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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

Present:

HON. DANIEL PALMIERI
Acting Justice Supreme Court

----------x **TRIAL PART: 50**

AALIYAH AALAAM,

INDEX NO.: 4367/04

Plaintiff,

MOTION DATE:10-28-05
SUBMIT DATE:12-2-05
SEQ. NUMBER - 003 & 004

-against-

MERCY MEDICAL CENTER,

Defendant

----------x

MERCY MEDICAL CENTER,

Third-Party Plaintiff,

-against-

CROTHALL HEALTHCARE, INC.,

Third-Party Defendant.

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The following papers have been read on this motion:

Notice of Motion, dated 9-30-05.....1
Notice of Cross Motion, dated 10-13-05.....2
Reply to Opposition, dated 10-21-05.....3
Affirmation in Opposition, dated 12-1-05.....4
Reply Affirmation, dated 12-13-05.....5

These motions were assigned to the undersigned on or after January 3, 2006.

This is a motion by third-party defendant, Crothall Healthcare, Inc., for summary

judgment pursuant to CPLR 3212 dismissing the third-party complaint. Defendant Mercy Medical Center is cross-moving for summary judgment dismissing the complaint. In the underlying personal injury action, plaintiff Aaliyah Aalaam seeks damages for injuries which she received in a slip and fall accident at Mercy Medical Center. In the third-party complaint, Mercy seeks indemnity from Crothall for negligent breach of its contract with Mercy to provide housekeeping management services. Plaintiff has not asserted a direct claim against Crothall for her injuries. See CPLR 1009.

On June 16, 2001 at approximately 8:30 p.m., plaintiff slipped and fell in a patient's bathroom in the maternity ward of the hospital. At the time of the accident, plaintiff was visiting her daughter who had just given birth. Plaintiff entered the bathroom to wash her hands in preparation for holding the baby. According to the affidavit of Rhonda Milner, another daughter of plaintiff who was present at the time of the accident, the bathroom floor was wet with soapy water and slippery. According to the affidavit of Amirah Aalaam, the daughter who had given birth, a child who was visiting another patient had spilled soda in the bathroom. A hospital housekeeper had mopped the floor a few minutes before but had not posted any type of sign or other warning.

In moving for summary judgment dismissing the third-party complaint, Crothall argues

i) plaintiff cannot establish causation, ii) there was no duty owing to plaintiff because the maintenance contract was "limited," and iii) as a matter of law Crothall was not negligent. None of these arguments has merit.

In order to recover as against Mercy, the owner of the building, plaintiff must prove 1) the premises were not reasonably safe, 2) defendant was negligent in not keeping the premises in a reasonably safe condition, and 3) defendant's negligence in allowing the unsafe condition to exist was a substantial factor in causing plaintiff's injury. (PJI 2:91; *Peralta v. Henriquez*, 100 N.Y.2d 139). Whether an unsafe condition was a substantial factor in causing an injury is ordinarily a question of fact. The affidavits submitted to the court clearly establish that a factual question is presented as to whether the wet and slippery condition of the floor was a substantial factor in causing plaintiff's injury.

Where a maintenance company has entered into a comprehensive and exclusive contract to perform maintenance services, they may be liable to non-contracting individuals within the zone of risk, if the maintenance company has entirely displaced the owner's duty to maintain the premises safely. (*Espinal v. Melville Snow Contractors*, 98 N.Y.2d 136; *Palka v. Servicemaster Management Services Corp.*, 83 N.Y.2d 579). The service agreement between Mercy Medical Center and Crothall Healthcare obligates Crothall to provide housekeeping services to Mercy in accordance with a defined schedule. The schedule itemizes 28 different kinds of housekeeping services to be performed in patient areas, including spot mopping as required seven days per week and mopping up "major spills" on request 16 hours per day, seven days per week. In his affirmation in support of motion, counsel for defendant asserts that "all housekeeping services are overseen by the third-party defendant." Thus, at the very least, a question of fact is presented as to whether Crothall was under a duty to the "known and identifiable group of hospital employees, patients, and

visitors," to keep the premises reasonably safe. *Palka*, supra, 83 N.Y.2d at 589.

A landowner's duty to warn of a dangerous condition on the property is ordinarily a natural counterpart of its duty to maintain the property in reasonably safe condition. (*Galindo v. Clarkstown*, 2 N.Y.3d 633). Indeed, in counsel for defendant's affirmation, he states that "A sign is supposed to be placed on floor when the bathroom floor is mopped." In these circumstances, a question of fact is clearly presented as to whether Crothall was negligent.

Accordingly, the motions by defendant Mercy Medical Center and third-party defendant Crothall Healthcare, Inc. are in all respects denied.

This shall constitute the Decision and Order of this Court

ENTER

DATED: ~~January~~ Feb 3, 2006

HON. DANIEL PALMIERI
Acting Supreme Court Justice

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