

Pahls v Chelsea Piers L.P.

2020 NY Slip Op 33321(U)

October 7, 2020

Supreme Court, New York County

Docket Number: 160595/2015

Judge: Lucy Billings

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

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JENNIFER PAHLS,

Index No. 160595/2015

Plaintiff

- against -

DECISION AND ORDER

CHELSEA PIERS L.P. and SPIRIT CRUISES
LLC,

Defendants

-----x

LUCY BILLINGS, J.S.C.:

I. BACKGROUND

Plaintiff, an employee of nonparty Photogenic, Inc., sues to recover damages for personal injuries sustained June 15, 2014, when she twisted her ankle at the bottom of stairs, attributing her fall to a crack in the concrete floor. Defendants move for summary judgment dismissing the complaint, C.P.L.R. § 3212(b), on the grounds that, as landlords out of possession and without control of the premises, they are not liable for plaintiff's injury.

II. SUMMARY JUDGMENT STANDARDS

To obtain summary judgment, defendants must make a prima facie showing of entitlement to judgment as a matter of law through admissible evidence, eliminating all material issues of fact. C.P.L.R. § 3212(b); Friends of Thayer Lake LLC v. Brown, 27 N.Y.3d 1039, 1043 (2016); Nomura Asset Capital Corp. v.

Cadwalader, Wickersham & Taft LLP, 26 N.Y.3d 40, 49 (2015); Voss v. Netherlands Ins. Co., 22 N.Y.3d 728, 734 (2014); Vega v. Restani Constr. Corp., 18 N.Y.3d 499, 503 (2012). Only if defendants satisfy this standard, does the burden shift to plaintiff to rebut defendants' prima facie showing, by producing evidence, in admissible form, sufficient to require a trial of material factual issues. De Lourdes Torres v. Jones, 26 N.Y.3d 742, 763 (2016); Nomura Asset Capital Corp. v. Cadwalader Wickersham & Taft LLP, 26 N.Y.3d at 49; Morales v. D & A Food Serv., 10 N.Y.3d 911, 913 (2008); Hyman v. Queens County Bancorp, Inc., 3 N.Y.3d 743, 744 (2004). In evaluating the evidence for purposes of defendants' motion, the court construes the evidence in the light most favorable to plaintiff. Stonehill Capital Mgt. LLC v. Bank of the W., 28 N.Y.3d 439, 448 (2016); De Lourdes Torres v. Jones, 26 N.Y.3d at 763; William J. Jenack Estate Appraisers & Auctioneers, Inc. v. Rabizadeh, 22 N.Y.3d 470, 475 (2013); Vega v. Restani Constr. Corp., 18 N.Y.3d at 503. If defendants fail to meet their initial burden, the court must deny summary judgment despite any insufficiency in the opposition. Voss v. Netherlands Ins. Co., 22 N.Y.3d at 734; Vega v. Restani Constr. Corp., 18 N.Y.3d at 503; Smalls v. AJI Indus., Inc., 10 N.Y.3d 733, 735 (2008); JMD Holding Corp. v. Congress Fin. Corp., 4 N.Y.3d 373, 384 (2005).

III. DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants maintain that they are not liable for plaintiff's injury because they are out of possession of the premises they leased to plaintiff's employer, where plaintiff was injured. As landlords out of possession of the leased premises, defendants would be liable for a condition on the premises that caused injury based on their actual or constructive notice of the condition only if (1) the condition was a structural defect that violated a statute, and (2) defendants retained a right to re-enter the premises for inspection and repair. Guzman v. Haven Plaza Hous. Dev. Fund Co., 69 N.Y.2d 559, 566-67 (1987); Yuying Qiu v. J&J Grocery & Deli Corp., 115 A.D.3d 627, 627 (1st Dep't 2014); Nielsen v. 300 East 76th Street Partners, LLC, 111 A.D.3d 414, 414-15 (1st Dep't 2013).

A. Structural Defect That Violated a Statute

Plaintiff attributes her injury to a crack in the floor, Restituyo v. East 174th St. Inc., 123 A.D.3d 599, 600 (1st Dep't 2014); Joyner v. Kingles Cafe, Inc., 115 A.D.3d 560, 561 (1st Dep't 2014), and lack of a handrail on the stairs, Podel v. Glimmer Five, LLC, 117 A.D.3d 579, 580 (1st Dep't 2014); Quing Sui Li v. 37-65 LLC, 114 A.D.3d 538, 539 (1st Dep't 2014), Drotar v. 60 Sweet Thing, Inc., 106 A.D.3d 426, 427 (1st Dep't 2013); Kittay v. Moskowitz, 95 A.D.3d 451, 452 (1st Dep't 2012), neither of which is a structural defect. The statutes plaintiff

identifies, albeit for the first time in opposition to defendants' motion and not in any pleading or disclosure, are New York City Administrative Code §§ 28-301.1 and 27-375.

