Vincent Knudsen, Appellant, v Mamaroneck Post No. 90, Department of New York--American Legion, Inc., Respondent. (Index No. 24717/08)

2011-05758

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, SECOND DEPARTMENT

94 A.D.3d 1058*; *942 N.Y.S.2d 800*; *2012 N.Y. App. Div. LEXIS 3134*; *2012 NY Slip Op 3145

April 24, 2012, Decided

HEADNOTES

Negligence--Maintenance of Premises--Proximate Cause--Fall on Interior Staircase

COUNSEL: [***1] Rosenberg, Minc, Falkoff & Wolff, LLP, New York, N.Y. (Robert H. Wolff of counsel), for appellant.

Lewis Brisbois Bisgaard & Smith, LLP, New York, N.Y. (Gregory S. Katz and Nicholas P. Hurzeler of counsel), for respondent.

JUDGES: RUTH C. BALKIN, J.P., JOHN M. LEVENTHAL, SHERI S. ROMAN, SANDRA L. SGROI, JJ. BALKIN, J.P., LEVENTHAL, ROMAN and SGROI, JJ., concur.

OPINION

[**801] [*1058] In an action to recover damages for personal injuries and wrongful death, etc., the plaintiff appeals, as limited by his brief, from so much of an order of the Supreme Court, Westchester County (Adler, J.), entered May 10, 2011, as granted the defendant's motion for summary judgment dismissing the complaint.

Ordered that the order is affirmed insofar as appealed from, with costs.

The defendant established its prima facie entitlement to judgment as a matter of law by demonstrating that the plaintiff did not know what caused the plaintiff's decedent to fall on an interior staircase at the defendant's premises (*see Yefet v Shalmoni, 81 AD3d 637, 915 NYS2d 866 [2011]*; *Martone v Shields, 71 AD3d 840, 840-841*, [*1059] *899 NYS2d 249 [2010]*; *Hennington v Ellington, 22 AD3d 721, 804 NYS2d 395 [2005]*; *Tejada v Jonas, 17 AD3d 448, 792 NYS2d 605 [2005]*).

In opposition, the plaintiff failed to raise a triable issue of fact (*see Ghany v Hossain, 65 AD3d 517, 884 NYS2d 125 [2009]*). [***2] Contrary to the plaintiff's contention, the *Noseworthy* doctrine (*see Noseworthy v City of New York, 298 NY 76, 80 NE2d 744 [1948]*) does not apply in this case, since the defendant's knowledge as to the cause of the decedent's accident is no greater than that of the plaintiff (*see Zalot v Zieba, 81 AD3d 935, 936, 917 NYS2d 285 [2011]*; *Kuravskaya v Samjo Realty Corp., 281 AD2d 518, 721 NYS2d 836 [2001]*; *Gayle v City of New York, 256 AD2d 541, 542, 682 NYS2d 426 [1998]*). The plaintiff alleged that the decedent would not have fallen down the staircase if the defendant had properly latched the boiler room door, or configured it so that it did not swing open over the steps. Additionally, the plaintiff's expert opined in an affidavit that the configuration of the door and staircase violated, among other things, a provision of the Executive Law. However, the plaintiff's evidence did not raise a triable issue of fact

as to whether the decedent's fall was proximately caused by those allegedly unsafe conditions (*see Noel v Starrett City, Inc., 89 AD3d 906, 932 NYS2d 727 [2011]*; *Ghany v Hossain, 65 AD3d at 517*; *Guiterrez v Iannacci, 43 AD3d 868, 841 NYS2d 377 [2007]*; *Tejada v Jonas, 17 AD3d 448, 792 NYS2d 605 [2005]*; *Curran v Esposito, 308 AD2d 428, 764 NYS2d 209 [2003]*; *Birman v Birman, 8 AD3d 219, 777 NYS2d 310 [2004]*; *cf. Griffin v Sadauskas, 14 AD3d 930, 787 NYS2d 721 [2005]*). "Since it is just as likely [***3] that the accident could have been caused by some other factor, such as a misstep or loss of balance, any determination by the trier of fact as to the cause of the accident would be based upon sheer speculation" (*Teplitskaya v 3096 Owners Corp., 289 AD2d 477, 478, 735 NYS2d 585 [2001]*; *see Ghany v Hossain, 65 AD3d 517, 884 NYS2d 125 [2009]*; *Reiff v Beechwood Browns Rd. Bldg. Corp., 54 AD3d 1015, 864 NYS2d 175 [2008]*; *Hennington v Ellington, 22 AD3d at 721-722*).

Accordingly, the Supreme Court properly granted the defendant's motion for summary judgment dismissing the complaint. Balkin, J.P., Leventhal, Roman and Sgroi, JJ., concur.