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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE SIMEON GOLAR IA Part 24  
Justice

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| JACK CAPPADORO, et al. | Index<br>Number <u>24817</u> 1995        |
| - against -            | Motion<br>Date <u>September 25, 2001</u> |
| THERESA RUFFIN, et al. | Motion<br>Cal. Number <u>8</u>           |

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The following papers numbered 1 to 10 read on this motion by defendant Sears, Roebuck and Co. ("Sears") for summary judgment dismissing all claims insofar as asserted against it.

|  | <u>Papers<br/>Numbered</u> |
|--|----------------------------|
| Notice of Motion - Affidavits - Exhibits ..... | 1 - 4                      |
| Answering Affidavits - Exhibits .....          | 5 - 7                      |
| Reply Affidavits .....                         | 8 - 10                     |

Upon the foregoing papers it is ordered that the motion by defendant Sears for summary judgment is granted.

Plaintiff Jack Cappadoro, a New York City firefighter, allegedly suffered serious injuries on May 4, 1995 while fighting a fire at premises located at 144-40 167th Street in Rosedale, New York, which was owned by defendant Theresa Ruffin. The evidence indicates that plaintiff lost his balance and fell off a portable ladder while he attempted to vent a second story window with his halligan tool outside of defendant Ruffin's premises.

Plaintiff and his wife, derivatively, commenced the instant action alleging, inter alia, that the fire was caused by Sears' violation of various sections of the Administrative Code of the City of New York and by Sears' negligent installation, maintenance and servicing of the dryer which Ruffin had purchased from Sears. Thus, plaintiff maintains that Sears' negligence ultimately caused his injuries. Defendant Sears now moves for summary judgment on the ground that plaintiff's claims based upon common-law negligence are barred by the firefighter's rule. Sears also maintains that there is no evidence of any statutory violation which led to plaintiff's injuries and, thus, plaintiff cannot recover for a violation of General Municipal Law § 205-a.

The firefighter's rule bars a police officer or firefighter from bringing a common-law negligence cause of action "where the performance of the police officer's or firefighter's duties increased the risk of the injury happening, and did not merely furnish the occasion for the injury." (Zanghi v Niagara Frontier Transp. Commn., 85 NY2d 423, 439; Carter v City of New York, 272 AD2d 498; Schembri v City of New York, 240 AD2d 722.) Thus, recovery for damages in common-law negligence may not be had "where some act taken in furtherance of a specific police or firefighting function exposed the officer to a heightened risk of sustaining the particular injury." (Carter v City of New York, supra, at 499; Byrnes v City of New York, 249 AD2d 352; Ciervo v City of New York, 240 AD2d 693, affd 93 NY2d 465.) The firefighter's rule is based upon the policy that firefighters, unlike members of the general public, are specially trained and compensated to confront hazards and, therefore, "must be precluded from recovering damages for the very situations that create a need for their services." (Galapo v City of New York, 95 NY2d 568, 573 [citations omitted].) Here, plaintiff's injury occurred because he had taken an act in furtherance of a specific firefighting function which exposed him to an increased risk of sustaining an injury. Thus, he may not maintain a claim for common-law negligence.

Plaintiff argues, however, that the 1996 amendments to General Obligations Law § 11-106 permit him to recover damages for common-law negligence. General Obligations Law § 11-106 partially abrogated the firefighter's rule and permits a police officer or firefighter to recover damages for common-law negligence only where the police officer's or the firefighter's injury, disease, or death "is proximately caused by the neglect, willful omission, or intentional, willful or culpable conduct of any person or entity, other than that police officer's or firefighter's employer or co-employee." (Melendez v City of New York, 271 AD2d 416; Strahl v Dale Constr., Inc., 171 Misc 2d 330, 331-332.) In the case at bar, Sears presented admissible evidence that it was not the proximate cause of plaintiff's injuries. Plaintiff fell off the ladder because the halligan tool ricocheted off a window pane and caused him to lose his balance, not because of any act or omission by Sears. In opposition, plaintiff failed to submit any evidence in admissible form raising an issue of fact as to whether Sears was the proximate cause of his injuries. (Zuckerman v City of New York, 49 NY2d 557, 562.)

To establish a prima facie case under General Municipal Law § 205-a, a plaintiff, in addition to demonstrating a violation of the relevant statute, code, or rule, must also establish a "practical or reasonable connection between a [statutory or code] violation and the injury." (Mullen v Zoebe, Inc., 86 NY2d 135, 140; Zanghi v Niagra Frontier Transp. Commn., supra, at 441; Giuffrida v Citibank Corp., AD2d \_\_\_\_\_, 733 NYS2d 679, 680; see also, Davison v Order Ecumenical, 281 AD2d 383; Kenavan v City of New York, 267 AD2d 353, 355; McGee

v Adams Paper & Twine Co., 26 AD2d 186, 195, affd 20 NY2d 921.) Although the plaintiff is not required to show the same degree of proximate cause as is required in a common-law negligence action, he must show some connection between his injuries and the violation alleged. (see, Zanghi v Niagra Frontier Transp. Commn., supra, at 441.) In the matter at hand, there is no reasonable connection between the statutory violations alleged and plaintiff's injury. The statutory violations alleged pertain to the Electrical Code and the type of materials to be used in installing exposed wires in basements or cellars. There is no evidence that Sears performed any electrical work at the premises. In any event, even if Sears had performed electrical work, there is no admissible evidence that any of the alleged violations caused the ladder to fall. (see, Dillon v City of New York, 238 AD2d 302, 303.)

Dated:

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J.S.C.