Catalfano v Michaelangelo Hotel
2020 NY Slip Op 32220(U)
June 18, 2020
Supreme Court, New York County
Docket Number: 160059/15
Judge: Nancy M. Bannon

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 42
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ANTHONY CATALFANO and STEVEN KAPFHAMMER

Plaintiffs

Index No. 160059/15

v

DECISION AND ORDER

THE MICHAELANGELO HOTEL (NEW YORK) and
STARHOTELS INTERNATIONAL CORPORATION

MOT SEQ 001

Defendants.
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NANCY M. BANNON, J.:

I. INTRODUCTION

In this action to recover damages for negligence and a violation of the notice requirements of General Business Law §200 arising out of an alleged theft of jewelry from the defendants' Manhattan hotel, the defendants move pursuant to CPLR 3212 for summary judgment dismissing the complaint. The defendants argue that the plaintiffs failed to demonstrate that the loss occurred at the hotel and that, in any event, the hotel complied with the statute by providing notice of a hotel safe or safe deposit box for the safeguarding of guests' valuables so as to limit their liability to $1,500. The plaintiffs oppose the motion.

II. BACKGROUND

The plaintiffs, Massachusetts residents who had previously stayed at the defendant hotel, allege that two sets of custom

cufflinks belonging to them were stolen from their room during their stay from December 11-14, 2014. Accordingly to the plaintiffs, they kept the cufflinks, which they valued at approximately $80,000, in boxes inside the safe in their hotel room for the duration of their stay, except while they were being worn, and opened and locked the room safe with a code. The plaintiffs maintain that no one at the hotel informed them of the existence of any hotel office safe or safe deposit box that they could have used to store their jewelry as required by General Business Law §200.

The plaintiffs assert that, on December 13, 2014, while the cufflinks were in their room safe, they were away from their hotel room for a time and had left the "Do Not Disturb" sign hanging from the door. Upon returning to the room they found a hotel employee "fidgeting around" outside the room and discovered that the room had been entered and cleaned while they were away. They did not check the room safe.

According to plaintiff Catalfano, on December 14, 2014, prior to checking out of the hotel, he opened the room safe and packed the jewelry boxes into a Gucci bag that the plaintiffs use for storing their jewelry while traveling. At that time, he did not check inside the boxes to see whether the subject cufflinks were there. Catalfano testified that, upon arriving back home in Boston, he opened the Gucci bag and gave the boxes therein to plaintiff Steven Kapfhammer to be placed in the plaintiffs' home

safe. Kapfhammer testified that he did not recall if the boxes containing the subject cufflinks was among the items he placed into the safe. Two days later, on December 16, 2014, Kapfhammer accessed the home safe intending to wear a set of the cufflinks and discovered that the boxes containing the cufflinks were missing. The plaintiff's notified the defendant hotel, which conducted an investigation, but the cufflinks were never recovered.

The complaint, filed in October 2015, does not denominate separate theories of liability but generally alleges a theory of negligence based on the defendants' violation of General Business Law §200, and also appears to allege that the loss was the result of a theft by a member of the hotel's housekeeping staff.

The defendants argue that the plaintiffs failed to demonstrate in the first instance that the loss occurred at the hotel or that the defendants were negligent in any manner, and that the complaint should be dismissed in its entirety. In the alternative, the defendants seek summary judgment upon their affirmative defense of General Business Law § 200, so as to limit any potential liability to $1,500.

The defendants allege that they posted statutory notice on a guest registration card, in a guest directory in each room, and inside the closet of each room, and argue that they thus satisfied the statute. They submit a copy of the hotel registration card signed by plaintiff Catalfano which contains a

disclaimer, in small print, just above the signature line, which reads in part that the hotel "assumes no responsibility for loss of money, jewels or other valuables, unless placed in our safe deposit boxes located at the reception desk" and "the hotel's liability is limited to general business law." The defendants do not submit similar proof to support their claim that the same notice is posted in each room, in the closet and guest directory. Nor do the defendants submit any affidavit of someone with personal knowledge.

In reply, the plaintiffs argue that these notices were inadequate, because they were not in a "public" or "conspicuous" place as required by the statute and did not set forth the precise statutory limit of liability.

