

Rudinsky v New York Convention Ctr. Dev. Corp.

2010 NY Slip Op 31475(U)

June 10, 2010

Sup Ct, NY County

Docket Number: 105535/2006

Judge: Saliann Scarpulla

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

PRESENT: Saliann Scarpulla, J.S.C.

PART 19

Index Number : 105535/2006
RUDINSKY, SHELLEY
 vs.
NEW YORK CONVENTION CENTER
 SEQUENCE NUMBER : 004
 SUMMARY JUDGMENT

INDEX NO. _____
 MOTION DATE _____
 MOTION SEQ. NO. _____
 MOTION CAL. NO. _____

In this motion to/for _____

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

PAPERS NUMBERED	
1	_____
2	_____
3	_____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is determined in accordance with the accompanying decision order.

FILED
 JUN 15 2010
 NEW YORK
 COUNTY CLERK'S OFFICE

Dated: 6/10/10

Saliann Scarpulla
 J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
 Check if appropriate: DO NOT POST REFERENCE

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

On March 25, 2005, plaintiffs Shelly Rudinsky and her husband Paul Rudinsky ("the Rudinskys") attended the New York Auto Show at the Jacob K. Javits Convention Center. At approximately 5:00 p.m., they were walking near the Lexus vehicle display area when Shelly Rudinsky ("Rudinsky") tripped and fell over a purported trap-like condition on the floor. Allegedly, there was a two inch high platform upon which a Lexus vehicle was displayed. There was carpeting covering the platform and extending one foot beyond the end of the platform onto the floor, purportedly giving the illusion that there was no height differential between the floor and platform. Shelly Rudinsky's left foot collided with the rise of the concealed platform and she fell onto her left knee and left side. The Rudinskys commenced this action in or about April 2006 seeking to recover damages for the injuries sustained by Rudinsky as the result of her fall, and for Paul Rudinsky's loss of consortium sustained as a result of his wife's fall.

Defendants now move for summary judgment dismissing the complaint, first arguing that the Rudinskys can not establish a *prima facie* case of negligence because they have not specified the exact defect upon which Rudinsky tripped and fell.

They further argue that, in any event, the defendants did not create or have notice of the allegedly defective condition upon which Rudinsky fell. They submit the affidavit and examination before trial testimony of Vice President for Legal Affairs and Operations for Greater New York Auto Dealers Association ("GNYADA") Stuart Rosenthal ("Rosenthal") in support of their argument. According to Rosenthal, defendant New York Convention

Center Development Corporation ("NYCCDC") owned the Jacob K. Javits Convention Center. GNYADA organized the auto show and contracted with NYCCDC to occupy almost the entire building for the auto show. GNYADA then leased sections of the convention center to various vehicle manufacturers. The subject accident occurred in an area leased by GNYADA to the Lexus division of defendant Toyota Motor North American, Inc. ("Toyota").

Rosenthal further testified that GNYADA took the space in "raw" condition from NYCCDC and in turn, leased it out in "raw" condition to various manufacturers/exhibitors. The "raw" space consisted of an empty area with concrete flooring and each exhibitor was responsible for decorating its designated area. The exhibitors submitted their construction and/or decoration floor plans to GNYADA prior to the beginning of the show so that GNYADA could ensure that each exhibitor was within its spacial boundaries and was in compliance with fire safety rules. NYCCDC was responsible for cleaning and maintaining any carpeted surfaces and would then submit bills for such services to GNYADA. GNYADA would then bill each exhibitor for the charges associated with cleaning the carpet in that exhibitor's section.

Rosenthal explained that based on his twelve years of experience with GNYADA, his involvement in the contract process with GNYADA for the 2005 Auto Show, and his familiarity with the auto show, only subcontractors, and not the actual vehicle exhibitors or agents of the Javits Center performed the exhibit assembly and construction. Rosenthal

explained that none of the defendants, their agents, servants or representatives were responsible for the assembly or construction of the platform or the installation of the carpet in the area where the fall occurred.

Finally, Rosenthal testified that the date of the accident was the first day the show was open to the public, there were no prior incidents that day, and the Rudinskys arrived only six hours after the show opened to the public.

In opposition, the Rudinskys argue that the defect upon which Rudinsky tripped and fell has been unequivocally identified in their bill of particulars and in Rudinsky's examination before trial testimony. They further argue that the defendants, as owners and/or possessors of the premises had a nondelegable duty to maintain the premises in a safe condition and they breached that duty. The Rudinskys maintain that defendants are vicariously liable for any independent contractors' negligence.

Discussion

A movant seeking summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, offering sufficient evidence to eliminate any material issues of fact. *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985). Once a showing has been made, the burden shifts to the opposing party who must then demonstrate the existence of a triable issue of fact. *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986); *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980). A motion for

summary judgment must be denied if there is any doubt as to the existence of a triable issue of fact. *See Rotuba Extruders, Inc. v. Ceppos*, 46 N.Y.2d 223, 231 (1978).

First, contrary to defendants' contention, Rudinsky adequately and consistently identified the defect upon which she fell. The evidence presented establishes that Rudinsky's left foot collided with the rise of the carpet-concealed platform at Toyota's Lexus exhibit area.

Second, defendants maintain that the Lexus exhibit area was presented to Toyota "raw" with concrete flooring before the auto show began and certain unidentified subcontractors were responsible for constructing, carpeting and decorating the exhibit. Defendants assert that they had no control over the subject area and they were not responsible for or involved in the actual assembly or construction of the platform or the installation of the carpet in the area where the fall occurred. However, to support their assertion, they merely submit Rosenthal's testimony, and submit no documentary evidence such as contracts, lease documents, agreements, or plans.

In any event, even if defendants had submitted sufficient evidence to prove that they had no control over the subject area and were not involved with the construction, assembly, or decoration of the Lexus exhibit, they still have not met their *prima facie* burden of establishing entitlement to summary judgment. The defendants knew that members of the public would be invited onto the premises for the auto show and they owed a nondelegable duty to provide the public with reasonably safe premises and a safe means of ingress and

gress. See *Richardson v. David Schwager Assocs.*, 249 A.D.2d 531 (2nd Dept. 1998). The defendants have failed to meet their burden of proving that, even if they were not responsible for actually creating the alleged defective condition, they fulfilled their duty to provide the public with reasonably safe premises. See e.g. *Podlaski v. Long Is. Paneling Ctr. of Centereach, Inc.*, 58 A.D.3d 825 (2nd Dept. 2009); *Arabian v. Benenson*, 284 A.D.2d 422 (2nd Dept. 2001).

In accordance with the foregoing, it is

ORDERED that defendants New York Convention Center Development Corporation, New York Convention Center Operating Corporation, Toyota Motor North American, Inc., and Greater New York Auto Dealers Association's motion for summary judgment dismissing the complaint is denied.

This constitutes the decision and order of the court.

Dated: New York, New York
June 10, 2010

ENTER:

Saliann Scarpulla
J.S.C.
SALIANN SCARPULLA
J.S.C.

FILED
JUN 15 2010
NEW YORK
COUNTY CLERK'S OFFICE