

Harris v Brooklyn Hosp. Ctr.

2020 NY Slip Op 35432(U)

December 15, 2020

Supreme Court, Kings County

Docket Number: Index No. 514791/2018

Judge: Reginald A. Boddie

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KINGS COUNTY CLERK
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At an I.A.S. Part 95 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 15th day of December 2020.

PRESENT:
Honorable Reginald A. Boddie
Justice, Supreme Court

-----X
JORDAN MATHEW HARRIS,

Plaintiff,

Index No. 514791/2018
Cal. No. 17 MS 1

-against-

DECISION AND ORDER

THE BROOKLYN HOSPITAL CENTER,

Defendant.
-----X

Recitation, as required by CPLR 2219 (a), of the papers considered in the review of this motion:

<u>Papers</u>	<u>Numbered</u>
MS 1	Docs. # 10-21

Upon the foregoing cited papers, defendant's motion for summary judgment, pursuant to CPLR 3212, is decided as follows:

Plaintiff commenced this action against defendant to recover for personal injuries allegedly sustained on April 26, 2017, at approximately 10:15 am, as a result of an assault and battery on the premises of the Brooklyn Hospital Center Women's Health Clinic (BHC), located at 121 DeKalb Street, Brooklyn, New York. BHC operated and controlled the subject premises.

Plaintiff alleged he arrived with his girlfriend, Kiara Ford, at BHC at approximately 9:00 AM for an ultrasound appointment for Ms. Ford. Approximately fifteen minutes after arrival, BHC personnel called plaintiff and Ms. Ford into the exam room and asked Ms. Ford to give a urine sample. Ms. Ford went to the bathroom and upon her return to the exam room, informed

Mr. Harris that “. . . a lady was verbally assaulting [her] for walking . . . into the bathroom without her knowing that somebody was in there.”

Plaintiff alleged that he and Ms. Ford went back into the waiting area to wait for the doctor when he observed a non-party patient (Ms. Williams) “pointing [at Ms. Ford] . . . on the phone talking to somebody about [her].” Plaintiff further alleged that he approached Ms. Williams and tried “to diffuse the situation by just telling her it’s not that serious” and Ms. Ford did not intend to intrude. The exchange erupted into shouting with Ms. Williams cursing plaintiff. The receptionist called security.

BHC’s security personnel arrived, including Ms. Eve Moulden, BHC’s Ambulatory Care Manager and Security Officer Elvin Cruz. Officer Cruz questioned plaintiff and separated him and Ms. Ford from Ms. Williams by placing them in a room next to the waiting room. Ms. Moulden also allegedly instructed the staff to escort Ms. Williams from the premises at the conclusion of her appointment so she would not pass by plaintiff and Ms. Ford again.

Plaintiff alleged he informed the officer on at least three occasions that Ms. Williams threatened “she was going to have somebody come up there and assault [him] . . . [so] that they will have someone on the lookout.” Officer Cruz allegedly reassured plaintiff that “nothing was going to happen” and left that room “a couple of minutes” following the verbal altercation. Plaintiff alleged he felt “the situation was contained because [he] told the security guard a couple of times.”

Approximately forty minutes after the verbal altercation, and fifteen minutes after Officer Cruz separated them from Ms. Williams, Ms. Williams entered their room and asked to speak with plaintiff. Plaintiff and Ms. Ford followed Ms. Williams out the room, past the waiting room and into the main lobby. Plaintiff alleged that he believed Ms. Williams wanted to apologize.

Upon entering the lobby, plaintiff observed a light-skinned male with a goatee who swung at him and hit his head several times causing personal injuries.

Defendant moved for summary judgment, pursuant to CPLR 3212, to dismiss the complaint on the grounds that plaintiff cannot establish that BHC failed to exercise reasonable care or that any action or inaction on the part of BHC was the proximate cause of the plaintiff's injury. Plaintiff opposed.

Summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue (*see Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). A party moving for summary judgment must make a prima facie showing of entitlement as a matter of law sufficient to demonstrate the absence of any material issues of fact, but once a prima facie showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish material issues of fact which require trial of the action (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Zuckerman*, 49 NY2d at 562).

