Tyler v HealthAlliance Hosp. Mary's Ave. Campus
2021 NY Slip Op 33281(U)
February 8, 2021
Supreme Court, Ulster County
Docket Number: Index No. EF2018-3082
Judge: James P. Gilpatric

STATE OF NEW YORK
SUPREME COURT **ULSTER COUNTY**

LINDA TYLER,

Plaintiff,

- against -

HEALTHALLIANCE HOSPITAL MARY'S AVENUE CAMPUS,

Defendant.

DECISION AND ORDER

Index No.: EF2018-3082

Supreme Court, Ulster County
R.J.I. No.: 55-18-01733

Present: James P. Gilpatric, J.S.C.

Appearances:

BASCH & KEEGAN, LLP
Attorney for Plaintiff
307 Clinton Avenue
P.O. Box 4235
Kingston, New York 12402
By: Derek J. Spada, Esq.

THE LAW OFFICES OF SHOLES & MILLER, PLLC.
Attorneys for Defendant
300 Westage Business Center Drive, Suite 225
Fishkill, New York 12524
By: Kimberly L. Brown, Esq.

Gilpatric:

Defendants move for summary judgment, pursuant to CPLR 3212, dismissing the plaintiff's complaint and, pursuant to CPLR 3211 (a)(7), to dismiss the complaint for failure to state a cause of action. The plaintiff opposes the motion.

This action arises from a trip and fall accident that occurred on April 10, 2018 at approximately 2:00 p.m.at the parking lot/roadways at the HealthAlliance Hospital Mary's Avenue Campus, by the Benedictine Medical Arts Building, located in Kingston, County of

Ulster, State of New York. The plaintiff allegedly sustained personal injuries when she tripped and fell on speed bump located in said parking lot. The plaintiff alleges, *inter alia*, that the defendant was negligent by permitting dangerous and unsafe conditions to exist at the parking lot in the form of an unmarked, rough, elevated, broken and deteriorated speed bump located in the parking lot. The plaintiff further alleges that the defendant had both actual and constructive notice of the defective condition of the speed bump upon which the plaintiff tripped had worn paint, was deteriorated, rough, uneven, unmaintained and failed to have a proper warning of speed bump and did nothing to correct the dangerous and unsafe condition in the exercise of reasonable care.The defendant asserts that there is no evidence of negligence by the defendant that allegedly caused the plaintiff's accident. The defendant further contends that the premises was properly maintained and that there was no actual or constructive knowledge of the defective condition of the icy condition on said portion of parking lot/loading dock asphalt as alleged by the plaintiff.

It is well settled that a proponent of a summary judgment motion must make a *prima facie* showing of entitlement to a judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact (*see,* Alvarez v. Prospect Hosp., 68 NY2d 320). Once this showing has been made, the burden shifts to the non-moving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution (*see*, Giuffrida v. Citibank Corp., 100 NY2d 72). Conclusory allegations, even if believable, are insufficient to defeat a summary judgment motion (*see*, S.J. Capelin Assocs. Inc. v. Globe Mfg. Corp., 34 NY2d 338).

When deciding a motion for summary judgment, the evidence must be viewed in the light most favorable to the non-moving party. The Court's duty is to determine whether an issue of fact exists, not resolve it (*see,* Barr v. County of Albany, 50 NY2d 247). Once the moving party has established its right to summary judgment, it is incumbent upon the non-moving party to lay bare its proof and demonstrate that an issue of fact remains (*see*, Alvarez v. Prospect Hosp., *supra*). To prevail on a summary judgment motion in an owner liability case, the defendants must establish as a matter of law that they maintained the property in question in a reasonably safe condition and that they neither created the allegedly dangerous condition nor had any constructive notice of it (*see*, Enscher v. Charlton, 64 AD3d 1032 [3rd Dept., 2009]). Once the

defendant has established its *prima facie* entitlement to summary judgment, the plaintiff is required to submit viable evidence that would support the position that the icy condition of the sidewalk constituted a dangerous condition (*see*, Walsh v. City School District of Albany, 237 AD2d 811 [3rd Dept., 1997]), and/or that the defendant had actual or constructive knowledge of the defective or dangerous condition (*see*, Warren v. Wilmorite, 211 AD2d 904 [3rd Dept.,1995]). Negligence cases by their very nature do not usually lend themselves to summary judgment, since often, even if all parties are in agreement as to the underlying facts, the very question of negligence is itself a question for jury determination (*see* Ugarriza v Schmieder, 46 NY2d 471; *see also* Hyatt v Messana, 67 AD3d 1400).

