

**Goumarides v Yankee Stadium Corp.**

2014 NY Slip Op 32634(U)

September 12, 2014

Supreme Court, Bronx County

Docket Number: 301476/2011

Judge: Alison Y. Tuitt

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

PART IA-5

DEBORAH GOUNARIDES and MICHAEL GOUNARIDES,

INDEX NUMBER: 301476/2011

Plaintiffs,

-against-

Present:  
HON. ALISON Y. TUITT  
*Justice*

YANKEE STADIUM CORPORATION, YANKEE STADIUM HOLDINGS LLC and YANKEE STADIUM LLC,

Defendants.

The following papers numbered 1 to 3

Read on this Defendants' Motion for Summary Judgment

On Calendar of 4/14/14

Notice of Motion-Exhibits, Affirmation 1

Affirmation in Opposition 2

Reply Affirmation 3

Upon the foregoing papers, defendants Yankee Stadium Holdings LLC and Yankee Stadium LLC (hereinafter "Yankees") motion for summary judgment is granted for the reasons set forth herein.

The within action involves personal injuries allegedly sustained by plaintiff when she allegedly fell down an internal stairwell in the Legends Suite Club (hereinafter "Legends Club") at 8:20 a.m. on April 2, 2009 in Yankee Stadium. That was the first day that an exhibition game was played at the new Yankee Stadium. The plaintiff worked at Yankee Stadium and was employed by Legends Hospitality LLC (hereinafter "Legends"), the concessionaire and an independent contractor. Legends is not a party to this case as it paid plaintiff's workers' compensation benefits. Plaintiff claims her accident occurred before the Legends Club was

open to the public. She went there at the direction of her supervisor, Phil, because she needed to use the bathroom. Plaintiff claims that the lights were off and she walked from the entrance of the restaurant, along the perimeter of the room, to the women's bathroom. She asserts that after she used the restroom, she walked diagonally across the restaurant floor to return to the door she entered, but fell down the Legends Club's internal staircase because she did not see it. Defendants contend that it did not own, operate, manage or control the Legends Club or its internal staircase, and that Legends Club, an independent contractor, controlled the restaurant, its stairs, employed and supervised the plaintiff, whose alleged accident was unforeseeable, that it had no notice of any issues involving lighting in the restaurant that morning or the staircase in question, and that it did not proximately cause plaintiff's accident.

Photographs of the Legends Club and the subject staircase were referenced during the depositions of plaintiff and Peter Pullara, the Yankee's Stadium Superintendent. More than two years after the accident, In July 2011, plaintiff returned to the Legends Club for a training session, where she took about five photographs. Three of these photographs were marked as Defendants' Exhibits A through C. Additional photographs referenced at the plaintiff's deposition were marked as Defendants' Exhibits A through D, and I through R at her continued deposition, where she authenticated the photographs as accurately depicting the accident site. Defendants annex the temporary certificate of occupancy issued by the New York City Department of Buildings which shows that there were no issues regarding the staircase or lighting at the Legends Club.

Plaintiff testified at her deposition that when she began working at the new Yankee Stadium for Legends, she was assigned as an in-seat server at the field level. She had a hand-held computer to take orders and a runner would bring the food out to the customer. As a Legends employee, she was only permitted to go to the uniform area, the Legends locker room and her work site. On the date of the accident, April 2, 2009, the Yankees hosted its first baseball game at the new Yankee Stadium, an exhibition game. She arrived at the stadium at 7:00 a.m. and waited on line at the Legends entrance until her name or number was called sometime between 7:30 and 8:00 a.m. She entered the Legends entrance and wore her Legends uniform and slip resistant shoes. Once inside the stadium, she turned right and walked toward her designated work area in the stand between third base and home plate where she would take food orders. She walked around the main concourse to get there. Just after entering the stadium, she had to use the bathroom. While walking around the field level

of the stadium to get to her work location, she tried to enter two public women's and men's restrooms that she passed but they were closed. There were only Legends people around so she informed "Phil" her Legends supervisor that the restrooms were closed and asked where she could find an open restroom. He told her to use the restroom in the Legends Club, where she had her accident.

