

Gould v Skyline Studios, LLC
2014 NY Slip Op 30897(U)
April 3, 2014
Supreme Court, New York County
Docket Number: 114081/2011
Judge: Joan M. Kenney
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: JOAN M. KENNEY
Justice

PART 8

Index Number : 114081/2011
GOULD, THOMAS
vs.
SKYLINE STUDIOS
SEQUENCE NUMBER : 001
SUMMARY JUDGMENT

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

The following papers, numbered 1 to 14, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

**MOTION IS DECIDED IN ACCORDANCE
WITH THE ATTACHED MEMORANDUM DECISION**

FILED

APR 09 2014

COUNTY CLERK'S OFFICE
NEW YORK

Dated: April 3, 2014


_____, J.S.C.
JOAN M. KENNEY

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS Part 8

-----X
Thomas Gould,

Plaintiff,

-against-

Skyline Studios, LLC, L & M Sound Design, LLC,
and Sidekick Events, LLC,

Defendants.

-----X
KENNEY, JOAN M., J.

DECISION AND ORDER
Index Number: 114081/2011
Motion Seq. No.: 001 & 002

Recitation, as required by CPLR 2219(a), of the papers considered in review of these motions for summary judgment.

Papers

Notice of Motion (001), Affirmation, and Exhibits
Opposition Affirmation and Exhibits
Reply Affirmation and Exhibits

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Numbered

1-14
15-19
20

Notice of Motion (002), Affirmation, and Exhibits
Opposition Affirmation and Exhibits
Reply Affirmation and Exhibits

COUNTY CLERK'S OFFICE
NEW YORK

21-31
n/a
n/a

In motion sequence number 001, defendants Skyline Studios, LLC (Skyline) and L&M Sound Design, LLC (L&M), move for an Order, pursuant to CPLR 3212, dismissing the complaint against them.

In motion sequence number 002, defendant Sidekick Events, LLC, moves for an Order, pursuant to CPLR 3212, dismissing the complaint against them.

Motion sequence numbers 001 and 002 are consolidated herein for disposition.

Factual Background

On the night of November 13, 2010, while attending a wedding at One Hanson Place,

Brooklyn, New York, plaintiff tripped and fell over a light fixture used to illuminate the columns of the event space.

The wedding at One Hanson Place included a thirty minute ceremony and a cocktail hour in the vaulted basement of the building. After the cocktail hour, plaintiff, as well as other guests, ascended a stairwell to the first floor of the building where the wedding celebrations were to commence. The space was set for the wedding, which included a round table set at the entrance of the hall and long rows of tables running along the sides of the room. The room itself is about 100 feet by 100 feet and approximately 40 to 60 feet high. At the end of the row of tables was the live band and dance floor. Plaintiff was seated on the left side approximately three quarters down the length of the row with his back to the wall and facing the center of the room. Guests were seated on both sides of the table. Approximately four feet behind these tables were bank teller cages with intermittent columns that protruded from the wall approximately eight inches. The columns were "uplit" by light fixtures located at the foot of the columns. These light fixtures were not permanently affixed to the floor.

Approximately ten or fifteen minutes after plaintiff was served his meal, he left his seat at the table intending to use the bathroom, which was located back down in the vault basement. As he was making his way to the bathroom, but while still on the main floor, plaintiff felt his right foot strike a box and he fell forward and onto the ground, sustaining injuries. A guest brought over a chair in which plaintiff sat for some time before eventually returning to his assigned seat at the dinner table.

L&M is the exclusive provider of lighting and audio services for the space and maintains the permanent lighting installations there. As part of L&M's permanent architectural lighting,

fixtures are placed to illuminate the columns at the event space. The column lights sit on a base at the foot of each column, not affixed to the floor. The metal base is approximately ten inches in diameter and one inch in height, and the light fixture is bolted to this base. The light fixture itself is eight inches in height and eight inches in diameter. On top of the base and fixture is a rectangular light cover that is about six inches deep and twelve inches tall.

Richard Tatum, the lighting designer and director of design production services for defendant L&M, testified that he was present for the set up of this particular wedding and that L&M had never been asked to change anything about its general lighting design for the wedding at issue. Mr. Tatum testified that there had never been a similar incident, nor had there been any complaints, in the past regarding the set up of the lighting.

Skyline provides the venue/event space and staffs each event it schedules with a manager and facility person. Skyline does not provide catering services, event design services, or other event services. Skyline does not have any involvement in the lighting of the event space. Instead this is solely the responsibility of L&M, as the in-house lighting provider.

Sidekick was the wedding planner for the bride and groom of the wedding held on the evening of the alleged trip and fall. According to the contract between Sidekick and the bride, the duties of Sidekick were to have a set number of meetings, to provide 2 assistants for 10 hours on the wedding day, budget management, research and resource recommendations relating to vendors, liaison with an invitation company, and labor associated with ceremony rehearsals. The contract does not in any way relate to lighting or hiring lighting vendors.

Ellen Kostman, testifying on behalf of defendant Sidekick, stated that Sidekick never requested L&M to make any adjustments to the lighting. Simply put, Sidekick did not have

anything to do with setting up the lights for the wedding.

