

Larrain v Citadel Sec. Agency
2009 NY Slip Op 31017(U)
May 4, 2009
Supreme Court, New York County
Docket Number: 111847/08
Judge: Jane S. Solomon
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT:

PART 55

Justice

Index Number: 111847/2008

LARAIN, KAREN HANES

vs.

CITADEL SECURITY AGENCY

SEQUENCE NUMBER: # 001

SUMMARY JUDGMENT

INDEX NO. 111847-08

MOTION DATE 5/1/09

MOTION SEQ. NO. #001

MOTION CAL. NO. _____

_____ were read on this motion to/for _____

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1-4

5-6

7

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed memorandum decision and order.

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

FILED

MAY 06 2009

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 5/4/09

JANE S. SOLOMON J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 55

----- X
KAREN HANES LARRAIN,

Index No. 111847/08

Plaintiff,
- against -

CITADEL SECURITY AGENCY,

DECISION AND ORDER

MAY 06 2009

COUNTY CLERK'S OFFICE
NEW YORK

----- X
JANE S. SOLOMON, J.S.C.:

Plaintiff Karen Hanes Larrain sustained serious injuries on September 11, 2005 when she was a guest at a fashion show hosted by designer Diane Von Furstenberg at a venue on West 12th Street in Manhattan. A piece of lighting apparatus fell into the audience, striking Larrain on the head. In 2005, Larrain sued Von Furstenberg's design studio, the alleged owner of the premises, the lighting equipment provider and designer, and others involved in the show. Many depositions were held in that action¹, including the depositions of Dean Snyder (Snyder), who identified his company Ojala, Ltd. as a lighting production company, and Deborah Hughes, whose company (Deborah Hughes, Inc.) prepared the guest list of approximately 800-850 people, the seating chart for the fashion show, decided who was admitted, and hired security. The security company she hired is defendant Citadel Security Agency (Citadel).

¹ *Larrain v Diane Von Furstenberg Studio, LP, et al.*, NY County index number 112984/05, is before another justice of this court.

At his deposition in the other action, Snyder testified that he was present at the show and witnessed the accident. He testified that the show was crowded, and that people were standing behind benches where normally people did not stand. Snyder opined that someone knocked over a pole that held up the lighting rigging (Snyder EBT Trans., annexed to Aff. In Opposition of Mary E. Burns, Esq. at Exh. G, 131). Snyder also recalled commenting to a security guard that the place was so crowded "you can't see the beautiful amber lights ..." (*Id.*, at 135).

Hughes testified that she hired Citadel because security is always needed at a fashion show "in case you have fur protesters or you have crashers or you have somebody doing something" (Hughes EBT Trans., annexed to Notice of Motion, Exh. C, 66). Security is positioned near the photographers and at the entrances.

In her complaint, Larrain alleges that Citadel negligently failed to maintain the premises in a reasonably safe condition, and failed to properly manage, inspect and control the premises. Her bill of particulars alleges, *inter alia*, that Citadel negligently maintained the premises; caused the lighting fixture to collapse; failed to provide the audience with a safe place to view the show; failed to warn the public of a hazardous condition; and permitted an excessive number of people to attend

the show.

Citadel moves for summary judgment dismissing the complaint in reliance upon the deposition transcripts, plaintiff's bill of particulars, and the affidavit of its principal, Ty Yorio. Citadel provided four security guards for each of six shifts. Yorio alleges that Citadel had nothing to do with the lighting, but was hired by Deborah Hughes, Inc. solely to make sure only invited guests were admitted, to make sure attendees were in their seats and not backstage or in other inappropriate places during the show.

To obtain summary judgment, a movant must establish entitlement to judgment in its favor as a matter of law (see *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]). Once this showing has been made, the party opposing summary judgment has the burden to produce evidentiary proof in admissible form sufficient to establish the existence of a material issue of fact (*Id.*, and see *Zuckerman v City of New York*, 49 NY2d 1t 557 [1980]).

Citadel has established that the scope of its duties did not include any of the grounds for liability set forth in Larrain's complaint and bill of particulars. It did not maintain the lighting fixtures, decide how many people were permitted to enter the show, issue warnings about the facilities, or perform any other duty cited in the pleadings. Although Yorio states that Citadel had a duty to keep guests from "inappropriate

places", there is no evidence that Hughes, Diane Von Furstenberg or anyone else told Citadel that behind the benches (and in front of the amber lights) was an inappropriate place for guests, or that it otherwise caused the accident as alleged in the pleadings.

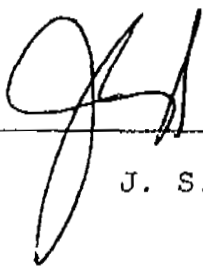
Larrain has taken significant discovery in the other action, including from the person who hired Citadel and from eyewitnesses to the accident, which she claims she relied upon in deciding to file this lawsuit. In opposing Citadel's motion, Larrain surmises that further discovery could reveal that Citadel set up the lights, or caused the show to be crowded, or failed to provide patrons with a safe place to view the show. However, in light of the depth of discovery already obtained in connection with this accident, it was incumbent upon Larrain to show some nexus between it and Citadel.

Finally, Citadel alleges that it is entitled to costs and attorneys fees under CPLR 8303(a) and Part 130-1 of the Uniform Rules of the Chief Administrator because this lawsuit is frivolous. In the court's discretion, plaintiff's sanction is limited to dismissal of the lawsuit with costs as directed below. Accordingly, it hereby is

ORDERED that Citadel's motion for summary judgment dismissing the complaint is granted, and the Clerk of the Court is directed to enter judgment accordingly with costs and disbursements as taxed, including the costs of this motion in the amount of \$100.

Dated: May 4, 2009

ENTER:



J. S. C.

JANE S. SOLOMON

FILED
MAY 06 2009
COUNTY CLERK'S OFFICE
NEW YORK