Plaintiff testified that the Legends Club was a glass enclosed restaurant with a glass door entrance from the interior concourse, an entrance on the Jerome Avenue side of the stadium, and glass windows facing the playing field. At 8:00 a.m., plaintiff opened the glass door and entered the Legends Club alone. The Legends Club was not opened yet and there was no one there and the lights were not on. Plaintiff testified that it was overcast and dark outside. Plaintiff testified that she walked directly from the concourse door which was facing the seats, toward the back of the restaurant, past a bar on her left until she reached the outside wall of the stadium, separating the Legends Club from Jerome Avenue. She continued walking along the outside wall until she saw the entrance to the ladies' bathroom which she entered and used. At approximately 8:20 a.m., plaintiff exited the ladies' room, she took a straight route, going to the door she had entered. She testified that she was looking around the restaurant as she walked and that she could see out toward the glass windows facing the playing field where some natural light was coming into the room. Although it was dark, she admitted that she had no difficulty seeing as she walked from the ladies' room toward the door to exit. After exiting the restroom, she could see the exit door and glass windows. She walked approximately 40 to 50 feet across the room before she fell. Plaintiff testified that she did not know that she was not retracing her steps before she accidentally came upon a interior set of stairs that led to another part of the Legends Club. Plaintiff further testified that the staircase was surrounded by tinted blue glass walls on three sides with shiny metal chrome wrapping around it. She believed she was walking out the door when she stepped into the staircase and fell down the stairs. She thought the staircase was an exit because she could see a glass wall to her right. When she entered the staircase, plaintiff thought she was walking on level ground. She fell approximately ten steps to the landing. After the accident, she advised Phil and her co-worker Shoyel that she fell. At about 9:30 to 10:00 a.m., she went to Legends' Human Resources and reported her incident to Kevin O'Connor and Arthur McHugh, who filled out an incident report. Plaintiff denied telling him that the accident occurred as she was walking down the stairs and that she misjudged the stairs and fell halfway down the stairs.

Peter Pullara, employed as the stadium superintendent, testified on behalf of the Yankees. He testified that his general duties are to oversee the mechanics and the cleanliness of the stadium. He has staff engineers, electricians, carpenters, cleaners and maintenance workers which carries out preventative maintenance by having a technician walk the building looking for any repairs that need to be made. The stadium was 99% completed in 2009 and it opened to the public in April, 2009. Legends is the Yankees concessionaire and runs, operates and controls concession stands, restaurants and souvenir stands in Yankee Stadium. As superintendent, Mr. Pullara had no authority to direct or supervise Legends employees. The Legends Club occupies two levels of the stadium. The Legends 100 level is an open space with tables and chairs, a bar and a staircase leading to the Legends 100 level, where there are more tables and chairs but no bar. The floor of the club is part carpet and part ceramic that resembles a hardwood floor. On the 100 level, there is a wall of windows that faces the playing field and is immediately adjacent to the 100 level concourse, where fans walk to get to their seats. Just next to the wall of windows is the door that exits onto the 100 level concourse. Mr. Pullara testified that the 100 level concourse is continuously lit at all times with eight foot long fluorescent light sticks, mounted on the ballasts just outside the wall of windows. The wall of windows was not covered and light would shine through the windows. The staircase connecting the two levels is made of granite with rectangular handrails. The stairwell is L shaped with two landings and is enclosed by three walls of blue glass. The stairs do not have lighted risers and he was not aware of any laws that required lighted risers. Before the stadium opened to the public, he walked the building, including the Legends Club and checked for cleanliness and to make sure the lights were working. He inspected the restrooms in the Legends Club and during his inspection he used the stairs. He testified that the lighting was dark but he did not tell anyone. The public bathrooms remained locked until the cleaning company opened them at approximately 9:00 a.m. Mr. Pullara did not know if the restrooms within the Legends Club were locked before the workers arrived. Legends was involved in opening and locking the restaurant's doors and he did not know whether the doors of the Legends Club were locked before the workers arrived. Legends Club was responsible for turning on the lights in the club because it is a private location apart from the rest of the stadium, run exclusively by Legends. The Yankees were responsible for turning on the lights in the stadium's field, stand lights, lights in public stairwell, seating bowls. There was no policy barring anyone from entering the Legends Club when the lights were off. Mr. Pullara visited the staircase prior to 2009 and found the lighting to be adequate when the lights were turned

on, however, when the lights were turned off, the staircase was dark. Legends was expected to turn on the lights when the club was opened to the public or its workers. He believed that Legends Club was closed at the time of plaintiff's accident since the lights were not turned on.

Philip Brina, a supervisor in the Delta Suite in Yankee Stadium for Legends, appeared at a deposition. In April 2009, he worked for Legends Hospitality and oversaw a staff of servers, kitchen workers, runners and three or four maintenance workers. Mr. Brina was familiar with the Legends Club because he ate his staff meal, had staff meetings and visited people there. He had also used the restrooms there. He did not know the plaintiff and did not have a recollection of any employees of Legend asking him if they could use a bathroom. In 2009, if the stadium bathrooms were locked and one of his employees asked him which bathroom they should use, he would have sent them to the Legends Club since the restaurant was closer than the Legends Hospitality locker room. The staircase connecting the two levels of the Legends Club was enclosed by blue tinted glass. The staircase was visible from the 100 level concourse through the glass walls and was located near the glass wall looking out onto the concourse and the glass entrance doors. In 2009, the Legends Club manager was responsible for opening the restaurant to the public two hours before game time.

Doug Behar, Vice President of Stadium Operations, submits an affidavit wherein he states that on April 2, 2009, the Legends Club was used exclusively by Legends Hospitality LLC for food services and it was Legends responsibility to open the Legends Suite Club at the beginning of every work day to its workers and staff, and to keep it orderly. He further states that the Yankees had no duty to turn on the lights in the Legends Club for its workers. Mr. Behar also states that the Yankees did not control the manner and method in which Legends operated its club. The right reserved by the Yankees under the Concession Services Agreement was the right to enter the Legends Club to make structural-type repairs that could affect other parts of Yankee Stadium.

Arthur McHugh, the Director of Human Resources for Legends, provides an affidavit stating that he handled all human resources issues at Yankee Stadium during the 2009 baseball season, including workers' compensation claims. He was familiar with the Legends Club and states that it was owned and operated exclusively by Legends, with its own managerial, cooking, cleaning and maintenance staff. On the morning of April 2, 2009, plaintiff went into his office and told him that "while walking down the interior stairs in the Legends Club, she misjudged them, missed a step and fell down approximately eight steps". Mr. McHugh

memorialized plaintiff's statement in a Workers' Compensation Incident Form, OSHA Injury and Illness Incident Report and a New York State Workers' Compensation Board Employer's Report of Work-Related Injury/Illness for the plaintiff.

The Yankees submit the affidavit of Stan A. Pitera, a licensed Professional Engineer, wherein he states that he inspected the Legends Club and its internal staircase, took photographs and measurements. He avers that the staircase has handrails, consistent riser heights and is slip resistant, measuring 0.8 (0.3 above the accepted industry standard). Mr. Pitera opines that the internal staircase constituted "access" stairs because he determined that "the shortest distance to exit either level of the Legends Suite Club is by means of the exits on each respective level, rather than by using the stairway". The staircase met the stricter requirements of "required" stairs under the New York City Building Code §27-375. Mr. Pitera took light measurements and opines that "the available natural lighting was sufficient for a reasonable person to detect the stairway and distinguish it from the rest of the room." With the lights turned off, the light level was 0.9 footcandles just to the right of the staircase, only 0.1 footcandles below the current minimum. The light level five feet from the staircase landing was 0.48 footcandles. With lights on, the stairwell lighting measured 7.9 footcandles at the staircase landing and 12.95 five feet before the landing. Mr. Pitera states that these measurements "far exceeded the requirements of the 2004 New York City Building Code §27-381" which required a minimum of 2.0 footcandles. Mr. Pitera states that there was no New York City Building Code requirement that a restaurant's light switch be near the door. He further opines that it was Legends responsibility, not the Yankees, to turn off the lights at the end of the work day and to turn on the lights when the Legends Club was in use, either for patrons or workers. Mr. Pitera bases his opinion on New York City Building Code §27-381 which requires such stairs to be lit when the area is in use and OSHA §1910.37 which requires employers to illuminate staircases that their employees are using. Based on his inspection, measurements and readings, Mr. Pitera opines "that the stairway and available lighting within the Legends Suite Club complies with the New York City Building Code" and that the Yankees were not negligent and were not the proximate cause of plaintiff's alleged fall.

