

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

JOSEPH NAVARRO,)
)
 Plaintiff,)
)
 v.) 14 M1 300567
)
 LORETTO HOSPITAL,)
)
 Defendant.)

MEMORANDUM OPINION AND ORDER ON DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

I. FACTUAL BACKGROUND

The Plaintiff filed a two-count complaint against the Defendant seeking damages for injuries he sustained when he fell from a ladder while constructing a temporary wall at the top of a stairway at the Defendant hospital, on April 17, 2012. Count I sounds in construction negligence and count II sounds in premises liability. The Defendant has filed an answer to the complaint denying all material allegations contained therein.

In the motion, the Defendant contends that the evidence shows that it did not control the operative details of the Plaintiff's work nor did it assume any supervisory control such that it owed a duty under section 414 of the Restatement (Second) of Torts. It points out that it contracted with Ujamaa Construction to perform the construction work at the hospital, and the contract between them did not place any responsibility, control, or supervision on the hospital, noting that Ujamaa was responsible for supervising and directing all of the work for the project. The Defendant maintains that Ujamaa told the Plaintiff to build the wall and where to build it. It contends that there is no evidence that it retained or exercised any

control over the work. With regard to premises liability, the Defendant contends that there is no evidence that it had any notice that was any defect in the ladder or any other dangerous condition. It notes that it did not supply the ladder and, in any case, it notes that the Plaintiff testified that there was nothing wrong with the ladder or the work space. Further, the Defendant maintains that the fall was caused by the way the Plaintiff used the ladder and not any condition of the property. Thus, it contends that it has no liability under section 343 of the Restatement (Second) of Torts.

In response, the Plaintiff contends that there are questions of fact as to whether Loretto retained control over the construction work. He notes that the work he was doing in building the wall was outside the scope of the contract documents, and thus, the language in the contract placing safety responsibility on Ujamaa has no application. He maintains that a representative of the hospital, John Pappone, informed Ujamaa that Loretto needed a temporary wall built at the top of the stairwell by the end of the day. He also contends that to accomplish this task required that he work in a cramped space exposed to a fall hazard. Thus, he contends that while Loretto did not explicitly instruct him to use the ladder, he was not entirely free to do the job in his own way. With regard to premises liability, the Plaintiff contends that his injury relates to a dangerous condition on the land as the dangerous condition here was a ladder situated in close proximity to a staircase and on an exposed edge. As such, the ladder was dangerous because of the conditions under which the Plaintiff had to use it. In addition, the Plaintiff contends that the Defendant had notice, noting that the use of the ladder was dangerous because of the features of the Defendant's property. He also contends that the Defendant actually create the condition by asking for the wall to be built

there.

The Court has read the motion, response, and reply, as well as, all of the supporting materials tendered therewith.

II. COURT'S DISCUSSION AND RULING

To find a duty under section 414 of the Restatement (Second) of Torts with respect to vicarious liability and retained control, there must be evidence of control over the means and methods and operative details of the subcontractor's work. Comment c to section 414 provides that there must be such a retention of a right of supervision that the contractor is not entirely free to do the work in his own way. Further, the retention of general supervisory rights or the existence of a safety program, safety manual, or safety directors does not necessarily amount to retained control. Calderon v. Residential Homes of America, 381 Ill. App.3d 333, 343-344 (1st Dist., 2008). Rather, those things are relevant only if they directly affect the means and methods of the work. Id., at 344. Further, where the contractor merely has a general right to order the work stopped or resumed, to inspect its progress or to receive reports, to make suggestions or recommendations which need not necessarily be followed, or to prescribe alterations and deviations, there is no liability. Martens v. MCL Constr. Corp., 347 Ill. App. 3d 303, 315 (1st Dist., 2004).

Here, there is no evidence that Loretto retained control over the means and methods or operative details of the Plaintiff's work. There is also no evidence that it retained control over the safety of the job. While Loretto requested that Ujamaa construct a temporary wall to separate the construction area, there is no evidence in the record that Loretto directed

Ujamaa or the Plaintiff on how to construct it, what methods to use, which tools to employ, or any other operative details as to its construction. There is also no evidence that anyone from Loretto supervised the construction the wall. The Plaintiff contends that the wall was beyond the scope of the contract, and thus, Loretto retained control over its construction. However, the contracts here show that Loretto merely requested a change order, from the temporary partition to a temporary wall, in order to comply with an upcoming IDPH inspection whose requirements and rules Ujamaa was contractually obligated to follow. In addition, there is no evidence that Loretto had any actual or constructive notice of any unsafe or dangerous condition on the land or in Ujamaa's construction practices, nor any evidence of constant monitoring of the work. Accordingly, there is no duty under section 414 with regard to either direct or vicarious liability and summary judgment in its favor as to count I is appropriate.

Similarly, as there is no evidence of notice, there can be no liability under section 343 of the Restatement (Second) of Torts. The dangerous condition identified by the Plaintiff is the use of a ladder near an open stairway in a confined area. The evidence shows that the Plaintiff chose where to place his ladder and how to use it to accomplish his work and no one from Loretto dictated the use or placement of the ladder. Further, there is no evidence that anything about the stairway or any other part of the premises was defective or dangerous. Also, the fact that Loretto requested that a ladder be built to separate the construction area does not amount to the creation of a defect or dangerous condition.

Clifford v. Wharton, 353 Ill. App.3d 34 (1st Dist., 2004), relied on by the Plaintiff, is

distinguishable and not applicable. There, the plaintiff was injured when a newly built wall fell on him and threw him into a nearby hole made in the floor for a stairwell opening. Clifford, at 36-37. The court held that while the opening in the floor was open and obvious, the general contractor should have reasonably foreseen that a construction worker would become distracted and fall through the hole. Id., at 46. The instant case does not involve an open and obvious or distraction issue. Further, the court there never discussed or made a finding as to actual or constructive notice. In addition, in Clifford the hole was created in the floor as part of the construction plans dictated by the general contractor and was not merely a nearby staircase. Accordingly, Loretto owed no duty under section 343 and summary judgment in its favor on count II is appropriate.

Based on the foregoing, Defendant's Motion for Summary Judgment is granted.

ENTER
ENTER:
JUN 19 2015 *ll*
