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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. CAROL EDMEAD Justice

PART 35

Index Number : 114703/2005
PEREZ, DOROTHY
VS
LATIN QUARTER
Sequence Number : 001
SUMMARY JUDGMENT

INDEX NO. 114703/05
MOTION DATE 6/1/07
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

s motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ... _____
Answering Affidavits — Exhibits _____
Replying Affidavits _____

Cross-Motion: ☑ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

The within motion and cross motion are decided in accordance with the accompanying Memorandum Decision. It is hereby

ORDERED that the motion of defendant LQ 511 Corp. I/s/h/a Latin Quarter, Inc. for an order, pursuant to CPLR 3212, granting summary judgment dismissing the complaint of plaintiff Dorothy Perez is denied. It is further

ORDERED that the cross motion of plaintiff to amend the Bill of Particulars to allege the violations of the New York City Administrative Code, as well as ASTM, CABO/ANCI violations, is denied without prejudice to renew before the trial judge. It is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry within twenty days of entry.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 6/25/07

HON. CAROL EDMEAD J.S.C.

Check one: ☐ FINAL DISPOSITION ☑ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

DOROTHY PEREZ,

Plaintiff,

-against-

LATIN QUARTER, INC.,

Defendant.

Index No. 114703/05

DECISION/ORDER

EDMEAD, J.S.C.

MEMORANDUM DECISION

Defendant LQ 511 Corp. i/s/h/a Latin Quarter, Inc. ("defendant") moves for an order, pursuant to CPLR 3212, granting summary judgment dismissing the complaint of plaintiff Dorothy Perez ("plaintiff").

Plaintiff opposes the within motion and cross-moves to amend the Bill of Particulars so as to include violations of the New York City Administrative Code, and other violations.

Plaintiff's Deposition

On the evening of September 23, 2005, plaintiff visited the defendant's premises with a group of her coworkers after work. They arrived around 6:00 p.m. and the accident occurred around 10:30 p.m. (Pl.'s dep. pp. 10-11) At the time of her accident plaintiff did see people on the dance floor with drinks in their hands. However, just before her accident occurred, plaintiff did not take notice of anybody standing with drinks in their hands within the two-foot radius circular area of where she was standing on the dance floor. (Pl.'s dep. pp. 21-22) From the point when plaintiff first arrived at the club to the point where her accident occurred, she did not see anyone spill a drink on the dance floor. While plaintiff was dancing with Mr. Blaine, they were

dancing about ıen or fifteen minutes, then he told her to be careful, the floor is wet, and at that point in a split second she fell. (Pl.'s dep. pp. 31-32) Plaintiff has no idea how the floor got wet when her accident occurred. Plaintiff states that she slipped on liquid and it made her foot go airborne and she fell backwards. After she fell she felt her clothes were wet. While she was on the floor, she was able to see the wetness. It appeared to be a clear liquid. The area of wetness was about one foot long and a foot wide. Plaintiff did not see the liquid on the floor before she fell. (Pl.'s dep. pp. 33-36) Plaintiff says that her friend Sonia told her that she, Sonia saw the water or liquid on the floor before plaintiff's accident, and that the liquid was there about one half hour to one hour before plaintiff fell. (Pl.'s dep. pp. 50-51)

Affidavit of Sonia Green James

According to Ms. James' affidavit, "The floor in the area where Ms. Perez told me she had slipped and where I observed her on the floor was wet for at least an hour prior to the time that I had observed her dancing. I know this because I had been dancing in the same area of the dance floor, in the vicinity in front of the stage, at least an hour prior to observing Ms. Perez dancing in that area and I noticed and observed that at the time the floor was wet and slippery."

Defendant's Contentions

The competent and admissible evidence in this case establishes that plaintiff does not know how the dance floor became wet, who placed the liquid on the dance floor nor how long that wet condition existed before she slipped and fell. Therefore, the plaintiff cannot make out a legally competent case of negligence against the defendant because the evidence establishes that the defendant did not have notice of the alleged wet condition of its dance floor prior to plaintiff's fall. As a result of this lack of prior notice, defendant did not have a sufficient amount

of time to remove the wet condition to prevent the plaintiff's fall. Therefore, defendant cannot be found negligent because the plaintiff is unable to establish a *prima facie* case of liability.

