Vanallen v Michael Kors Stores LLC
2018 NY Slip Op 31998(U)
August 13, 2018
Supreme Court, New York County
Docket Number: 159166/2015
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED **PART** IAS MOTION 2

Justice

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INDEX NO. 159166/2015

LAWRENCE VANALLEN and MARY VANALLEN,

Plaintiffs,

MOTION SEQ. NO. 001

- v -

MICHAEL KORS STORES LLC, and RCPI LANDMARK PROPERTIES LLC,

DECISION AND ORDER

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30

were read on this motion to/for SUMMARY JUDGMENT

Upon the foregoing documents, it is ordered that the motion is **granted**.

In this slip and fall action commenced by plaintiffs Lawrence Vanallen ("Mr. Vanallen") and Mary Vanallen ("Mrs. Vanallen"), defendant Michael Kors Stores LLC ("Michael Kors") moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint and all crossclaims. After oral argument, and after a review of the parties' papers and the relevant statutes and case law, the motion, which is unopposed, is **granted**.

FACTUAL BACKGROUND:

On June 28, 2015, Mr. Vanallen allegedly slipped and fell on a sidewalk in front of 610 Fifth Avenue ("the premises") in Manhattan. Plaintiffs thereafter commenced this suit against defendants RCPI Landmark Properties LLC ("RCPI"), the lessor of the premises, and Michael Kors, the lessee of the premises, alleging that Mr. Vanallen's injuries resulted from defendants'

negligence in their maintenance and supervision of the sidewalk. (Docs. 17 at 6–13, 20 at 2–6.) The complaint also alleged a derivative cause of action on behalf of Mrs. Vanallen for loss of consortium. (Docs. 17 at 13–14, 20 at 6.)

In its answer, RCPI asserted the following five crossclaims against Michael Kors: (1) that plaintiffs' injuries arose out of Michael Kors's negligence; (2) that, pursuant to the lease agreement between the two entities, Michael Kors is required to hold harmless and indemnify RCPI for any recovery obtained by plaintiffs in this matter; (3) that Michael Kors violated its obligation under the lease agreement to obtain insurance that would cover plaintiffs' claims; (4) that Michael Kors breached the lease agreement by negligently maintaining and supervising the premises; and (5) that RCPI is entitled to common law indemnification from Michael Kors. (Doc. 19 at 7–11.)

Michael Kors now moves, pursuant to CPLR 3212, for summary judgment dismissing plaintiffs' complaint and RCPI's crossclaims. In support of the motion, Michael Kors submits the lease agreement executed between it and RCPI. (Doc. 25.) In addition to Mr. Vanallen's deposition transcript, Michael Kors also proffers the deposition transcripts of Police Officer Raymond Atischand ("Atischand"), who responded to the scene of the accident, and Michelle Tilyou ("Tilyou"), the vice president of store design and construction for Michael Kors. (Docs. 21, 23, 24.) Both Mr. Vanallen and Officer Atischand testified that it was raining at the time of the incident. (Docs. 21, 24.) Last, Michael Kors submits an affidavit by Julie Swartwood ("Swartwood"), the director of store maintenance for Michael Kors. (Doc. 26.) The motion is unopposed.

POSITIONS OF THE PARTIES:

Michael Kors first argues that it cannot be held liable for plaintiffs' claims under § 7-210 of the Administrative Code of the City of New York because that statute places liability only on the owners, and not lessees, of real property abutting a sidewalk. Second, Michael Kors argues that it was not responsible for the maintenance and supervision of the sidewalk pursuant to its lease agreement with RCPI. (Doc. 16 at 8–9.) Third, Michael Kors maintains that, even if it owed a duty toward Mr. Vanallen, liability cannot attach since a wet sidewalk does not constitute a dangerous or defective condition. (*Id.* at 10–11.)