Anthony Bruno, Chief Financial Officer and Vice President of Yankee Stadium Holdings LLC and Vice President of Yankee Stadium LLC, submits an affidavit wherein he states that Yankee Stadium Holdings LLC is a holding company that has a membership interest in Yankee Stadium LLC and has no ownership interest in the new Yankee Stadium. He further states that Yankee Stadium LLC is the tenant at

Yankee Stadium and leases the premises from New York City Industrial Development Agency. Thus, he argues that these defendants are not a proper parties to this litigation and the complaint against those entities must be dismissed.

In opposition to the motion, plaintiff make numerous arguments. In essence, plaintiff argues that defendants failed to meet their prima facie burden that they did not have a duty to illuminate the Legends Club because as a proprietor of a place of public assembly, defendants had a duty to provide their employees a reasonably safe premises, including the duty to provide the employees of an independent contractor with a safe work environment. Plaintiff further argues that defendants failed to show that they did not affirmatively create the dangerous condition of the stairway or that they did not have actual or constructive notice of the dangerous condition, particularly since their witness had inspected the restaurant when the lights were not illuminated and stated that it was dark. Plaintiff submits the affidavit of William Marletta, a Board Certified Safety Professional, who states that he conducted an inspection of the subject premises, including taking measurements and photographs. He states that it is his professional opinion to a reasonable degree of certainty that defendants were negligent in that the stairs represented a change in the pedestrians expectation and was dangerous to users when not properly illuminated; that the stairs required an intermediate handrail in conformance with the New York State Industrial Code Rule §36 Part 36 State Standard Building Code for Places of Assembly; the shape of the handrail was oversized and excessive providing a dangerous handrail for use as it provided with a 2"x1/2" rectangular handrail on both sides, and was not readily graspable; the illumination provided at the time was inadequate and dangerous; the lack of general lighting over the stair treads and landing were in violation of New York State Industrial Code Rule 36, the New York City Building Code and do not meet the standards set by the Illuminating Engineering Society; that the similarity of color and lack of contrast between the surface levels for the treads diminished plaintiff's ability to quickly perceive and react to transition; and, that the stairs were an unexpected trap because they were not highlighted or properly illuminated.

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. 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 34<sup>th</sup> Street Co. v. Habeeb, 683 N.Y.S.2d 175 (1<sup>st</sup> Dept. 1997).

It is well established that an owner of a premises has a duty to keep its property in a "...reasonably safe condition, considering all of the circumstances including the purposes of the person's presence and the likelihood of injury..." Macey v. Truman, 70 N.Y.2d 918 (1987); Basso v. Miller, 40 N.Y.2d 233, 241 (1976). In order to recover damages for a breach of this duty, plaintiff must demonstrate that the landlord created or had actual or constructive notice of the dangerous or defective condition. Piacquadio v. Recine Realty Corp., 84 N.Y.2d 967, 969 (1994); Leo v. Mt. St. Michael Academy, 708 N.Y.S.2d 372 (1<sup>st</sup> Dept. 2000). In order to charge a defendant with constructive notice, the defect must be visible and apparent, and it must exist for a sufficient length of time prior to the accident to permit its discovery and remedy. Gordon v. American Museum of Natural History, 67 N.Y.2d 836, 837 (1986).

Landowners who operate places of public assembly are charged with the duty of providing the public with a reasonably safe premises, including a safe means of egress and ingress; the use to which one's property is put, and the frequency of that use by others, weigh heavily in determining the likelihood of injury, the seriousness of the injury, and the burden of avoiding the risk. Peralta v. Henriquez, 100 N.Y.2d 139 (2003)(In determining duty, courts must be mindful of the future effects their ruling will have and must limit the legal consequences of wrongs to a controllable degree. Judicial recognition of a duty of care must be based upon an assessment of its efficacy in promoting a social benefit as against its costs and burdens). The Yankees, as the proprietor of a place of public assembly, have "a nondelegable duty to provide the public with a reasonably safe premises," and "the duty to provide [their] employees and the employees of independent

contractors with a safe place to work”. Correa v. City of New York, 890 N.Y.S.2d 461 (1<sup>st</sup> Dept. 2009) quoting Bakiel v. Citibank, 751 N.Y.S.2d 492 (2d Dept. 2002). The nondelegable duty does not extend to area of the owner’s premises that is not open to the public. Pulliam v. Deans Management of N.Y., Inc., 878 N.Y.S.2d 302 (1<sup>st</sup> Dept. 2009).