III. DISCUSSION

A. Summary Judgment

The proponent of a motion for summary judgment pursuant to CPLR 3212 must establish its entitlement to such relief as a matter of law (see Zuckerman v City of New York, 49 NY2d 557 [1980]) by submitting proof in admissible form demonstrating the absence of triable issues of fact. See Winegrad v New York Univ. Med. Ctr., 64 NY2d 851 (1985). If the movants fail to meet this burden and establish their claim or defense sufficiently to warrant a court's directing judgment in their favor as a matter of law (see Alvarez v Prospect Hosp., 68 NY2d 320 [1986];

Zuckerman v City of New York, supra; O'Halloran v City of New York, 78 AD3d 536 [1st Dept. 2010]), the motion must be denied regardless of the sufficiency of the opposing papers. See Winegrad v New York Univ. Med. Ctr., supra; O'Halloran v City of New York, supra. Should the movants meet their burden, it then becomes incumbent upon the party opposing the motion to come forward with proof in admissible form to raise a triable issue of fact. See Alvarez v Prospect Hosp., supra.

It is also well settled that "[t]he drastic remedy of summary judgment, which deprives a party of his [or her] day in court, should not be granted where there is any doubt as to the existence of triable issues or the issue is even 'arguable.'" De Paris v Women's Natl. Republican Club, Inc., 148 AD3d 401, 403-404 (1st Dept. 2017); see Bronx-Lebanon Hosp. Ctr. v Mount Eden Ctr., 161 AD2d 480 (1st Dept. 1990). Thus, a moving defendant does not meet its burden of affirmatively establishing its entitlement to judgment as a matter of law by merely pointing to gaps in the plaintiff's case. It must affirmatively demonstrate the merit of its claim or defense. See Koulermos v A.O. Smith Water Prods., 137 AD3d 575 (1st Dept. 2016); Katz v United Synagogue of Conservative Judaism, 135 AD3d 458 (1st Dept. 2016). "In determining whether summary judgment is appropriate, the motion court should draw all reasonable inferences in favor of the nonmoving party and should not pass on issues of

credibility." Garcia v J.C. Duggan, Inc., 180 AD2d 579, 580 (1st Dept. 1992).

B. General Business Law § 200

General Business Law § 200, entitled "Safes; Limited Liability"[1], limits the liability of a "hotel, motel, inn or steamboat" for any property loss to a maximum of $1,500.00, provided the hotel provides a safe or safe deposit box in the office of the hotel or "other convenient place" for guests to keep valuables during their stay, and provides "public and

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[1] The statute provides that:

"[w]henever the proprietor or manager of any hotel ....shall provide a safe or safe deposit boxes in the office of such hotel ... or other convenient place for the safe keeping of any money, jewels, ornaments, bank notes, bonds, negotiable securities or precious stones, belonging to the guests of or travelers in such hotel ..., and shall notify the guests or travelers thereof by posting a notice stating the fact that such safe or safe deposit boxes are provided, in which such property may be deposited, in a public and conspicuous place and manner in the office and public rooms, and in the public parlors of such hotel ... ; and if such guest or traveler shall neglect to deliver such property, to the person in charge or such office for deposit in such safe or safe deposit boxes, the proprietor or manager of such hotel ... shall not be liable for any loss of such property, sustained by such guest or traveler by theft or otherwise; but no hotel ... proprietor, manager or lessee shall be obliged to receive property on deposit for safe keeping, exceeding one thousand five hundred dollars in value; and if such guest or traveler shall deliver such property, to the person in charge of such office for deposit in such safe or safe deposit boxes, said proprietor, manager or lessee shall not be liable for any loss thereof, sustained by such guest or traveler by theft or otherwise, in any sum exceeding the sum of one thousand five hundred dollars..."

conspicuous" notice of the availability of such safe, safe deposit box or other convenient place.

It has long been the law that an innkeeper, as landowner, has a duty to exercise reasonable care to protect guests or tenants, while they are on the premises, against injury caused by third persons, and is required to take reasonable measures, including providing adequate security, to protect guests or tenants against third-party criminal acts. See Pantages v L.G. Airport Hotel Associates, Inc., 187 AD2d 273 (1st Dept. 1992); Davidson v Madison Corp., 231 AD 421 (1st Dept. 1931). Enacted in 1909, General Business Law §200 was intended to circumscribe an innkeeper's absolute liability at common law for the loss or theft of a guest's valuables while on the innkeeper's premises." Moog v Hilton Hotels Corp., 882 F Supp 1392, 1396 (SDNY 1995) (citations omitted). Since General Business Law § 200 "was enacted in derogation of the common law rule of absolute liability for innkeepers, it must be strictly construed . . . The protection against liability that it affords will not be granted unless all of its provisions, including the requirement of conspicuous posting of notice, are complied with." Moog v Hilton Hotels Corp., supra at 1397(citations omitted); see Goncalves v Regent Intern. Hotels, Ltd., 58 NY2d 206, 215 (1983); Davidson v Madison Corp., 231 App Div 421 (1st Dept. 1931) aff'd 257 N.Y. 120 (1931); Latini v Loews Corp., 657 F Supp 475 (SDNY 1987).