Plaintiff's Contentions

The fact that defendant's management allowed patrons to hold drinks while dancing constituted notice of a dangerous condition. This is a recurring condition. And, as the defendant had notice of a particular dangerous condition to reoccur, such owner is chargeable with constructive notice of each specific reoccurrence of that condition. The wet dance floor existed for along enough period of time for the defendant to know that a dangerous condition existed prior to plaintiff slipping and falling.

Analysis

It is well settled that where a defendant is the proponent of a motion for summary judgment, the defendant must establish that the "cause of action . . . has no merit" (CPLR § 3212[b]), sufficient to warrant the court as a matter of law to direct judgment in his or her favor (*Bush v St. Claire's Hosp.*, 82 NY2d 738, 739 [1993]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Wright v National Amusements, Inc.*, 2003 N.Y. Slip Op. 51390(U) [Sup Ct New York County, Oct. 21, 2003]). This standard requires that the proponent of a motion for summary judgment make a *prima facie* showing of entitlement to judgment as a matter of law, by advancing sufficient "evidentiary proof in admissible form" to demonstrate the absence of any material issues of fact (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Silverman v Perlbinder*, 307 AD2d 230, 762 NYS2d 386 [1st Dept 2003]; *Thomas v Holzberg*, 300 AD2d 10, 11, 751 NYS2d 433, 434 [1st Dept 2002] [defendant not entitled to summary judgment where he failed to produce

admissible evidence demonstrating that no triable issue of fact exists as to whether plaintiff would have been successful in the underlying negligence action]). Thus, the motion must be supported "by affidavit [from a person having knowledge of the facts], by a copy of the pleadings and by other available proof, such as depositions" (CPLR § 3212[b]). A party can prove a *prima facie* entitlement to summary judgment through the affirmation of its attorney based upon documentary evidence (*Zuckerman, supra*; *Prudential Securities Inc. v Rovello*, 262 AD2d 172 [1st Dept 1999]).

Alternatively, to defeat a motion for summary judgment, the opposing party must show facts sufficient to require a trial of any issue of fact (CPLR §3212[b]). Thus, where the proponent of the motion makes a *prima facie* showing of entitlement to summary judgment, the burden shifts to the party opposing the motion to demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action, or to tender an acceptable excuse for his or her failure to do so (*Vermette v Kenworth Truck Co.*, 68 NY2d 714, 717 [1986]; *Zuckerman v City of New York, supra*, 49 NY2d at 560, 562; *Forrest v Jewish Guild for the Blind*, 309 AD2d 546, 765 NYS2d 326 [1st Dept 2003]). Like the proponent of the motion, the party opposing the motion must set forth evidentiary proof in admissible form in support of his or her claim that material triable issues of fact exist (*Zuckerman, supra* at 562). Opponent "must assemble and lay bare [its] affirmative proof to demonstrate that genuine issues of fact exist" and "the issue must be shown to be real, not feigned since a sham or frivolous issue will not preclude summary relief" (*Kornfeld v NRX Technologies, Inc.*, 93 AD2d 772 [1st Dept 1983], *affd*, 62 NY2d 686 [1984]).

The affidavit of Sonia Green James raises an issue of fact as to constructive notice. Her

affidavit is more than a general awareness that some patrons might spill drinks on the floor. She gives specific details as to the location of the wet area, the duration that the area was wet, and that it was the self same area where plaintiff fell.

Conclusion

Based on the foregoing, it is hereby

ORDERED that the motion of defendant LQ 511 Corp. i/s/h/a Latin Quarter, Inc. for an order, pursuant to CPLR 3212, granting summary judgment dismissing the complaint of plaintiff Dorothy Perez is denied. It is further

ORDERED that the cross motion of plaintiff to amend the Bill of Particulars to allege the violations of the New York City Administrative Code, as well as ASTM, CABO/ANCI violations, is denied without prejudice to renew before the trial judge. It is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry within twenty days of entry.

This constitutes the decision and order of this court.

Dated: June 25, 2007

Carol Robinson Edmead, J.S.C.