Hill v Teamwork Found., Inc.
2014 NY Slip Op 32631(U)
September 11, 2014
Supreme Court, Bronx County
Docket Number: 301204/2008
Judge: Alison Y. Tuitt
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FILED Sep 18 2014 Bronx County Clerk

NEW YORK SUPREME COURT----------COUNTY OF BRONX

PART IA - 5

JURDON HILL,

Plaintiff,

-against-

TEAMWORK FOUNDATION, INC. d/b/a GAUCHOS GYMNASIUM, SAME ROE OR DOE CORP. (true name being unknown) d/b/a ROLLIN WIT IT RECORDS, EMANUEL S. RICHARDSON, WILLIAM SHAW, JOHN DOE #1, JOHN DOE #2, JANE DOE #1 and JANE DOE #2,

Defendants.

INDEX NUMBER: **301204/2008**

Present:
HON. **ALISON Y. TUITT**
Justice

The following papers numbered 1 to 3,

Read on this Defendant Teamwork Foundation, Inc.'s Motion for Summary Judgment

On Calendar of 2/10/14

Notice of Motion-Exhibits, Affirmation	1
Affirmation in Opposition	2
Reply Affirmation	3

Upon the foregoing papers, defendant Teamwork Foundation, Inc.'s (hereinafter "The Foundation") motion for summary judgment is granted for the reasons set forth herein,

This is an action for injuries sustained by plaintiff on November 25, 2006 at approximately 1:00 a.m. when he was stabbed by an assailant at defendant The Foundation's premises. The Foundation is a charitable organization that owns defendant Gauchos Gymnasium (hereinafter "Gauchos") which is located at 478 Gerard Avenue, Bronx, New York. The Foundation states that its primary mission is to help children stay

FILED Sep 18 2014 Bronx County Clerk

in school so they can graduate from high school. The Foundation alleges that defendant Emanuel Richardson (hereinafter "Richardson"), who had defaulted in this matter, was an independent contractor for the charity. The Foundation argues that without its knowledge or approval, Richardson rented Gauchos to defendant Rollin Wit It Records, which has also defaulted in this matter. The Foundation states that Rollin apparently provided security for a "hip hop" concert they put on at Gauchos. Plaintiff, who attended the concert, claims he was cut with a sharp object by an unknown assailant at the time. The Foundation argues that it is entitled to summary judgment as it did not owe a duty to plaintiff as the random criminal act was not foreseeable or preventable, and the security provided was adequate and would have been unable to prevent the random act.

Charles Chiara, President of The Foundation, testified at a deposition that The Foundation is a not-for-profit charity foundation and that defendant Richardson was an independent contractor for organization. According to Richardson's contract, he was responsible for the entire basketball program at the facility. The contract specifically provides that Richardson is to "[n]ever accept an outside payment without prior written approval from the BOD [Board of Directors]". Mr. Chiara testified that Richardson never sent any documents to him with respect to renting the facility for a hip hop function. Rocky Bucano, who testified that he is an independent contractor for The Foundation, testified that he oversees the operations of the basketball program, including tournament games and the use of the gym. Mr. Bucano testified that the procedure for renting the facility was to obtain a signed agreement, an insurance policy naming The Foundation as an additional insured and obtaining payment three days in advance. Mr. Bucano also testified that no one working for The Foundation had the authority to make arrangements with promoters for use of the gym and no one from The Foundation had knowledge of this event. The Foundation has no paperwork concerning the event and was never paid for it. Mr. Bucano further testified that even if The Foundation had rented the gym, it would not have been responsible for security as it was not The Foundation's policy to provide for security.

Plaintiff testified at his deposition that he received an invitation on the street to attend a party at Gauchos and had also heard about the party on myspace.com, that "Rollin Wit It Records" was promoting a party at the gym. Plaintiff was familiar with Gauchos as a basketball facility and had been there three times prior to the party. He had never witnessed any fights at the facility prior to the party. Plaintiff testified that when he arrived at Gauchos, there were four bouncers at the door. The women were not physically patted down but the bouncers used a hand held metal detector to check their bodies. The men, including himself, were

FILED Sep 18 2014 Bronx County Clerk

physically frisked by the bouncers. Plaintiff was asked to remove his shoes and they searched his shoes. They told him to take metal objects out of his pockets and place them on the table and they then physically patted him down his chest, sternum, legs and ankles to make sure he did not have anything in his socks. Then the bouncer used the hand held metal detector and ran it over his body. Plaintiff saw the bouncers perform the same procedure with all of the other men. In addition to the bouncers at the door, plaintiff saw approximately eight to nine bouncers inside the facility. Plaintiff also saw approximately four New York City police officers parked outside the premises. There was no alcohol being served at the party. Sometime after entering the premises, plaintiff noted an argument and little scuffles taking place. He also saw a group of individuals pushing and shoving, but no fight ensured. At that point, the bouncers and staff closed down the gym and the DJ made an announcement that the party was over. Plaintiff testified that when the argument started to take place, the security guards went over and tried to resolve it. They were breaking it up and separating the individuals. While plaintiff was leaving, he observed a group of guys randomly attacking people and security personnel attempted to stop it from escalating. At this time, despite having been directed to leave the facility, plaintiff remained in the gym, close to the exit, watching the altercations and security's attempt to break up the fight. After watching for about 10 minutes, plaintiff began walking out of the Gauchos and was waiting in line at the coat check when an unidentified man cut him with a sharp object. Plaintiff had no warning that he would get cut and he described it as a totally random act. Plaintiff did not see who cut him or what was used to cut him.

The Foundation moves for summary judgment on the grounds that it did not owe plaintiff any duty and, even if it did, there was no breach of any duty of care. Plaintiff argues that there is no legal basis for The Foundation's claim that it owed no duty to plaintiff because defendant Richardson was a salaried manger of its operations, not an independent contractor, who arranged for an event on its premises. Plaintiff further argues that Richardson opened the doors on the date in question. Moreover, plaintiff states that according to Mr. Chiara's testimony, defendant Richardson was in charge of day to day operations and had the authority to close and open the facility, had his own set of keys to the premises and had the authority to allow the premises to be used for non-basketball related events.

The court's function on this motion for summary judgment is issue finding rather than issue determination. Sillman v. Twentieth Century Fox Film Corp., 3 N.Y.2d 395 (1957). Since summary judgment is a drastic remedy, it should not be granted where there is any doubt as to the existence of a triable issue.

Rotuba Extruders v. Ceppos, 46 N.Y.2d 223 (1978). The movant must come forward with evidentiary proof in admissible form sufficient to direct judgment in its favor as a matter of law. Zuckerman v. City of New York, 49 N.Y.2d 557, 562 (1980). Thus, when the existence of an issue of fact is even arguable or debatable, summary judgment should be denied. Stone v. Goodson, 8 N.Y.2d 8, (1960); Sillman v. Twentieth Century Fox Film Corp., *supra*. The proponent of a motion for summary judgment carries the initial burden of production of evidence as well as the burden of persuasion. Alvarez v. Prospect Hospital, 68 N.Y.2d 320 (1986). Thus, the moving party must tender sufficient evidence to demonstrate as a matter of law the absence of a material issue of fact.

The proponent of a motion for summary judgment carries the initial burden of production of evidence as well as the burden of persuasion. Alvarez v. Prospect Hospital, 68 N.Y.2d 320 (1986). Thus, the moving party must tender sufficient evidence to demonstrate as a matter of law the absence of a material issue of fact. Once that initial burden has been satisfied, the "burden of production" (not the burden of persuasion) shifts to the opponent, who must now go forward and produce sufficient evidence in admissible form to establish the existence of a triable issue of fact. The burden of persuasion, however, always remains where it began, i.e., with the proponent of the issue. Thus, if evidence is equally balanced, the movant has failed to meet its burden. 300 East 34th Street Co. v. Habeeb, 683 N.Y.S.2d 175 (1st Dept. 1997).