The Court of Appeals has explained that "[s]ection 200 is an affirmative defense (see Zaldin v Concord Hotel, [48 NY2d 107, 113-114; Faucett v Nichols, 64 NY2d 377, 380) and so the burden of proof lies on the defendant (see Faucett v Nichols, supra). Furthermore, whether a "safe" was provided is a question of fact [citation omitted]." Goncalves v Regent Intl. Hotels, Ltd., 58 NY2d 206,217 1983). However, this 'does not mean that the issue must always be submitted to the jury. As with any factual issue, a judge will make a determination on the evidence as a matter of law if there is no real controversy as to the facts (citations omitted)." Id, at 218.

C. The Defendants' Motion

The defendants are correct in arguing that it is the plaintiff's burden of proof in the first instance to establish that the alleged theft or loss occurred at the defendant's hotel. The plaintiffs also must establish negligence on the part of the defendants or some other theory of liability. However, that is the plaintiff's burden of proof at trial. This is a motion for summary judgment by the defendant on their affirmative defense based on General Business Law §200, which merely limits the defendants' liability should the plaintiffs meet their burden at trial. On that issue, the defendant's have the burden of proof. The defendants have not, on the papers submitted, met their burden of demonstrating, *prima facie*, that they met the statutory

posting requirements of General Business Law § 200, so as to entitle them to its corresponding limitation of liability..

First, "[a] motion for summary judgment must be supported by an affidavit from a person having knowledge of the facts." LaRusso v Katz, 30 AD3d 240, 243 (1st Dept. 2006); see CPLR 3212. As noted above, the defendant fails to submit any affidavit of someone with personal knowledge. Nor can it rely upon the verified answer, as that pleading provides insufficient facts to support summary dismissal of the complaint. Merely pointing to the gaps in the plaintiffs' case does not warrant summary judgment. See Koulermos v A.O. Smith Water Prods.,supra.

Even assuming the defendants had met their burden in the first instance, the plaintiffs, who each submitted affidavits and their own deposition transcripts, have raised triable issues.

While there is no dispute that the plaintiffs were aware of and did use the hotel room safe, the parties' submissions present a factual dispute as to whether the hotel informed them of the availability of an office safe or a safe deposit box, which presumably would be more secure. The defendants allege that they posted statutory notice of the hotel safe deposit box on the guest registration card, in a guest directory in each room, and inside the closet of each room. This presents a factual issue as to whether this notice was in a public and conspicuous place. The defendants make a colorable argument that the notice satisfied

the statute since it was in several locations, all of which are essentially public, even if not all conspicuous. Further, they correctly observe that since the plaintiffs were frequent guests at the hotel, it would be difficult to convincingly argue that they were unaware that the hotel's amenities included a hotel safe or safe deposit box. The plaintiff's, however, each denied knowledge of the hotel safe or safe deposit box. This presents an issue of credibility for a jury.

Also to be considered is the fact that the statute, as evidenced by its language, was first enacted more than 100 years ago and well before the advent of room safes. Indeed, the predecessor statute was enacted in 1855 (see Goncalves v Regent Intern. Hotels, Ltd., supra at 215), before the invention of the telephone. Thus, it could also be reasonably argued that the advent of individual room safes, at least to some degree, obviated the need for one central hotel safe. Indeed, the statute expressly states that the hotel shall provide "a safe or safe deposit box in the office" "*or other convenient place*" and notify its guests of such safes by posting a notice. The hotel guest rooms may reasonably be considered such a "convenient place."

In any event, in addition to the factual issue of the adequacy of the posted notice of the hotel safe deposit box at the reception desk, the parties also dispute whether the hotel gave any verbal notice to the plaintiffs of the same so as to put the plaintiffs on actual notice of the safe and the statutory

limitation of liability. See Williams v Margolis, 98 NYS2d 25 (App Term, 1st Dept. 1950). Furthermore, as stated above, there are triable issues as to whether the loss of the cufflinks occurred at the hotel or after the plaintiffs left the hotel and, if at the hotel, whether the loss was the result of any negligence on the part of the defendants. Should the plaintiffs meet their burden of proof at trial, the defendants' liability may be limited to $1,500.00 if they then meet their own burden of establishing their affirmative defense of General Business Law §200.

IV. CONCLUSION

Accordingly, it is

ORDERED that the defendants' motion for summary judgment is denied, and it is further

ORDERED that the parties shall contact chambers on or before September 30, 2020, to schedule a settlement conference.

This constitutes the Decision and Order of the court.

Dated: June 18, 2020 ENTER:

NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON