

Guntur v Jetblue Airways Corp.

2011 NY Slip Op 32615(U)

October 4, 2011

Supreme Court, New York County

Docket Number: 114468/2009

Judge: Eileen A. Rakower

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

HON. EILEEN A. RAKOWER

PRESENT: _____

PART 15

Justice

Index Number : 114688/2009

GUNTUR, VALERIE

VS.

JETBLUE AIRWAYS

SEQUENCE NUMBER : 001

SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

1, 2

3, 4

5

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

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER

FILED

OCT 07 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 10/5/11


HON. EILEEN A. RAKOWER

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

-----X
VALERIE GUNTUR,

Plaintiff,

- against -

JETBLUE AIRWAYS CORPORATION,

Defendant.

Index No.
114688/09

**DECISION
and ORDER**

FILED

Met. Seq.

OCT 07 2011

HON. EILEEN A. RAKOWER

NEW YORK
COUNTY CLERK'S OFFICE

Valerie Guntur ("Plaintiff") brings this action for personal injuries allegedly sustained on February 22, 2009 while boarding Jetblue Flight 1011 (flying to JFK Airport) in Logan Airport in Boston, Massachusetts. She alleges in her complaint that she "was caused to slip, trip and/or fall by reason of a dangerous, defective, unsafe, hazardous and unlawful slippery condition existing upon the airplane." Plaintiff states in her bill of particulars that "[t]he accident occurred near the entrance to the airplane shortly after [she] boarded the airplane." Plaintiff testified in her deposition that she arrived at Logan Airport at about 6:30 p.m. Plaintiff described the weather that day as "[a] little snow and rain." Plaintiff's name was called to board the flight while she was in the bathroom. She recalls that although she was originally told that the flight was delayed an hour, the plane actually boarded earlier than expected. Plaintiff was the last person to board the plane.

Plaintiff describes the accident as follows:

I was walking, and I watched the step, the – in between the metal and the plane. Then the attendant in front of me, and I just walk, and the next thing I fell. I trip and fell.

Plaintiff testified that she was looking straight ahead towards the flight attendant and walking at "normal" speed when she fell. She was not talking to anyone and was not on her phone. Since Plaintiff was the last one to board the plane, she was the only

person in the area at the time. Plaintiff testified that after she fell, she looked down and observed the condition which caused her to fall, which she described as “icy wet dirt.” Plaintiff testified that she did not know where it came from.

Donald Todd was an Airport Operations Lead with Jetblue at the time of the incident. This position entailed supervision of gate agents, ticket counter agents, and the handling of “any irregular issues.” Such issues would include if a person is injured, or there is an incident on board or in the gate area. Todd was stationed at Terminal C at Logan Airport at the time of the incident. Todd testified that Jetblue “clean teams” are responsible for the cleaning of Jetblue aircraft interiors. Prior to Jetblue employees, Jetblue used an outside service named Lima Cleaning. Todd did not recall which was responsible for cleaning the aircraft at the time of Plaintiff’s accident. Jetblue clean teams consist of two Jetblue employees; Todd believed that Lima used something between two to four cleaners.

Todd testified that on days where it rains or snows, Jetblue employees “will check the jet bridge itself and the immediate inside of the aircraft for any water or snow accumulation.” Employees will go “gate to gate” inspecting the premises for snow, ice, or wet conditions. If they found any such conditions, “[t]hey have a shovel and a broom, sometimes a dry mop with them, an extra carpet to replace the [carpet that goes from the front of the aircraft door straight down to the back door of the jet bridge] ... in case that was wet.” Flight attendants will also use paper towels to wipe up any wet conditions they observe.

Todd testified that, on February 22, 2009, Flight 1011 was delayed due to weather conditions. Passengers initially boarded the aircraft but were asked to deplane approximately 25 minutes later as a result of the delay. Todd observed Plaintiff at the end of the first boarding of the flight “[r]unning from the middle of the terminal towards the gate” in what he described as “a brisk little jog.” Todd told Plaintiff that she was the last person to board the plane and that she did not have to run. However, Plaintiff did not slow down.