Landowners in general have a duty to act in a reasonable manner to prevent harm to those on their property. Basso v. Miller, 40 N.Y.2d 233 (1976). In particular, landowners have a duty to control the conduct of third persons on their premises when they have the opportunity to control such persons and are reasonably aware of the need for such control. D'Amico v. Christie, 71 N.Y.2d 76 (1987). A landord also has a common law duty to protect tenants and members of the public on its premises from the risk of foreseeable harm including the reasonably foreseeable criminal acts of third persons. Nallan v. Helmsley-Spear, Inc., 50 N.Y.2d 507 (1980). The duty to take protective measures is limited to situations where it is demonstrated that the owner knows or has reason to know from past experience that there is a likelihood of conduct on the part of third persons to endanger the safety of a member of the public. Id.; Jacquelin S. v. City of New York, 81 N.Y.2d 288 (1993). Thus, the owner or possessor of land had "a duty to maintain minimal security measures, related to a specific building itself, in the face of foreseeable criminal intrusion." Miller v. State of New York, 62 N.Y.2d 506 (1984). Foreseeability in this context depends on the location, nature and extent of previous

FILED Sep 18 2014 Bronx County Clerk

criminal activity and their similarity, proximity or other relationship to the crime in question. Jacquelin S., 81 N.Y.2d at 295. Foreseeability rests on whether the prior criminal activity in the building put the defendant on notice that 'there [was] a likelihood of conduct on the part of third... persons which [was] likely to endanger the safety of the visitor." Wayburn v. Madison Land Ltd. Partnership, 724 N.Y.S.2d 34 (1st Dept. 2001)(Citations omitted).

In the instant matter, summary judgment is warranted. The evidence shows that the event was held at The Foundation's premises without its knowledge or consent. Nor did The Foundation have any control over use of the premises on the date of the incident as it was not aware of it. Therefore, it cannot be said that it failed to control the conduct of third persons on their premises as they were not aware that these persons were on its premises. Moreover, since it had no knowledge of the event, it could not have been aware of any foreseeable harm or foreseeable criminal acts of third persons on its property. Here, Richardson had been contracted by The Foundation to manage its basketball program. Richardson apparently undertook to allow the event to take place on The Foundation's premises. However, there is no evidence whatsoever that the landlord was aware that Richardson had done so. Thus, the complaint against The Foundation must be dismissed. See, Joseph R.C. v. Bronx Underground LLC, 987 N.Y.S.2d 161 (1st Dept. 2014)(Summary judgment was properly granted in favor of the Church, in this action where infant plaintiff was injured when he was struck in the head by an unidentified participant at a music event held at the Church's premises and hosted by defendant Bronx Underground LLC. The Church owed no duty to supervise the subject music event, or to otherwise retain control of its premises); McGlynn v. St. Andrew the Apostle Church, 761 N.Y.S.2d 151 (1st Dept. 2003), *lv. denied*, 100 N.Y.2d 508 (2003)(Summary judgment properly granted in favor of defendant Church where plaintiff was injured by alleged intoxicated underage person. The Church owed no duty to supervise the subject music event, or to otherwise retain control of its premises. Although the Church, as owner of the premises where the injured plaintiff was attacked, owed him a duty "to keep its premises free of known dangerous conditions" , which may include intoxicated guests", the Church did not host the party at which such drinking took place, but merely permitted parishioner, to use its hall in exchange for a $100 donation. Under these circumstances, the Church was not under a duty to supervise Andrea's party or otherwise retain control of its premises).

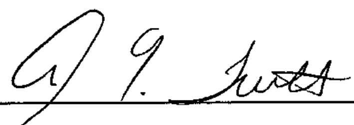
Accordingly, The Foundation's motion for summary judgment is granted and the complaint against it is

FILED Sep 18 2014 Bronx County Clerk

dismissed.

This constitutes the decision and order of this court.

Dated: 9/11/14



Hon. Alison Y. Tuitt