

Wright v Greyston Health Servs., Inc.

2019 NY Slip Op 34903(U)

January 23, 2019

Supreme Court, Bronx County

Docket Number: Index No. 23657/2015E

Judge: Lizbeth González

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 10

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Shaquanna Wright,

Plaintiff,

DECISION and ORDER
Index No. 23657/2015E

- against -

Greyston Health Services, Inc. 23 Park Avenue LP and
Prestige Management, Inc.,

Defendants.
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Plaintiff Wright alleges that on 10/13/13 she sustained serious injury when a ceiling fan fell in her bedroom in her apartment known as Issan House, located at 23 Park Avenue in ("23 Park") in Westchester County. Defendant Greyston Services, Inc. ("Greyston"), the owner of the subject premises, seeks leave to file its proposed answer and for summary judgment on the issue of liability. Plaintiff opposes the motion for summary judgment. Since plaintiff neither moved for a default judgment against defendant Greyston nor opposes its leave to file a late answer, defendant's proposed answer, annexed to its motion, is deemed filed and served.

DISCUSSION

In accordance with CPLR 3212, summary judgment is warranted if the movant shows through the submission of admissible evidence that the opposing party has no defense to the cause of action or that the cause of action or defense has no merit (CPLR 3212[b]).

As the movant for summary judgment, defendant Greyston must demonstrate that it neither created nor had actual or constructive notice of the condition which precipitated plaintiff's claimed injury. In order to constitute constructive notice, a defect must be visible and exist for a sufficient length of time prior to the accident to permit the owner, or its employees, to discover and remedy it (*Zuk v Great Atlantic & Pacific Tea Co., Inc.*, 21 AD3d 275 [1st Dept 2005]).

In support of its motion, defendant Greyston proffers the requisite pleadings, its proposed answer, 23 Park Avenue's property registration, the deposition transcript and affidavit of Arthur Davis, the deposition transcripts of plaintiff Wright and Luis Guzman, plaintiff's patient care report and an incident report. The defendant also submits a hand-written document consisting of measurements of plaintiff's bedframe and ceiling fan in her unit (#306) and her height that were provided by Julian in the maintenance department.

Luis Guzman was employed by Greyston as a security guard for 3 years and worked at the subject premises. Mr. Guzman testified that in October 2013, he looked at the security camera and observed plaintiff coming toward him with a ceiling fan in her hand. Mr. Guzman stated that there appeared to be no damage to the fan or its attached blades but the wires were hanging. Mr. Guzman said he would write a report although the plaintiff did not appear to be injured and Mr. Guzman observed no blood or bruises. Ms. Wright told Mr. Guzman that the fan fell on her and she could not lift her shoulder; she requested that he call an ambulance. Mr. Guzman maintains that plaintiff never made any complaints to him prior to the alleged accident.

At deposition, Arthur Davis, a case manager employed by Greyston for 14 years, testified that Prestige Management Inc. was the property management company at Issan House on the date of the accident. Mr. Davis attests that he inspected Room 306 prior to Ms. Wright's move-in date. He ensured that everything was in working condition, including the ceiling fan which operated by dial and not by a switch. The fan was working properly and no problems were detected. The plaintiff never complained about the fan to him or to any other staff prior to the accident.

A few days after plaintiff's alleged accident, Erika D'Aquino, Jennifer Rhoad and Mr. Davis went to plaintiff's apartment to ascertain what happened. He observed wires protruding from the part of the fan that was still hanging. The fan did not look as though it had fallen - it looked like it was pulled because it was "not exactly straight." Ms. Wright informed Erika that the ceiling fan started to fall and she stood up and caught it. Mr. Davis described plaintiff as 6 feet tall and weighing over 500 pounds. When Erika asked plaintiff to demonstrate, her boyfriend, Hugh, interjected and said "No, she can't move."

Mr. Davis testified that when he saw plaintiff a week after the alleged accident, she showed no visible signs of injury since she ran down the hallway and attacked a tenant

with whom she had a verbal altercation.

Plaintiff Shaquanna Wright testified that when she moved into the apartment on 8/12/13, she had problems with the ceiling fan. She complained to Arthur that the fan was "wobbly" and "shaky." Although two maintenance workers came to inspect the fan, observed that it was wobbly and said they would return, they never returned. Plaintiff complained again in September. Maintenance instructed her to leave the fan off and it would be fixed. The fan was operated by a string and was never repaired or replaced. Ms. Wright stated that Arthur told her that the ceiling fan fell because the prior tenant had damaged the apartment.

