Starks v Architectural Flooring Resource, Inc.
2021 NY Slip Op 33055(U)
November 24, 2021
Supreme Court, Bronx County
Docket Number: Index No. 26010/2015E
Judge: Adrian Armstrong
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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APRIL STARKS,

Plaintiff,

- against -

ARCHITECTURAL FLOORING RESOURCE, INC.,

Defendant.

---X

AND A THIRD-PARTY ACTION

DECISION and ORDER
Index No. 26010/2015E

Adrian Armstrong, J.

Plaintiff brings this personal injury case against Architectural Flooring Resources, Inc. (hereinafter "AFR"). AFR commenced a third-party action against Mohawk Industries, Inc., Mohawk Factoring, Inc. (hereinafter "Mohawk") and Interior Preservation, Inc. (hereinafter "IPI"). AFR now moves for summary judgment pursuant to CPLR § 3212, dismissing the plaintiff's complaint as well as any counter-claims or cross claims against it.

The subject incident arises out of a workplace accident that occurred April 3, 2014. It is alleged that at the time of the incident, plaintiff tripped while at work at Self Help Resources (hereinafter "Self Help"), over a loose metal piece from a cubical that was on the carpet.

It is undisputed that Self Help hired AFR in 2011 to design and install flooring at its office at 520 Eighth Avenue, in New York County. AFR purchased carpet tiles from Mohawk. AFR subcontracted the installation of the carpet tiles to Gray Rose. The installation was done in 2011.

In 2014, Self Help made complaints to AFR that there were issues with the flooring. A representative of AFR notified Mohawk. Mohawk determined that the product was failing and accepted the claim for remediation. IPI was retained by Mohawk to inspect the carpet, determine the necessary repairs and to make the repairs that were recommended.

The repairs began on the evening of April 2, 2014. The following day, April 3, 2014, sometime before 11:00 a.m., plaintiff alleged that she tripped over a piece of metal from the cubicle at the workplace.

In moving for summary judgment, AFR relies primarily on the deposition testimony of Selina Ramoutar, its general manager. Ms. Ramoutar testified that AFR was hired by a general contractor in 2011 to perform work at Self Help. AFR hired a subcontractor to perform floor covering at the subject location. At the end of 2013 or the beginning of 2014, Self Help contacted Ms. Ramoutar regarding the condition of the carpet tile, indicating that the carpet tiles were lifting. Ms. Ramoutar testified that she sent Oscar Rojas, an employee of AFR to Self Help in early 2014 who told her that the carpet tiles were lifting in the open areas of the 5th floor. Ms. Ramoutar further testified that she contacted Mohawk who made arrangements to correct the carpet. It is alleged that during the morning of April 3, 2014, Oscar Rojas went to Self Help to check on the work done the night before by IPI. He is alleged to have inspected the subject area that had been worked on and was satisfied that the carpet remediation was done properly, and the area was safe. Mr. Rojas also met with a person that morning from the facilities department of Self Help and told him that he saw a base panel from a cubicle on the floor inside a cubicle. AFR maintains that it owed no duty to the injured plaintiff, and therefore cannot be found to be negligent.

In opposition, plaintiff contends that the carpet repair was being performed at the direction and under the supervision of AFR. In fact, it is undisputed that AFR's project manager was present at Self Help at the time of the accident and admitted in his deposition testimony that prior to the plaintiff's accident he observed the dislodged metal base on the floor during his walk through but declined to remove the object, warn others, or do anything to rectify the

condition. Plaintiff argues that this evidence establishes that AFR had actual notice of the loose metal object on the carpet that caused plaintiff's accident.

The court's function on this motion for summary judgment is issue finding rather than issue determination (*Stillman v Twentieth Century Fox Film Corp.*, 3 NY2d 395 [1957]). "[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact.

Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

Since summary judgment is a drastic remedy, it should not be granted where there is any doubt as to the existence of a triable issue (*Rotuba Extruders v Ceppos*, 46 NY2d 223 [1978]). The burden on the movant is a heavy one, and the facts must be viewed in the light most favorable to the non-moving party (*Jacobsen v New York City Health & Hosps. Corp.*, 22 NY3d 824 [2014]).

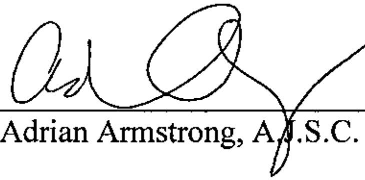
In this action, the Court finds that movant failed to make a prima facie showing that it was devoid of negligence in its failure to exercise due care in removing or repairing the metal piece near the cubicle that caused the plaintiff's accident.

Accordingly, it is hereby

ORDERED that AFR's motion for summary judgment is denied in its entirety

This is the Decision and Order of the Court.

Dated: November 24, 2021



Adrian Armstrong, A.J.S.C.

HON. ADRIAN N. ARMSTRONG, J.C.C.