Flight attendant Lisa Povey testified at her deposition that Jetblue’s flight attendant manual instructs attendants to mop up any wet spots they observe in order to reduce the risk of passengers slipping and falling. She stated that generally, “the ramp customer service” was responsible for ensuring that there were no wet conditions on the floor of an aircraft, but “[i]f it gets past them, us, flight attendants,

and the captain, the first officer, and anyone who sees something” is supposed to rectify the condition or report it to the attendants. Povey described the weather causing the delay as “blowing snow” in Boston. She testified that she is certain that she cleaned the floor of Flight 1011 on the date of the incident because, in her six years of working for Jetblue, she has always cleaned the floor if it was wet. She described the cleaning of the floor as “everybody’s responsibility ... if one person misses it, then another crew member would see it and clean it.” Povey first observed Plaintiff on her knees after she fell. She helped Plaintiff back up and asked if she was okay. Povey believes that she checked the floor to see what caused Plaintiff to fall but did not recall observing anything. She also used the plane’s PA system to ask if there was a doctor on board, and a doctor did in fact respond and looked at Plaintiff’s knee. Povey placed Plaintiff in the first row when passengers re-boarded so she could put an ice pack on her knee.

Povey testified that she did not observe a wet and slippery condition in the front cabin. However, she testified that she believed the front cabin *could have been* wet and slippery from the jet bridge because

The canopy that goes over the aircraft is not a tight seal, and sometimes moisture gets in, and it will get that little – it’s almost like an area rug. It will get wet, so the person walks on there and then walks on the aircraft. You’ve got a shoe print that’s wet.

She testified that she has observed this condition “many times.”

Jetblue now moves for summary judgment. Jetblue provides an attorney’s affirmation and memorandum of law in support of its application. Annexed to the affirmation as exhibits are copies of the pleadings; Plaintiff’s bill of particulars; an incident report; and weather reports from Logan Airport on the date of the accident. Jetblue argues that it is entitled to summary judgment because there is no evidence that Jetblue either created the condition which caused Plaintiff’s accident, or had constructive notice thereof; and because it was under no duty to continuously remedy water being “tracked into” the aircraft. Plaintiff submits an attorney’s affirmation and a memorandum of law in opposition. Plaintiff argues that “[t]he hazardous condition that caused the plaintiff to slip and fall at the entrance to the defendant’s airplane was the proximate result of a defective, ‘untight’ seal between the ‘canopy’, i.e., a covering employed to serve as an ‘umbrella’ over the airplane door, and the doorway

entrance to the airplane, itself.” This “created an opening through which precipitation was permitted to continuously leak, unabated, onto an ‘area rug’, which was placed by the defendant’s employees on the ‘jet bridge’....”

The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law. That party must produce sufficient evidence in admissible form to eliminate any material issue of fact from the case. Where the proponent makes such a showing, the burden shifts to the party opposing the motion to demonstrate by admissible evidence that a factual issue remains requiring the trier of fact to determine the issue. The affirmation of counsel alone is not sufficient to satisfy this requirement. (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]). In addition, bald, conclusory allegations, even if believable, are not enough. (*Ehrlich v. American Moninger Greenhouse Mfg. Corp.*, 26 N.Y.2d 255 [1970]). (*Edison Stone Corp. v. 42nd Street Development Corp.*, 145 A.D.2d 249, 251-252 [1st Dept. 1989]). “[I]f it is reasonable to disagree about the material facts or about what may be inferred from undisputed facts, summary judgment may not be granted. Moreover, in deciding whether there is a material triable issue of fact, ‘the facts must be viewed in the light most favorable to the nonmoving party’” (*Ferluckaj v. Goldman Sachs & Co.*, 2009 NY Slip Op 2483 [2009]).