Defendant Yankees meets its prima facie burden on its motion for summary judgment. In opposition, plaintiff fails to raise any issues of fact. The Yankees had no duty to illuminate the internal staircase inside the Legends Club. The restaurant was operated exclusively by plaintiff’s employer, Legends, and it was their responsibility to open the restaurant and turn the lights on for its workers and the public. The Legends Club’s manager was responsible for opening the restaurant to the public two hours before game time. At the time of plaintiff’s accident, the Legends Club was not open and the lights were off. The Legends Club was a private restaurant that was controlled and managed by Legends pursuant to its Concession Services Agreement with the Yankees. The Yankees were responsible for turning on the lights in the stadium’s field, stand lights, lights in public stairwell and in the seating areas, but were not responsible for the lights in the privately run restaurant. Although the Yankees were responsible to maintain and repair the structural aspects of the Legends Club, and changing light bulbs within the restaurant, turning on the lights in the Legends Club was the sole responsibility of Legends. Moreover, plaintiff’s argument that the Yankees created or had notice of the alleged defect is without merit. Contrary to plaintiff’s contention, Mr. Pullara did not inspect the Legends Club before the plaintiff’s accident on the morning of April 2, 2009. Mr. Pullara testified that before the new Yankee Stadium was opened for the 2009 baseball season, he had conducted an inspection of the Legends Club while the lights were off and that the staircase was dark.


Plaintiff’s expert’s affidavit also fails to raise any issues of fact. Mr. Marletta’s opinions regarding the handrail at the subject stairs or the lack of a center handrail is irrelevant because there is no evidence that plaintiff attempted to reach for the handrail or was holding the handrail at the time of her accident. Plaintiff testified that she had her hands behind her at the time of the accident. See, Raghu v. New York City Housing Authority, 897 N.Y.S.2d 436 (1<sup>st</sup> Dept. 2010)(Expert William Marletta’s “claim of inadequacy of the handrail cannot avail plaintiff, inasmuch as her testimony was that she was not using the handrail at the time of the accident); Plowden v. Stevens Partners, LLC, 846 N.Y.S.2d 238 (2d Dept. 2007)(Defendant’s motion for summary judgment granted where plaintiff failed to present any evidence connecting the absence of handrails to

her fall and plaintiff did not allege that she reached out for a handrail either before or during her fall and did not testify at her deposition that the lack of handrail contributed to her accident). Additionally, the remainder of Mr. Marletta's opinions are conclusory and speculative. He never addresses the evidence showing that Legends was exclusively responsible for turning on the lights in the restaurant. The alleged violations of statutory and code provisions reveals that they are general in form, do not apply or do not impose liability. Section 28-301.1 of the New York City Building Code which imposes a general requirement to keep common areas and means of ingress and egress safe, is inapplicable because the Legends Club was not a common area and the internal staircase was not for ingress or egress. The alleged violations of the Administrative Code of the City of New York §27-127 and §27-128 are general sections regarding maintaining areas in a safe condition and when cited with no other statutory violations do not impose liability. See, Plung v. Cohen, 673 N.Y.S.2d 144 (1<sup>st</sup> Dept. 1998)(Sections 27-127 and 27-128, which merely require that an owner of a building maintain and be responsible for its safe condition, do not impose liability in the absence of a breach of some specific safety provision of the Administrative Code). The remaining opinions of Mr. Marletta are without probative value. His opinion that the staircase was structurally unsafe and violated the 2004 New York City Building Code is belied by the Certificate of Occupancy that the new stadium was issued. Thus, the staircase was approved by the City of New York.

Accordingly, defendants' motion for summary judgment is granted and the complaint is dismissed.

This constitutes the decision and order of this Court.

Dated: 9/18/14



**Hon. Alison Y. Tuitt**