Administrative Code § 28-301.1 does not support liability because this non-specific safety provision merely imposes the overall duty on defendants to maintain their premises. Sapp v. S.J.C. 308 Lenox Ave. Family L.P., 150 A.D.3d 525, 528 (1st Dep't 2017); Stubbs v. 350 E. Fordham Rd., LLC, 117 A.D.3d 642, 643 (1st Dep't 2014); Yuying Qiu v. J&J Grocery & Deli Corp., 115 A.D.3d at 627-28; Centeno v. 575 E. 137th St. Real Estate, Inc., 111 A.D.3d 531, 531 (1st Dep't 2013). Administrative Code § 27-232 is inapplicable because the undisputed evidence establishes that the staircase did not require a handrail, as it was an interior staircase connecting two floors. Levine v. 425 Madison Assoc., 138 A.D.3d 606, 607 (1st Dep't 2016); Pwangsunthie v. Marco Realty Assoc., L.P., 136 A.D.3d 502, 502 (1st Dep't 2016); Jean-Baptiste v. 153 Manhattan Ave. Hous. Dev. Fund Corp., 124 A.D.3d 476, 477 (1st Dep't 2015); Varga v. North Realty Co., 123 A.D.3d 639, 640 (1st Dep't 2014).

B. Landlords Out of Possession Without Rights to Inspect and Repair

To show that defendants are landlords out of possession of the leased premises, limiting defendants' liability to structural conditions where defendants retained the right to inspect and repair, Michael Braitto testified at his deposition that Chelsea

Piers leased the land and buildings from nonparty Hudson River Park Trust. Aff. of Joseph E. Donat Ex. O, at 12. Defendants also refer to two leases, as evidence that (1) defendant Chelsea Piers L.P. leased all the real property from nonparty Hudson River Park Trust, and (2) defendant Spirit Cruises LLC leased dock and office space from Chelsea Piers. Although defendants repeatedly refer to the two leases, they present neither lease in support of their motion. Therefore Braitto's testimony that, under the leases, defendants owed no duty to inspect or repair the floor is inadmissible hearsay. Kenneth J. v. Lesley B., 165 A.D.3d 439, 441 (1st Dep't 2018); AQ Asset Mgt. LLC v. Levine, 128 A.D.3d 620, 621 (1st Dep't 2015); Shanmugam v. SCI Eng'g, P.C., 122 A.D.3d 437, 438 (1st Dep't 2014). See Residential Credit Solutions, Inc. v. Gould, 171 A.D.3d 638, 642 (1st Dep't 2019); Adriana G. v. Kipp Wash. Hgts. Middle Sch., 165 A.D.3d 469, 470 (1st Dep't 2018); Berr v. Grant, 149 A.D.3d 536, 536 (1st Dep't 2017); Williams v. Esor Realty Co., 117 A.D.3d 480, 480-81 (1st Dep't 2014). Defendants' references to the contents of either lease are "not an acceptable substitute" for the documents themselves, People v. Joseph, 86 N.Y.2d 565, 570 (1995), particularly when defendants give no reason for not producing the leases. River Park Assoc. (1972) L.P. v. Richman Plaza Garage Corp., 178 A.D.3d 422, 423 (1st Dep't 2019); Clarke v. American Truck & Trailer, Inc., 171 A.D.3d 405, 406 (1st Dep't

2019); Adriana G. v. Kipp Wash. Hgts. Middle Sch., 165 A.D.3d at 470.

Consequently, insofar as defendants rely on the unproduced leases to establish that defendants are not responsible for plaintiff's injury, their failure to support their motion for summary judgment with those documents precludes a determination whether defendants retained or delegated the duty to maintain the premises where plaintiff fell. Adriana G. v. Kipp Wash. Hgts. Middle Sch., 165 A.D.3d at 470; Williams v. Esor Realty Co., 117 A.D.3d at 480-81; Cole v. Homes for the Homeless Inst., Inc., 93 A.D.3d 593, 594 (1st Dep't 2012). Notwithstanding the absence of a structural defect that violated a statute, defendants' failure to produce any lease to establish that defendants were landlords out of possession of the premises with no duty to inspect or repair them requires the denial of defendants' motion. C.P.L.R. § 3212(b).

IV. CONCLUSION

The court thus denies the motion by defendants Chelsea Piers L.P. and Spirit Cruises LLC for summary judgment. C.P.L.R. § 3212(b).

DATED: October 7, 2020



LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C