

Derasmo v Port Auth. of N.Y. & N.J.

2023 NY Slip Op 34756(U)

June 16, 2023

Supreme Court, Queens County

Docket Number: Index No. 701421/2018

Judge: Denise N. Johnson

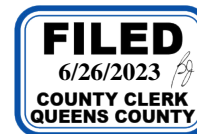
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This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DENISE N. JOHNSON IAS Part 11
Justice



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Table with 3 columns: Case Name (ANTHONY DERASMO and BENEDETTA DERASMO), Plaintiff(s), Index No. (701421/2018), Defendant(s) (PORT AUTHORITY OF NEW YORK AND NEW JERSEY, DNATA AVIATION USA, INC. d/b/a DNATA, TONY ANGELO EAST LLC, and ABC CORPORATION), Motion Date (4/10/23), Motion Cal. No. (5 & 6), Motion Seq. No. (3 & 4).

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The following papers numbered EF 55 -106 read on this motion by Defendant DNATA AVIATION USA, INC. d/b/a DNATA (DNATA) in this action for an order Pursuant to CPLR § 3212 granting summary judgment in favor of moving defendant as well as dismissing all cross-claims against the movant and on this motion by Defendant TONY ANGELO EAST LLC (TAE) in this action for an order Pursuant to CPLR § 3212 granting summary judgment in favor of moving defendant as well as dismissing all cross-claims against the movant.

Papers Numbered

Motion Seq 3:

- Notice of Motion-Affirmation- Statement of Material Facts - Exhibits - Service.....EF 55- 74
Affirmation in Opposition- Statement of Material Facts - Exhibits - Service.....EF 97-101
Reply Affirmation-.....EF 105

Motion Seq 4:

- Notice of Motion-Affirmation- Statement of Material Facts - Exhibits - Service.....EF 76 - 93
Affirmation in Opposition- Statement of Material Facts - Exhibits - Service.....EF 102-104
Reply Affirmation-.....EF 106

Upon the foregoing papers it is ORDERED that as follows:

This is an action to recover for damages for personal injury allegedly sustained by Plaintiff as a result of a slip and fall accident in the workplace on February 9, 2017, at John F. Kennedy Airport Terminal 7. It is alleged that Plaintiff slipped in fell on ice while working between gates 1 and 2.

CPLR §3212(b) requires that for a court to grant summary judgment the court must determine if the movant's papers justify holding as a matter of law, "that the cause of action or defense has no merit." The evidence submitted in support of the movant must be viewed in the light most favorable to the non-movant (*see, Grivas v. Grivas*, 113 A.D.2d 264, 269 [2d Dept. 1985]; *Airco Alloys Division, Airco Inc. v. Niagara Mohawk Power Corp.*, 76 A.D.2d 68 [4th Dept. 1980]; *Parvi v. Kingston*, 41 N.Y.2d 553, 557 [1977]). Summary judgment shall be granted only when there are no issues of material fact and the evidence requires the court to direct judgment in favor of the movant as a matter of law (*see, Friends of Animals, Inc., v. Associated Fur Mfrs.*, 46 N.Y.2d 1065 [1979]; *Orwell Bldg. Corp. v. Bessaha*, 5 A.D.3d 573 [2d Dept. 2003]).

With the instant motion, assuming arguendo that Plaintiffs have established that there is a triable issue of fact as to whether Defendant was responsible for performing de-icing services at the Terminals and/or gates of JFK Airport Terminals, Plaintiffs are unable to overcome the storm-in-progress doctrine. Plaintiff Anthony Derasmo admitted that prior to, at the time of, and consistently throughout his shift on the date of the accident it was actively snowing, and snow was accumulating. This is an undisputed fact which Defendants have shown this through their submission and Plaintiffs' testimony during the pre-trial depositions. "[A] property owner will not be held liable in negligence for a plaintiff's injuries sustained as the result of an icy condition occurring during an ongoing storm or for a reasonable time thereafter" (*Solazzo v New York City Tr. Auth.*, 6 NY3d 734, 735, 843 NE2d 748, 810 NYS2d 121 [2005]; *see Sherman v New York State Thruway Auth.*, 27 NY3d 1019, 1021, 32 NYS3d 568, 52 NE3d 231 [2016]; *Daniel v E. Williston Union Free Sch. Dist.*, 180 AD3d 750, 751 [2d Dept 2020]). As the Defendants have submitted proof that establishes that they are entitled to judgement in their favor as a matter of law the burden shifts to the plaintiff to come forward with evidence to overcome the defendant's submission by demonstrating a triable issue of fact. While Plaintiff argues that there was a pre-

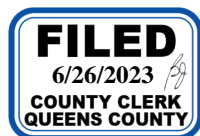
existing ice condition that preceded the storm in progress and that the ice condition was the underlying cause of the accident, Plaintiff offers no proof to bolster this claim. Therefore, it is,

ORDERED, that Defendant TONY ANGELO EAST's motion for summary judgment pursuant to CPLR § 3212 dismissing the action is granted and all crossclaims against Defendant TAE are dismissed as moot.

ORDERED, that Defendant DNATA AVIATION USA, INC. d/b/a DNATA's motion for summary judgment pursuant to CPLR § 3212 dismissing the action is granted and all crossclaims against Defendant DNATA are dismissed as moot.

The foregoing shall constitute the decision and order of this court.

Dated: June 16, 2023



Denise N. Johnson

DENISE N. JOHNSON
J.S.C.