over" and that firefighters were unable to enter the premises through the front door. Plaintiff further testified that at some point a "mayday" was given and he was instructed to call in a "second alarm" to "FDNY dispatch," so that more resources could be sent to the scene. Plaintiff testified that he entered a fire truck in front of the premises and, after calling in the "second alarm," he exited the truck stepping down into the roadway and slipped on ice in the street. It is noted that the Fire Marshall concluded that the fire likely originated in the boiler of the basement and was accidental.

Based upon the foregoing, movant met his initial burden to establish that the alleged accumulation of “debris” in defendant’s home, which resulted in the calling of a “second alarm” did not have a direct or indirect connection to plaintiff slipping on a patch of ice, in the street, and the resulting injuries (*see e.g. Heyer v City of New York*, 176 AD2d 550, 550 [1st Dept 1991] [Court held that to the extent that plaintiff contends that various code violations caused the building fire, which, in turn, caused him to be present in the location of the defective street, he fails to state a cause of action under General Municipal Law § 205 - a, as there was no reasonable connection between the violations alleged and plaintiff’s injury]; *see also Parkman v 149-151 Essex St. Assoc., LLC*, 122 AD3d 439, 440 [1st Dept 2014] [Court held that plaintiff’s injury resulting from falling over something while supervision other firefighters was not directly or indirectly connected to defendant’s violation of the New York City Fire Code, by operation of a charcoal grill within 10 feet of any combustible waste or material, where the operation of the grill occurred more than 12 hours prior to the fire that was started by another tenant]; *Menard v Highbridge House, Inc.*, 82 AD3d 532, 533 [1st Dept 2011] [Court held that the storage of combustible clothing on the exterior balcony of an apartment and which was alleged to have encouraged the spread of the fire, in violation of Administrative Code of City of NY §§ 27-127 and 27-128, did not directly or indirectly cause plaintiff’s injuries which resulted from being knocked down by a tenant fleeing the building]; *Marano v New York City Hous. Auth.*, 39 AD3d 238, 238 [1st Dept 2007] [Court held the connection between defective electrical wiring and petitioner’s injuries caused by falling from a fence, was too remote]).

As defendant met his initial burden, the burden shifts to plaintiff to raise an issue of fact. To make out a valid claim under General Municipal Law § 205 - a, a plaintiff must identify the statute or ordinance with which the defendant failed to comply, describe the manner in which the firefighter was injured, and set forth those facts from which it may be inferred that the defendant’s negligence directly or indirectly caused the harm to the firefighter (*Zvinys v Richfield Inv. Co.*, 25 AD3d 358, 359 [1st Dept 2006]).

In opposition to the motion, plaintiff submits the deposition transcript of Fire Marshall Peter Fredriksen; and 2) the affidavit of Eugene J. West. Plaintiff alleges defendant violated Administrative Code of City of N.Y. §§ 27–127 and 27–128 (since

