

Achaibar v Richard Attias & Assoc. LLC
2018 NY Slip Op 30921(U)
May 11, 2018
Supreme Court, New York County
Docket Number: I58546/2012
Judge: Kelly A. O'Neill Levy
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**KELLY O'NEILL LEVY
JSC**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 19

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SHELLITA ACHAIBAR,

INDEX NO. 158546/2012

Plaintiff,

MOTION DATE 03/14/2018

- v -

RICHARD ATTIAS & ASSOCIATES LLC, THE EXPERIENCE LLC,
NEX 5, INC., RODNEY CORPORATION, JAMINCO
MANAGEMENT COMPANY LLC,

MOTION SEQ. NO. 005

Defendants.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 104, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 118

were read on this motion to/for

Summary Judgment

This is an action for personal injuries that were sustained by the plaintiff, a temporary employee, who allegedly tripped on wires and cables and fell over a co-worker.

Defendant Nex 5, Inc. (hereinafter, "Nex 5") moves, pursuant to CPLR § 3212, for summary judgment in its favor, dismissing the complaint and all cross-claims against it. Defendants Richard Attias & Associates LLC (hereinafter, "Attias"), The Experience LLC (hereinafter, "The Experience"), Rodney Corporation (hereinafter, "Rodney"), Jaminco Management Company LLC (hereinafter, "Jaminco") (collectively, "opposing defendants") and plaintiff Shellita Achaibar oppose.

BACKGROUND

On the date of the incident, February 13, 2012, plaintiff was employed by temp agency Citi Staffing, and was working as a temp at the office of The Experience, located at 555 Madison Avenue in Manhattan. Ms. Achaibar had been working at The Experience since January 2012 [Deposition of Plaintiff (ex. E to the Simmons aff.) at 21-22]. In or about 2012, The Experience

changed its name to Richard Attias & Associates, LLC [Deposition of Doreen Bonnami, Operations Director at Attias (ex. F to the Simmons aff.) at 9]. Attias/The Experience leased the space at 555 Madison Avenue from Rodney, which owned the building [Deposition of John Bzezinski, Director of Operations at Rodney (ex. T to the Simmons aff.) at 7]. Jaminco is a subsidiary of Rodney and it manages Rodney's properties (*id.*). Nex 5 was an off-site company hired by Attias/The Experience to provide IT services as needed in January and February 2012 [Bonnami tr. at 32-34]. The services included running cables, installing workstations, purchasing hardware and software, and working on various infrastructure issues in the IT server room [Deposition of Doreen Bonnami, (ex. Q to the Simmons aff.) at 17, 22].

At the time of the accident, plaintiff was sitting at a table with three others (Plaintiff tr. at 34). Briana Mulherin, plaintiff's supervisor at The Experience, came to the doorway of the room (*id.* at 32). As plaintiff stood up to face Ms. Mulherin, plaintiff fell down (*id.* at 38). She was unable to move her chair back because her co-worker, Chad, was sitting immediately behind her (*id.* at 37). Plaintiff alleges that her leg got caught in several wires and cables on the floor which caused her to trip and fall over Chad and hit the ground (*id.* at 22, 37, 38, 41, 43, 74, 75, 80, 81, 124). Approximately five to ten minutes after she fell, plaintiff saw certain cables and wires on the floor that she believes contributed to her fall (*id.* at 43-45), but she does not know who installed them (*id.* at 48). Plaintiff assumed that it was an IT consultant because she saw him in the office doing some work near her work area (*id.* at 50-52).

At his deposition, Ronald Rothschild, the CEO of Nex 5, reviewed the individual invoices created by Nex 5 for the IT services it performed for Attias [Invoices (ex. W to the Simmons aff.)]. None of the work outlined in the invoices required the running of wires or

cables in or around the area of the accident [Deposition of Ronald Rothschild, CEO of Nex 5 (ex. S to the Simmons aff.) at 25-67].