Furthermore, "… on a motion to dismiss for a failure to state a cause of action pursuant to CPLR 3211 (a)(7) the allegations of the complaint are deemed to be true; and the pleading will be deemed to allege whatever may be reasonably implied from the statements therein (CPLR 3211 (a) (7); Foley v D'Agostino, 21 AD2d 60 [2nd Dept 1964]). "[T]he sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law, a motion for dismissal will fail..." (Guggenheimer v. Ginsburg, 43 NY2d 268, 275 [1977]). Pleadings are to be liberally construed, and defects shall be ignored if a substantial right of a party is not prejudiced (CLR 3026). The pleading must apprise the defendant of the nature of the plaintiff's grievances and the relief the defendant seeks (Shapolsky v Shapolsky, 22 AD2d 91 [1st Dept 1964]).
Initially, as to the defendants' motion to dismiss for failure to state a cause of action, and applying the law as set forth above to the submissions herein, the Court finds that the plaintiff has stated a valid cause of action in the complaint against the movants (*see* CLR 3211 [a] [7]). Moreover, the question to be resolved is not whether the plaintiff can ultimately establish the allegations and is likely to prevail, but whether, if believed, the complaint sets forth facts that constitute a viable cause of action (*see* EBC I, Inc v Goldman, Sachs &Co., 5 NY3d 11, 19 [2005]; Crepin v Fogarty, 59 AD3d 837, 838 [3rd Dept 2009]). Under this test, the Court determines that the allegations set forth in the Complaint, if accepted as true and accorded the benefit of every favorable inference, state a viable claim (*see* Skibinsky v State Farm Fire & Cas. Co., 6 AD3d 975, 976 [3rd Dept 2004]). Consequently, the motion to dismiss is denied as to CPLR 3211 (a) (7).

Next, in support of their motion for summary judgment, the defendant submits, *inter alia*, a copy of the pleadings, a copy of the plaintiff's deposition testimony, a copy of the deposition testimony of non-party witness Michael Tyler, a copy of the deposition testimony of Charles Pringle, Maintenance Worker for the defendant, a copy of the plaintiff's medical records, a copy of the outdoor safety inspection of the defendant's property, and copies of pictures depicting the subject speed bump to support its contention that there is no evidence of negligence by the defendants. The defendant asserts that there is no proof that the plaintiff tripped over a speed bump as alleged, Defendant further argues that there was a clearly marked crosswalk at the location. The defendant further alleges that there is no evidence of a dangerous condition, nor did the defendant have any notice of any dangerous condition in the subject parking lot. The defendant assert that their submissions clearly indicate that there is no evidence to show that there was a dangerous or hazardous condition present on the premises of which the defendant was aware of or should have been aware.

In opposition, the plaintiff rebuts the defendant's assertion with the submission of Michael Tyler's affidavit. Mr. Tyler avers that on the day of the accident the speed bumps had very little paint on them (Michael Tyler Affidavit, paragraph 8). Mr. Tyler also avers that the crosswalk present would have led the couple in a direction that was away from their car (Michael Tyler Affidavit, paragraph 12). The plaintiff further submits copies of photographs of the alleged speedbump that caused the fall (Plaintiff's Exhibits A-D). Additionally, the plaintiff submits a copy of the deposition testimony of Charles Pringle, Maintenance Employee for the Defendant, to rebut the defendant's assertions (Plaintiff's Exhibit K). The plaintiff further submits that a prior incident occurred in June of 2019 on the same speedbump that would have put the defendant on notice of a dangerous condition.

Upon the Court's review of all of the submissions, the same clearly gives rise to an issue of fact regarding notice on the defendants. Review of work order 14110 dated May 12, 2017, which stated "paint speed bumps and high to low curb transition as indicated on site map" , Mr. Pringle's testimony indicated that he had no idea if the work had been done prior to the plaintiff's incident (Plaintiff's Exhibit "M" and "K"). Furthermore, the plaintiff's submission regarding a prior incident that occurred on the same speedbump raise significant issues of fact as to whether the defendant had received actual notice or constructive notice of the dangerous

condition of the speedbump in the parking lot or should have known of speedbump's condition that created a dangerous condition and whether the defendant maintained the facility's speedbump/parking lot in a reasonably safe condition to prevent such condition from occurring.

Since the Court's function is issue finding and not issue determination (*see* Sillman v Twentieth Century-Fox Film Corp., 3 NY2d 395 [1956]) and, reviewing all of the evidence presented in the light most favorable to the opponent of the motion (*see* Martin v Briggs, 235 AD2d 192, 196 [1st Dept 1997]), the Court hereby determines that the plaintiff has raised triable issues of fact in his opposition to the defendants' motion for summary judgment. Additionally, as previously sated in the aforesaid discussions, the plaintiff has stated a viable claim in her pleadings and the motion to dismiss for failure to do so is denied. The Court has reviewed the remaining arguments raised by the defendant and find them to be unpersuasive and/or unnecessary to reach. Therefore, the summary judgment motion to dismiss the complaint as against the defendants must be denied in its entirety.

Accordingly, it is hereby

ORDERED, that the defendant's motion for Summary Judgment is denied, and it is further

ORDERED, that the defendant's motion to dismiss the complaint pursuant to CPLR§3211 (a)(7) is denied.

This shall constitute the decision of the Court. The original decision and all other papers are being delivered to the Supreme Court Clerk for transmission to the Ulster County Clerk for filing. The signing of this decision shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the applicable provisions of that rule regarding notice of entry.

SO ORDERED!

Dated: February 8 , 2021
Kingston, New York

ENTER,

JAMES P. GILPATRIC, J.S.C.

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Papers Considered:

1.) Notice of Motion, dated September 9, 2020;
2.) Affirmation in Support of Kimberly L. Brown, Esq., dated September 9, 2020, with annexed exhibits;
3.) Affirmation in Opposition of Derek J. Spada, Esq., dated October 30, 2020;
4.) Affidavit of Michael Tyler, dated October 30, 2020, with annexed exhibits;
5.) Reply Affirmation of Kimberly L. Brown, Esq., dated November 23, 2020.