LEGAL CONCLUSIONS:

A party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law on the undisputed facts. (*See Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985].) In so doing, the movant must produce sufficient evidence to eliminate any issues of material fact. (*Id.*)

A threshold question in tort cases is whether the defendant owed a duty of care toward the injured party. (*See Espinal v Melville Snow Contrs., Inc.*, 98 NY2d 136, 138 [2002].) Under § 7-210(b) of the Administrative Code of the City of New York, "the owner of real property abutting any sidewalk . . . shall be liable for any injury to property or personal injury, including death, proximately caused by the failure of such owner to maintain such sidewalk in a reasonably safe condition." Therefore, § 7-210(b) places the duty of care on the real property owner, not on the tenant of such property. Nevertheless, a "tenant may be held liable to the owner for damages resulting from a violation of . . . [a] lease, which imposed on the tenant the obligation to repair or

replace the sidewalk in front of [the property]." (*Wahl v JCNYC, LLC*, 133 AD3d 552, 552 [1st Dept 2015] (quotations omitted).)

Michael Kors has established its prima facie entitlement to judgment as a matter of law on the undisputed facts, which warrant a determination that it is not liable for Mr. Vanallen's injuries because § 7-210(b) places the duty of care on RCPI, the owner of the premises, and not on the lessee. (*See O'Brien v Prestige Bay Plaza Dev. Corp.*, 103 AD3d 428, 429 [1st Dept 2013] (tenant has no statutory obligation to maintain a public sidewalk under § 7-210).)

Further, Michael Kors did not assume the burden of maintaining, repairing, or supervising the sidewalk pursuant to the lease it had with RCPI. The lease merely obligates Michael Kors to repair "all doors, windows, plate glass, all plumbing and sewage facilities within and exclusively serving the Premises, fixtures, interior walls, floors, ceilings, signs, and all wiring, electrical systems, HVAC systems and equipment, and similar equipment exclusively serving the Premises . . . ." (Doc. 25 at 27–28.) Notably, there is no mention of any duty to repair or maintain the abutting sidewalk. (*Id.*) This conclusion is supported by the deposition testimony of Tilyou and the affidavit of Swartwood, who are employees of Michael Kors. Tilyou testified that she did not have any knowledge of Michael Kors's responsibilities for maintenance of the entranceway (Doc. 23 at 18), and Swartwood represented that RCPI is responsible for repairing the sidewalk (Doc. 26). (*See O'Brien*, 103 AD3d at 429 (no liability where the lease did not obligate tenant to make repairs).)

Even assuming, *arguendo*, that the lease put the burden on Michael Kors to maintain the sidewalk abutting the premises, it would only be liable to RCPI, and not to Mr. and Mrs. Vanallen, for damages. (*See Wahl*, 133 AD3d at 552 (lease provisions make tenants liable to property owners, not to plaintiffs); *Collado v Cruz*, 81 AD3d 542, 542 [1st Dept 2011] (same).)

Finally, even if Michael Kors owed a duty of care to Mr. Vanallen, it cannot be liable because, as Mr. Vanallen and Police Officer Atischand testified, it was raining when the accident occurred.[1] (Docs. 21 at 16–17, 24 at 24.) Specifically, Officer Atischand attested that it was "raining heavy" when he found Mr. Vanallen lying on the sidewalk. (Doc. 24 at 24.) Therefore, this Court finds that, under the circumstances, Michael Kors did not breach the duty of care. (*See McGuire v 3901 Independence Owners, Inc.*, 74 AD3d 434, 435 [1st Dept 2010] ("[A]s a matter of law, mere wetness on walking surfaces due to rain does not constitute a dangerous condition.").)

In accordance with the foregoing, it is hereby:

ORDERED that the motion by defendant Michael Kors Stores LLC for summary judgment dismissing all claims and crossclaims against it is granted and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendant; and it is further

[1] § 19-152(a) of the Administrative Code of the City of New York obligates property owners to remedy substantial defects on abutting sidewalks. Mr. Vanallen claims that the sidewalk in front of the premises was wet due to the rain, but he does not allege any specific defect on the sidewalk. This Court declines to infer any specific defect in the sidewalk where the pleadings have failed to identify one. (*See Vazquez v Takara Condominium*, 145 AD3d 627, 628 [1st Dept 2016] (dismissing action where plaintiffs failed to identify the cause of injury).)

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (access*ible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh)].

8/13/2018
DATE

KATHRYN E. FREED, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
	X	GRANTED		DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE

159166/2015 VANALLEN, LAWRENCE vs. MICHAEL KORS STORES LLC
Motion No. 001