Plaintiff testified that on the date of the accident, she got up to go to the bathroom. The dresser was next to the bed and she held onto its side to pull herself up. As she was sliding off the bed, the ceiling fan fell. When asked what part of the ceiling fan fell, plaintiff replied, "Believe it or not I just heard it." She placed her hands on top of her head to protect herself and the fan hit her between her shoulders and directly on her neck. Reflexively, her right arm went back and she grabbed and threw the fan forward and it landed on the floor. She became angry and carried the fan downstairs to the security desk. Plaintiff informed security guard Lou what occurred. He inquired about the fan's screws which were missing. Ms. Wright testified that when she was unable to turn her neck, she asked the security guard to call an ambulance. Plaintiff was taken to St. Joseph's Medical Center where x-rays were taken of her neck and right shoulder.

Plaintiff's patient care report from Emergacare NY states:

Cause of injury: ceiling fan fell on patient while trying to turn it on.

Plaintiff's incident report by Luis Guzman states:

Ms. Wright came down with a ceiling fan. She told me it fell on her neck and left shoulder. She showed me a scratch. So she asked me to call the ambulance because she couldn't lift her shoulder up.

Case Manager Jennifer Rhoad's report states:

Ms. Wright was asked if the fan was on when it fell on her and she replied, "No it was off and once it fell on me I carried it down to Security."

Erika D'Aquino's report states:

On 10/16/13, Issan staff conducted apartment inspections, starting with unit 306, plaintiff's unit. Present were: Case manager, Arthur Davis, Director of Housing support services, Erika D'Aquino, VP of Real Estate, Shelley Weintraub and Julian, maintenance worker. Staff was let into the unit by Hugh, Ms. Wright's boyfriend. Ms. Wright was asked how she felt and her reply was that her right shoulder was hurting and she was unable to move it. Staff observed the ceiling fan pole still connected to the ceiling. Staff asked Ms. Wright how the ceiling fan fell and Hugh responded "I was sitting on the bed in front of the TV near the window, the boy (Shaquanna's son) was sleeping behind me, with his head near wall and Shaquanna was to the right of me sitting up. She stood up on the bed platform and held onto the dresser on her left side as she was stepping down from bed platform to floor and as she was stepping down the ceiling fan fell on her right shoulder. Staff asked Shaquanna if the fan was on, Hugh said no. Hugh said there was a problem with the ceiling fan balance and he knew this because he installs ceiling fans for a living. When staff asked Ms. Wright to show them what happened, Hugh said no, she was in too much pain and stood up on the bed frame and re-enacted the incident.

Note from maintenance: the ceiling fan was brought down with the light bulb and pin that attaches the smaller pole to the fixed pole in tact and wires were hanging out of the top of the pole.

In opposition, plaintiff Wright proffers a certified medical record from Saint Joseph's Medical Center and an affidavit of non-party, Hugh Boyd.

Mr. Boyd, plaintiff's boyfriend, attests that plaintiff complained to Arthur Davis that the ceiling fan was "loose" and "wobbly." Mr. Davis told them to keep the fan turned off and a maintenance worker would check it, but maintenance never came to the unit. One week before the incident, Mr. Boyd spoke with Julian and asked him to check the "loose, wobbly fan." Julian came to the unit, observed that it was "loose" and "wobbly" and told them it would need to be repaired, but no one from maintenance returned to repair it. On the day of the alleged accident, Mr. Boyd asserts that Ms. Wright was stepping off the bed platform when the ceiling fan suddenly fell on her neck and right shoulder. Mr. Boyd maintains that plaintiff never touched the fan prior to it

falling. The proffered medical record states that plaintiff was triaged for pain in her neck and right shoulder.

CONCLUSION

After a review of the evidence, the court finds that because there are numerous inconsistencies as to how plaintiff's accident occurred, the jury is in the best position to evaluate the credibility of the witnesses (*James v Farhood*, 96 AD3d 503 [1st Dept 2012]). Defendant Greyston's motion for summary judgment is accordingly denied.

Service of a copy of this Decision and Order with Notice of Entry shall be effected within 30 days.

Dated: January 23, 2019

So ordered



Hon. Lizbeth González, J.S.C.