Pinkham v West Elm
2016 NY Slip Op 30067(U)
January 14, 2016
Supreme Court, New York County
Docket Number: 150953/14
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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ANTOINETTE SARDINA PINKHAM,

Plaintiff,

Index No. 150953/14

-against-

DECISION/ORDER

WEST ELM d/b/a WILLIAMS-SONOMA STORES, INC.
And WILLIAMS-SONOMA, INC.,

Defendants.

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HON. CYNTHIA KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for :

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	1
Notice of Cross-Motion and Affidavits Annexed.....	2
Answering Affidavits	3
Replying Affidavits.....	4
Exhibits.....	5

Plaintiff Antoinette Sardina Pinkham commenced the instant action to recover damages for injuries she allegedly sustained when she fell off an elevated display platform in one of defendants' stores. Defendants Williams-Sonoma, Inc. s/h/a West Elm d/b/a Williams-Sonoma Stores, Inc. and Williams-Sonoma, Inc. now move for an Order pursuant to CPLR § 3212 granting them summary judgment dismissing the complaint. Plaintiff cross-moves for an Order pursuant to CPLR § 3212 granting her summary judgment on the issue of liability and scheduling an inquest to determine plaintiff's damages. For the reasons set forth below, both defendants' motion and plaintiff's cross-motion are denied.

The relevant facts are as follows. On or about December 21, 2013, plaintiff was shopping in one of defendants' West Elm furniture retail stores located in Paramus, New Jersey (the "Store") when she fell from a display platform located in the Store. Specifically, plaintiff asserts that after she entered the Store with her son, she followed her son up a ramp leading to a flat elevated platform area (the "elevated platform") on which there were shelves displaying miscellaneous items. After plaintiff took a pillow from one of the shelves, she turned to her right, took one step and fell off the elevated platform, missing two descending steps attached to the elevated platform, sustaining injuries. Both plaintiff and defendants now move for summary judgment.

On a motion for summary judgment, the movant bears the burden of presenting sufficient evidence to demonstrate the absence of any material issues of fact. *See Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986). Summary judgment should not be granted where there is any doubt as to the existence of a material issue of fact. *See Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). Once the movant establishes a *prima facie* right to judgment as a matter of law, the burden shifts to the party opposing the motion to "produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim." *Id.*

It is well established that "[a] landowner has a duty to maintain its property in a reasonably safe condition in view of all the circumstances, including the likelihood of injury to third parties, the potential seriousness of the injury and the burden of avoiding the risk." *Branham v. Loews Orpheum Cinemas, Inc.*, 31 A.D.3d 319, 322 (1st Dept 2006). "However, a court may still afford summary judgment to a landowner or licensed occupier on the ground that the condition complained of by a visitor was both open and obvious and, as a matter of law, not inherently dangerous." *Broodie v. Gibco Enters., Ltd.*, 67 A.D.3d 418 (1st Dept 2009); *see also Johnson v. 301 Holdings*, LLC, 89 A.D.3d 550 (1st Dept 2011); *Remes v. 513 West 26th Realty, LLC*, 73 A.D.3d

665 (1st Dept 2010); *Schwartz v. Hersh*, 50 A.D.3d 1011 (2nd Dept 2008). "A condition that is visible to one 'reasonably using his or her senses' is not inherently dangerous." *Langer v. 116 Lexington Ave., Inc.*, 92 A.D.3d 597, 598 (1st Dept 2012) (quoting *Tagle v. Jakob*, 97 N.Y.2d 165, 170 (2001)). However, a step or elevation "may be dangerous where the conditions create 'optical confusion'–the illusion of a flat surface, visually obscuring" said step or elevation. *Id.* at 599. "Findings of liability have typically turned on factors, such as inadequate warning of the drop, coupled with poor lighting, inadequate demarcation between raised and lowered areas, or some other distraction or similar dangerous condition." *Id.* (internal citations and quotations omitted). "Even visible hazards do not necessarily qualify as open and obvious because of the nature or location of some hazards, while they are technically visible, make them likely to be overlooked." *Westbrook v. WR Activities – Cabrera Mkts.*, 5 A.D.3d 69 (1st Dept 2004).

Here, the court finds that neither defendants nor plaintiff are entitled to summary judgment on the ground that there is an issue of fact as to whether the elevated platform off of which plaintiff fell constituted a dangerous condition. Although defendants have put forth evidence that the area was well-lit, that the elevated platform and the two steps at issue were demarcated with black tape, that there was no substance on the elevated platform which caused plaintiff's fall and that there were no prior reported accidents involving the elevated platform, defendant has failed to establish that the elevated platform did not constitute a dangerous condition as a matter of law based on the evidence presented by plaintiff that the elevated platform constituted a dangerous, trap-like condition due to optical confusion experienced by plaintiff. Indeed, plaintiff's testimony, her affidavit and the photographs submitted with the motions raise an issue of fact as to whether the elevated platform constitutes a dangerous condition based on the following factors: that the light tan shade of the floorboards made it difficult to distinguish the two steps when standing on the elevated

platform; that there was an illusion of a flat surface; that the black demarcation lines were insufficient to dispel the illusion of a flat surface; that the length of the steps, the small height differential between each of the steps and the ramp used by plaintiff to reach the elevated platform contributed to the optical confusion; and that the lack of railings on the sides of the elevated platform gave plaintiff a false sense of security because there were railings on the side of the ramp. Indeed, the photographic evidence demonstrates the illusion of a flat surface and raises an issue as to whether the two steps attached to the elevated platform are less discernible for those standing on the elevated platform than for those standing on the floor below. Thus, summary judgment is inappropriate for either plaintiff or defendants as there remains a disputed material issue of fact that must be left to the jury.

Defendants' assertion that their motion for summary judgment should be granted on the ground that even if the elevated platform did constitute a dangerous condition, plaintiff was the sole proximate cause of her accident based on her testimony that she failed to see and/or look for the edge of the elevated platform or the stairs prior to taking a step is without merit. Plaintiff's claim is that due to optical confusion, she could not discern the steps or edge of the elevated platform and not that her accident was caused by inattentive walking. Indeed, courts have found that a plaintiff is not the sole proximate cause of her accident under these circumstances.. *See Chafoulias v. 240 E. 55th Street Tenants Corp.*, 141 A.D.2d 207, 211 (1st Dept 1988)("A reasonable interpretation of plaintiff's deposition testimony that she 'never saw the stairs' and one which is consistent with her negligence theory is that the steps were so indistinguishable from the platforms above and below them and so close to the entrance door that they could not be seen. Defendant's contention, therefore, that [plaintiff] failed to look and see that which was there to be seen, simply begs the question. Nevertheless, the interpretation of plaintiff's deposition testimony and her failure to

maintain a reasonable lookout, if any, are questions for the jury.")

Accordingly, both defendants' motion for summary judgment and plaintiff's cross-motion for summary judgment are denied. This constitutes the decision and order of the court.

Dated: 1/14/16

Enter: _____
J.S.C.

CYNTHIA S. KERN
J.S.C.