

Schepis v St. Barnabas Hosp.

2013 NY Slip Op 33348(U)

August 7, 2013

Sup Ct, Bronx County

Docket Number: 8796/06

Judge: Mark Friedlander

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This opinion is uncorrected and not selected for official publication.

PART 25

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF BRONX:

Case Disposed
 Settle Order
 Schedule Appearance

SCHEPIS, TAMMY A.

Index No. 0008796/2006

-against-

Hon. MARK FRIEDLANDER

ST. BARNABAS HOSPITAL

Justice.

The following papers numbered 1 to 4 Read on this motion, **SUMMARY JUDGMENT DEFENDANT**
 Noticed on **April 09 2013** and duly submitted as No. _____ on the Motion Calendar of 5/16/2013

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	1-2	
Answering Affidavit and Exhibits	3	
Replying Affidavit and Exhibits	4	
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this

Motion is Respectfully Referred to:
 Justice: _____
 Dated: _____

**MOTION IS DECIDED IN ACCORDANCE WITH
 MEMORANDUM DECISION FILED HEREWITH**

Dated: 8/7/13

Hon. 
MARK FRIEDLANDER, J.S.C.

**NEW YORK SUPREME COURT-COUNTY OF BRONX
PART IA-25**

TAMMY SCHEPIS, as Administrator of the Estate
of SCOTT J. SCHEPIS,

Plaintiff,

-against-

ST. BARNABAS HOSPITAL,

Defendant.

**MEMORANDUM
DECISION/ORDER**
Index No.: 8796/06

HON. MARK FRIEDLANDER

Defendant, St. Barnabas Hospital ("St. Barnabas") moves for an order, pursuant to CPLR§3212, dismissing plaintiff's complaint. Defendant's motion is decided as hereinafter indicated.

This is an action by the estate of the deceased plaintiff to recover monetary damages for personal injuries sustained by decedent on September 5, 2005, as a result of the purported negligence of the defendant.

The facts are not in dispute. The decedent, who weighed approximately 400 pounds at the time of the accident, was a New York City Police Officer. On September 7, 2005, decedent was guarding a patient/prisoner at St. Barnabas, Room 731-B. There were two chairs in the room, one near the door and one close to the window. These chairs had wood frames with vinyl cushions. Decedent sat in the chair nearest the door. His left leg was straight, his right leg was tucked under his left leg, and he did not change his position. At approximately 3:10 A.M., decedent had been continuously sitting in a chair for about an hour, when the chair broke, coming apart at the joints. Some of the wood dowels were cracked. However, decedent did not notice

the cracked dowels until after the accident. Prior to the chair's breaking, it remained sturdy, but creaked a little for a second or two before the accident. Within a few minutes of the accident, a fellow Police Officer took photographs of the broken chair which decedent identified at his deposition.

In support of the motion, defendant submits a photocopy of the deposition transcript of the testimony of James Donovan ("Donovan"), taken on September 26, 2007. Donovan testified that he is employed by St. Barnabas as the Director of Environmental Services, a position he held since November, 1992. He is in charge of housekeeping, laundry and grounds department. In September, 2005, there were two types of chairs in patients' rooms, a high-back and a short back. Both types had vinyl upholstery and the arm rests and legs made of wood. The Nursing Department decided what type of chairs were to be used, which were then ordered by the Purchasing Department. In September, 2005, rounds were made on a monthly basis by various units of St. Barnabas (including Safety Department, Infection Control Department, Housekeeping, Engineering and Nursing), inspecting for such things as tripping hazards and damaged furniture, including chairs. Chairs were inspected to determine whether they were stable or wobbly. This would be done by putting a hand on the chair and moving it. If a chair was found to be defective, it would be sent to Housekeeping to remove the defective part and then repaired, or otherwise, discarded. This inspection would also entail a visual examination and if damage was noted, any tears in the upholstery would be addressed. Donovan had no idea of the weight capacity of the chairs. To Donovan's knowledge, the inspection did not include the bottom of the legs of the chairs. No complaints were received by Donovan for the two years prior to defendant's accident.

Defendant has demonstrated a *prima facie* of lack of actual or constructive notice of the alleged defective condition of the chair that broke, in view of plaintiff's testimony, that he sat on the chair for about an hour and it remained steady. Donovan's testimony established that there were no complaints about the chair for two years prior to plaintiff's accident, that the alleged defect was not apparent and visible, and that there was no evidence as to how the condition was created or how long it existed. *Lawrence v. Gonzalez*, 106 A.D.3d 462 (1st Dept. 2013).

Plaintiff asserts that the deposition transcripts submitted by plaintiff constitute inadmissible evidence as they are unsigned. An unsigned deposition transcript is still admissible as evidence if it was certified as accurate and no party challenges the accuracy of the testimony as transcribed. *Martin v. City of New York*, 82 A.D.3d 653 (1st Dept. 2011); *White Knight LTD v. Shea*, 10 A.D.3d 567 (1st Dept. 2004). Here, the deposition transcripts are duly certified and no one has challenged their accuracy.

The papers submitted by plaintiff in opposition to the motion, including the expert report/affidavit of Robert John Anders, IDSA, fail to raise a triable issue of fact. Anders' report acknowledges that there are no codes applicable to this matter. Anders attaches ANSA/BIFMA, X5.1 2002 General-Purpose Office Chairs – Tests. American National Standard for Office Furniture (“ANSA/BIFMA”), consisting of eighty-eight pages, including diagrams. However, nowhere in Anders' report does he cite a specific section of (“ANSA/BIFMA”) to support his assertion that “the industry standard” requires that inspection of the subject chair include “racking” (moving a “machine mechanism” [*sic*] or part thereof, forwards and backwards). Anders' assertion that the adhesive used to connect the components of the chair failed as a result of it drying out over an extended period of time, and that this would have been apparent upon a

proper inspection of the chair, constitutes speculation.

The doctrine of *res ipsa loquitor* is inapplicable. One of the elements of the doctrine is that the event must be caused by an agency or instrumentality within the exclusive control of the defendant. Here, the subject chair was located in the patient/prisoner room, where members of the general public had access to it. *Lawrence v. Rockland County Bd. Of Coop. Educ. Servs.*, 93 A.D.3d 766 (2nd Dept. 2012); *Hardesty v. Slice of Harlem, II, LLC*, 79 A.D.3d 472 (1st Dept. 2010); *Loiacono v. Stuyvesant Bagels, Inc.*, 29 A.D.3d 537 (2nd Dept. 2006).

Based upon the foregoing, defendant's motion is granted and plaintiff's complaint is dismissed.

The foregoing constitutes the Decision and Order of the Court.

Dated: 8/7/13


MARK FRIEDLANDER, J.S.C.