

Stone v St. Leo R.C. Church

2023 NY Slip Op 34183(U)

November 20, 2023

Supreme Court, Kings County

Docket Number: Index No. 502019/21

Judge: Robin S. Garson

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 75, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 20th day of November, 2023.

P R E S E N T: HON. ROBIN S. GARSON,
Justice.

-----X

ALICIA STONE,

Plaintiff,

-against-

Index No.: 502019/21

Decision & Order

ST. LEO R. C. CHURCH, CEREBRAL PALSY
ASSOCIATIONS OF NEW YORK STATE,

(Mot. Seq. 4 & 7)

Defendants.

-----X

CEREBRAL PALSY
ASSOCIATIONS OF NEW YORK STATE,

Third-Party Plaintiff,

-against-

AHTRAM SERVICES CORPORATION,

Third-Party Defendant.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.:

Notice of Motion/Order to Show Cause/Cross Motion and
Affidavits (Affirmations) Annexed _____

50 – 52, 91 – 93

Opposing Affidavits (Affirmations) _____

65, 66, 110-111, 116

Affidavits/ Affirmations in Reply _____

115, 135

In this premises liability action, plaintiff Alicia Stone moves for summary judgment on the issue of liability against defendant St. Leo Roman Catholic Church (St. Leo) and defendant/third-party plaintiff Cerebral Palsy Associations of New York State (CPA) and to dismiss defendants’ affirmative defenses of comparative negligence, assumption of risk, and failure to mitigate damages. CPA cross-moves for summary judgment contending that that it is shielded from liability as plaintiff’s special employer. Co-defendant St. Leo

opposes both the direct motion and the cross-motion. CPA's cross-motion is denied.

Plaintiff's motion is granted to the extent as follows:

On December 2, 2019, plaintiff was working as a "direct support professional" at the Donald Savio Residence, a residential facility for a special-needs population operated by CPA. Plaintiff claims that at approximately 7:00 a.m., after she helped a resident shower and walked him back to his room, she returned to the shower area to clean up. As she was disinfecting the shower floor, the ceiling collapsed on her, causing her to fall and to sustain injuries.

At the time of the accident, plaintiff was an employee of Pearl Care Medical Staffing, LLC (Pearl Care), a company that provided supportive staff to CPA. While CPA operates the facility, it is undisputed that St. Leo owns the premises.

St. Leo entered into a lease with Catholic Charities Neighborhood Services, Inc. (Catholic Charities) for premises located at 104-22 48th Avenue, Corona, New York 11368, known as the Donald Savio Residence. The lease in effect at the time of plaintiff's accident was a renewal of an agreement entered into in 2008. The lease specifically identified the intended purpose of the tenancy as the operation of a "residential facility for the developmentally disabled." It is unclear from the papers before the court whether CPA is a contractor, subcontractor, vendor, or in some other way directly associated with Catholic Charities in the operation of the facility.¹

¹ The court notes that St. Leo's witness, testified during his deposition that CPA assumed the lease to the premises from Catholic Charities in or about 2016. However, no documentary evidence establishing same has been provided to the court.

Plaintiff asserts that, pursuant to the New York City Administrative Code § 28-301.1², St. Leo, as the owner of the premises, has a nondelegable duty to maintain the building in a safe condition. Plaintiff further contends that both St. Leo and CPA had actual and/or constructive notice of the defective ceiling. In support, plaintiff offers a work order she contends was issued two days prior to the ceiling collapse. The exhibit is not dispositive. The portion of the work order mentioning the bathroom ceiling is dated December 2, 2019, at 11:13 a.m., subsequent to the collapse. While there are “service requests” on other portions of the exhibit that are dated prior to December 2, those requests do not specify the nature of the requested services or the portion of the premises requiring work. Moreover, there is nothing in the record to suggest that St. Leo was aware of a dangerous condition, structural defect, or other issue affecting the bathroom ceiling or causing its collapse. Plaintiff’s burden to demonstrate *prima facie* notice as to either or both defendants is not satisfied here and remains a material question of fact for trial.

The court notes that while plaintiff has not satisfied her burden here as to the essential element of notice, the court will address St. Leo’s argument that it is an out-of-possession landlord. St. Leo contends that it merely reserved a right of inspection and accordingly does not owe a duty to plaintiff in this instance. A reservation of right of entry for inspection and repair may constitute sufficient retention of control to impose liability for injuries caused by a dangerous condition (*see Denermark v 2857 W 8th St. Assoc.*, 111

² Administrative Code of the City of New York § 28-301.1 provides, in pertinent part that “All buildings and all parts thereof and all other structures shall be maintained in a safe condition ... The owner shall be responsible at all times to maintain the building and its facilities and all other structures regulated by this code in a safe and code-compliant manner and shall comply with the inspection and maintenance requirements of this chapter.”

AD3d 660, 661 [2d Dept 2013]). For right of entry to give rise to liability, the dangerous condition must violate a specific statutory provision, combined with a significant structural or design defect (*see Behluli v 228 Hotel Corp.*, 172 AD3d 1151, 1152 [2d Dept 2019]). Plaintiff contends that St. Leo violated Administrative Code of the City of New York § 28-301.1. This section of the code is nonspecific and reflects only a general duty to maintain the premises in a safe condition, and has been held insufficient to impose liability on an out-of-possession owner (*see McNeil v HMB E. 40th St. Corp.*, 117 AD3d 997, 998 [2d Dept 2014]). Paragraph 8 of the lease between St. Leo and Catholic Charities provides that “the Tenant shall permit the Landlord at all usual proper times to enter the premises for the purposes of inspection . . . and suffer the Landlord to make repairs and improvements to all parts of the building. . . .” It is unclear on the record before the court whether and to what extent St. Leo exercised its right of entry or inspection and whether the cause of the ceiling collapse was a result of a structural or design defect in violation of a specific statutory provision. That demonstration remains plaintiff’s burden at trial.

That branch of plaintiff’s motion seeking to dismiss defendants’ affirmative defenses of comparative negligence and assumption of risk is granted as the record is devoid of competent evidence that the plaintiff was aware of a risk that the bathroom ceiling could collapse, or that she was engaged in any activity other than disinfecting the shower floor when the accident occurred. Neither defendant demonstrates support for their conclusory contention that the incident did not happen as described by plaintiff.

In its cross-motion, CPA argues that while Pearl Care was undisputedly plaintiff’s general employer, CPA is shielded from liability as plaintiff’s special employer pursuant

to Workers' Compensation Law §§ 11 and 29 (6). CPA demonstrates that it exercised direction and control of plaintiff while she worked at the facility. Plaintiff's deposition testimony, along with the employment documents created and distributed by Pearl Care, challenges the substance and extent of that control. Questions of fact remain as to whether Pearl Care sufficiently surrendered control over the plaintiff's employment to CPA to create a special employment relationship. Accordingly, CPA's cross-motion is denied.

For the reasons stated above, it is hereby:

ORDERED that St. Leo Roman Catholic Church's second affirmative defense is hereby stricken; it is further

ORDERED that Cerebral Palsy Associations of New York State's second, eleventh, and fourteenth affirmative defenses are hereby stricken;

ORDERED that Cerebral Palsy Associations of New York State's cross-motion for summary judgment dismissing all claims as against it is denied.

All issues not specifically addressed herein have been considered and are hereby denied.

The above is the decision and order of the court.

Dated: November 20, 2023

E N T E R,



Hon. Robin S. Garson, A. J. S. C.

HON. ROBIN S. GARSON
A.J.S.C.