After the accident occurred, plaintiff completed an Employee Incident Report in which she stated that she was getting up from her desk when her leg was caught in several wires because her chair could not be pushed back enough due to another person directly behind her [Employee Incident Report (ex. 3 to the Dunne aff.)]. About a day after the accident, plaintiff also completed an Employee Claim C-3 Form for the Workers' Compensation Board in which Ms. Achaibar states that when she got up from her desk to speak with her manager, she tripped on multiple wires and over another employee, and could not push her chair back due to another employee sitting directly behind her [Employee Claim C-3 Form (ex. 4 to the Dunne aff.)].

DISCUSSION

On a summary judgment motion, the moving party has the burden of offering sufficient evidence to make a prima facie showing that there is no triable material issue of fact. *Jacobsen v. N.Y. City Health & Hosps. Corp.*, 22 N.Y.3d 824, 833 (2014). Once the movant makes that showing, the burden shifts to the non-moving party to establish, through evidentiary proof in admissible form, that material factual issues exist. *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). In determining a motion for summary judgment, the court must view the evidence in the light most favorable to the non-moving party. *Henderson v. City of New York*, 178 A.D.2d 129, 130 (1st Dep't 1997). The court's function on a motion for summary judgment is issue-finding, rather than making credibility determinations or factual findings. *Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499, 505 (2012).

Nex 5 asserts that summary judgment must be granted in its favor because there is no triable issue of fact, plaintiff is unable to identify what caused her to fall, and Nex 5 did not

create or have notice of any defective condition. Nex 5 argues that plaintiff testified repeatedly that she did not know what caused her to fall and that any attribution of the accident to the wires and cables on the floor is mere speculation, as plaintiff could not recall observing the allegedly defective condition either before or after her fall. Nex 5 contends that it neither created nor had actual or constructive notice of the alleged defective condition, as plaintiff did not see any allegedly defective condition before her fall, nor could she state with certainty what was the actual cause of her fall. Nex 5 asserts that it received no complaints from employees of The Experience regarding cables or wires in the office (Rothschild tr. at 93) and that it had no duty to inspect the premises (*id.* at 97-98).

Opposing defendants assert that triable issues of fact exist as to Nex 5's liability. Plaintiff argues that her testimony makes it clear that the negligently-placed wires caused her to trip and fall over her co-worker, citing the Employee Incident Report and C-3 Form which corroborate the cause of the accident. Plaintiff asserts that there is an issue of who and/or which of the defendants created the hazardous condition that caused the accident. Plaintiff contends that the issue of how liability should be shared between the opposing defendants and Nex 5 is a question of fact for a jury.

Here, triable issues of fact exist as to whether the wires and cables caused plaintiff's fall and as to who was responsible for the hazardous condition. It is unclear based on plaintiff's testimony and the documentary evidence presented whether the cables and wires were the cause of plaintiff's fall. Also, it is unclear whether Nex 5 was responsible for the cables and wires that were left on the floor, as the invoices contradict plaintiff's recollection of the work Nex 5 did at the premises prior to the accident. Moreover, Mr. Rothschild's testimony as to whether it was possible for Nex 5's employees to have left the cables and wires on the floor at the subject

premises is ambiguous. Thus, as triable issues of fact exist, the court denies Nex 5's summary judgment motion.

The court has considered the remainder of the arguments and finds them to be without merit.

CONCLUSION AND ORDER

For the foregoing reasons, it is hereby

ORDERED that defendant Nex 5, Inc.'s motion, pursuant to CPLR § 3212, for summary judgment in its favor dismissing the complaint and all cross-claims against it is denied.

This constitutes the decision and order of the court.

5/11/18
DATE

CHECK ONE:

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CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

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DENIED

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NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☐

OTHER

☐

REFERENCE

Kelly O'Neill Levy
KELLY O'NEILL LEVY, J.S.C.

KELLY O'NEILL LEVY
JSC