"To prevail on a cause of action alleging negligence, a plaintiff must establish the existence of a legal duty, a breach of that duty, proximate causation, and damages" (*Pasquaretto v Long Is. Univ.*, 106 AD3d 794, 795 [2d Dept 2013]). "A hospital, like any other property owner, has a duty to protect persons lawfully present on its premises, including patients and visitors, from the reasonably foreseeable criminal or tortious acts of third persons" (*Royston v Long Is. Med. Ctr., Inc.*, 81 AD3d 806, 807 [2d Dept 2011]; citing *Sandra M. v St. Luke's Roosevelt Hosp. Ctr.*, 33 AD3d 875, 878 [2d Dept 2006]). [T]he scope of [that] duty 'is defined by past experience and the likelihood of conduct on the part of third persons . . . which is likely to endanger the safety of the visitor' " (*Pink v Rome Youth Hockey Ass'n, Inc.*, 28 NY3d 994,

998 [2016], quoting *Nallan v Helmsley-Spear, Inc.*, 50 NY2d 507, 519 [1980] [citation omitted]), and “is limited to risks of harm that are reasonably foreseeable” (*Sanchez v State of New York*, 99 NY2d 247, 253 [2002])[citation omitted]). Thus, to prevail on summary judgment, a hospital as defendant, must demonstrate that the alleged assailant’s conduct was not foreseeable to them and that the conduct of a third person was not likely to endanger the visitor’s safety (*see Pink*, 28 NY3d at 998; *see also Williams v Bayley Seton Hosp.*, 112 AD3d 917, 918 [2d Dept 2013]).

Here, defendant argued that it satisfied its duty and met its prima facie burden by proffering Officer Cruz’s testimony in which he averred he followed hospital protocol by placing the offending parties in separate rooms following the verbal altercation. Defendant further argued that the alleged assailant’s conduct was not foreseeable to them by proffering plaintiff’s testimony in which he averred that he was willing to apologize to Ms. Williams and that he did not tell the security guard that he was scared. Therefore, defendant met its prima facie burden (*see Williams*, 112 AD3d 917 at 918).

In opposition, plaintiff argued BCH was on notice that Ms. Williams had threatened to summon the assailant to the hospital, the situation was ongoing, and BCH had a continuing duty to protect plaintiff. Plaintiff averred, “[I] told the security guard that the lady said that she was going to have somebody come up there. I just made sure that I told him a few times so he knew that I felt like something was going to happen.” Even assuming plaintiff raised a triable issue of fact as to whether the assailant’s conduct was foreseeable and likely to endanger his safety (*Pink*, 28 NY3d at 998), plaintiff has failed to raise a triable issue of fact as to whether his intervening actions broke the causal nexus between defendant’s negligence and his injuries.

“It is well established that while a party remains liable for all normal and foreseeable consequences of his or her acts, an intervening act will constitute a superseding cause and will

serve to relieve that party of liability when the act is of such an extraordinary nature or so attenuates that party's conduct from the ultimate injury that responsibility for the injury may not be reasonably attributed to that party" (*Prysock v Metropolitan Transp. Auth.*, 251 AD2d 308, 309 [2d Dept 1998], citing *see Derdarian v Felix Contr. Corp.*, 51 NY2d 308 [1980]). Here, having been separated from Ms. Williams and averring that he feared Ms. Williams would summon an assailant, plaintiff followed her out of the room, past the waiting area and into the main lobby where he encountered the assailant. Despite plaintiff's argument that defendant allowed Ms. Williams unfettered access to him while he was in the private room, his conduct of voluntarily following her out into the lobby so attenuates defendant's conduct from plaintiff's injuries, it cannot be said plaintiff's injuries were attributable to defendant's negligence, if any (*see Prysock*, 51 NY2d at 309).

Accordingly, defendant's motion for summary judgment is granted.

ENTER:

RAB

Hon. Reginald A. Boddie
Justice, Supreme Court

HON. REGINALD A. BODDIE
J.S.C.

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