Here, the court finds that Jetblue is entitled to summary judgment. The controlling law is succinctly summarized by the First Department in *Segretti v. Shorestein Company, East, L.P.*, (256 A.D.2d 234, 234-35 [1st Dept. 1998]):

The mere existence of a foreign substance, without more, is insufficient to support a claim of negligence (*see, Lewis v Metropolitan Transp. Auth.*, 99 AD2d 246, 249-250, *affd* 64 NY2d 670). To establish a prima facie case, the plaintiff must show that the defendant either created a dangerous condition or had actual or constructive knowledge of the condition (*Gordon v American Museum of Natural History*, 67 NY2d 836, 837). Furthermore, “ [t]o constitute constructive notice, a defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit [the owners'] employees to discover and remedy it ” (*O'Connor-Miele v Barhite & Holzinger*, 234 AD2d 106, quoting *Gordon v American Museum of Natural History*, *supra*, at 837). The burden may also be satisfied by providing evidence that an “ongoing and recurring dangerous condition existed in the area of the

* 6]

accident which was routinely left unaddressed by the landlord" (*O'Connor-Miele v Barhite & Holzinger, supra, at 106-107*). However, a mere general awareness of some dangerous condition is legally insufficient to establish constructive notice (*see, Piacquadio v Recine Realty Corp., 84 NY2d 967, 969*).

Here, there is no testimony or any other evidence in the record which demonstrates that Jetblue employees had actual notice of the "icy wet dirt" which caused Plaintiff's accident prior to her fall. Nor is there evidence that Jetblue had constructive notice of the slippery condition, since, there is nothing in the record which establishes how long the "icy wet dirt" was present (*see Keum Choi v. Olympia & York Water Street Co., 278 A.D.2d 106-07 [1st Dept. 2000]*) ("Even were we to assume that water was visible, despite plaintiff's inability to recall seeing water, there is no evidence from which a jury could reasonably conclude that such condition existed for a sufficient period of time to allow defendants to have discovered and remedied it.").

While Plaintiff's attorney surmises in his affirmation that the condition was caused by "a defective, 'untight' seal between the 'canopy' ... and the doorway entrance to the airplane," this assertion fails for a number of reasons. First, it is well settled that mere speculation as to the cause of an accident is insufficient to maintain a cause of action (*see Segretti at 235*) ("Plaintiff, who testified only to seeing 'stuff' on the floor of the lobby, has merely established that there was an 'oily substance' on his shoes with no known etiology. While surmising that it might have come from the garbage room located across the hall from defendant ... , plaintiff testified that he never saw any substance emanating from that source."). While Plaintiff cites Povey's testimony that "[t]he canopy that goes over the aircraft is not a tight seal, and sometimes moisture gets in," there is no evidence in the record that this actually occurred on the date and time of Plaintiff's accident, or that this was the source of the "icy wet dirt" which caused Plaintiff to slip. Moreover, Plaintiff relies on the non-expert opinion of counsel that the canopy constituted a defective condition, and fails to provide evidence in admissible form that the canopy was defective in any way (*see Georgiou v. 32-42 Broadway LLC, 2011 NY Slip Op 2133, *1 [1st Dept. 2011]*) ("In opining that the sidewalk bridge [which allegedly allowed rain water to stream down its roof and into restaurant where plaintiff slipped] was defectively designed, plaintiff's expert did not specify any accepted industry standards or practices that were violated ...").

Additionally, to the extent that the "icy wet dirt" may have been "tracked in" by fellow passengers boarding the plane, an owner of a premises is "not obligated to provide a constant remedy" to rain or snow being "tracked in" during periods of rainy or snowy weather (*see Yearwood v. Cushman & Wakefield, Inc.*, 294 A.D.2d 568 [1st Dept. 2002]).

Wherefore it is hereby

ORDERED that defendant's motion for summary judgment is granted and the complaint is dismissed with costs and disbursements to defendant as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: October 4, 2011



EILEEN A. RAKOWER, J.S.C.

FILED

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