Arguments

Defendants Skyline Studios, LLC and L&M Sound Design, LLC maintain that they cannot be held liable because the alleged instrument of injury was both open and obvious and not inherently dangerous.

Defendant Sidekick Events, LLC argues that there is no evidence of negligence against Sidekick as it had nothing to do with the setup, arrangements or design of the lighting of the event space, and that it had no duty to the plaintiff as a guest at the wedding.

Plaintiff claims that the motion of defendants Skyline Studios, LLC and L&M Sound Design, LLC must be denied because there is a dispute between the parties as to whether or not the “up light” was open and obvious.

Plaintiff does not oppose the motion of defendant Sidekick Events, LLC.

Discussion

Pursuant to CPLR 3212(b), “a motion for summary judgment shall be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admissions. The affidavit shall be by a person having knowledge of the facts; it shall recite all the material facts; and it shall show that there is no defense to the cause of action or that the cause of action of defense has no merit. The motion shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party. Except as provided in subdivision ‘c’ of this rule the motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact. If it shall appear that any party other than the moving party is entitled to a

summary judgment, the court may grant such judgment without the necessity of a cross-motion.”

The rule governing summary judgment is well established: “The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case.”

(*Winegrad v New York University Medical Center*, 64 NY2d 851 [1985]; *Tortorello v Carlin*, 260 AD2d 201 [1st Dept 1999]).

In order to establish a prima facie case of negligence in a trip and fall action, a plaintiff must demonstrate that a defendant either created a dangerous condition, or had actual and/or constructive notice of the defective condition alleged (see *Judith D. Arnold v New York City Housing Authority*, 296 AD2d 355 [1st Dept 2002]). Plaintiff has no duty to warn of an open and obvious danger; however, a latent hazard may preserve that duty (see *Westbrook v. WR Activities-Cabrera Markets*, 5 A.D.3d 69, 71, 773 N.Y.S.2d 38, 41 [N.Y.App. Div. 2004]). The question of whether a condition is latent or open and obvious is generally fact-specific and thus a question for the jury, only to be determined as a matter of law when the established facts compel such a conclusion. (See *Tagle v. Jakob*, 97 N.Y.S.2d 165, 169, 763 N.E.2d 107, 110 [2001]).

Here, defendants Skyline and L&M cannot eliminate all material issues of fact. Defendants Skyline and L&M claim that the light fixture was open and obvious because the light was encased in a black box which was larger in size and stood out from the surrounding conditions, including the contrasting white marble floor, the light’s sole purpose was to illuminate the immediate area, and the plaintiff observed the lighting effects upon entering the event space. Plaintiff, on the other hand, asserts that the light fixture was in a narrow pathway, encased in a black box in a dark room at the base of the column, thus effectively diminishing the

presence of the light fixture/black box. Furthermore, plaintiff asserts that even though he observed the lighting effects when he entered the room, the design was to draw the eye upwards to the columns instead of to the pathway or the room itself. As such, plaintiff alleges that this contributed to hazardous placing of the fixtures, which while technically visible, was likely to be overlooked by a careful observer. (See *Sanchez v. Toys "R" Us*, 303 A.D.2d 165, 754 N.Y.S.2d 884, *Thornhill v. Toys "R" Us NYTEX*, 183 A.D.2d 1071, 583 N.Y.S.2d 644, *De Conno v. Golub Corp.*, 255 A.D.2d 734, 680 N.Y.S.2d 727). It is not fatal to plaintiff's version of facts as stated by defendants Skyline and L&M that his vision was not obstructed or that he was looking straight ahead and not upward. It is not unreasonable to think that the lighting fixture was placed in an inconspicuous manner so as to not disturb the set-up of the event space for the wedding or to draw the eye downward to the base of the columns.

Defendant Sidekick has established that it did not cause the alleged dangerous condition and that it did not owe a duty to plaintiff. It is undisputed that defendant Sidekick had nothing to do with the setup, arrangement, or design of the lighting of the venue. Sidekick was only hired by the bride and groom to provide wedding planning services. It had nothing to do with L&M in setting up lighting and audio for the venue space. As such, Sidekick did not cause or create the alleged dangerous placement of the light box. Furthermore, plaintiff has not opposed defendant Sidekick's motion or established any triable issue of fact as against this defendant. Accordingly, it is hereby

ORDERED, that defendants' Skyline Studios, LLC and L&M Sound Design, LLC, motion sequence 001 is denied, in its entirety; and it is further

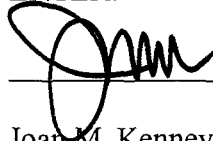
ORDERED, that regarding motion 002, the Clerk of the Court shall enter judgment in

favor of defendant, Sidekick Events, LLC, and against plaintiff, dismissing this action as against defendant Sidekick Events, LLC, only, without opposition; and it is further

ORDERED, that the action is severed and continued against the remaining defendants and the parties shall proceed to mediation/trial forthwith.

Dated: April 3, 2014

ENTER:



Joan M. Kenney, J.S.C.

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