Jackson v AMC Entertainment Inc.

2019 NY Slip Op 31746(U)

June 20, 2019

Supreme Court, New York County

Docket Number: 156025/2016

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **IAS MOTION 32**

Justice

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TASHAUNA JACKSON,

Plaintiff,

- v -

AMC ENTERTAINMENT INC, SLG 315 WEST, LLC,SL GREEN REALTY CORP, STONEHENGE MANAGEMENT, LLC,EXCEL ELEVATOR & ESCALATOR CORP.

Defendants.

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INDEX NO. 156025/2016

MOTION DATE ______

MOTION SEQ. NO. 003

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 003) 49, 51, 52, 53, 54, 55, 56, 57, 58
were read on this motion to/for JUDGMENT - SUMMARY.

The branch of plaintiff's motion for summary judgment is denied. The branch of the motion dismissing defendants' affirmative defenses alleging comparative negligence, contributory negligence and culpable conduct is also denied.

Background

This case arises from personal injuries allegedly suffered by plaintiff as she was riding the escalator at an AMC Loews movie theater in Manhattan. Plaintiff claims she was on the escalator when it suddenly stopped, causing her to lose her balance and fall. As a result, plaintiff underwent surgery for her injuries. After the alleged accident, an Incident Report was created by an employee of defendant AMC Entertainment, Inc. ("AMC") (NYSCEF Doc. No. 49 at Exhibit E). The report indicates that the escalator "is known to shut off randomly during the day" (*id.*). Plaintiff claims that because the Incident Report states that the escalator randomly shuts off, this

conclusively establishes that defendants had constructive notice of any defects in the escalator and thus, summary judgment as to liability should be granted. In opposition, defendants argue that the Incident Report alone is insufficient to prove that no triable issues of fact remain and contend that summary judgment at this stage of litigation is premature. They point to an inspection report and work orders submitted by defendant Excel Elevator & Escalator Corp. which indicate that a routine preventative maintenance occurred two weeks prior to the incident, wherein no issues with the escalator were reported (NYSCEF Doc. No. 54 at Exhibit A, Work Order dated October 31, 2015). Defendants also argue that the affirmative defenses cannot be dismissed because plaintiff's deposition testimony indicates that she was partially responsible for her injuries.

Discussion

To be entitled to the remedy of summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such a prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id.*). When deciding a summary judgment motion, the court views the alleged facts in the light most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492, 955 NYS2d 589 [1st Dept 2012]).

Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court's task in deciding a

summary judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d'Amiante Du Quebec, Ltee,* 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], *affd* 99 NY2d 647, 760 NYS2d 96 [2003]).

The summary judgment motion is denied because it is premature at this stage of litigation. The Incident Report alone is not enough to prove defendants had notice of the alleged defects in the escalator, especially in light of the work order which indicates that a routine inspection occurred two weeks prior to the accident. The Court cannot speculate about what happened on the date and time of the accident based solely upon a report stating that the escalator is known to turn off randomly at times. The employee who made the report has not yet been deposed and neither has the escalator maintenance company. Without a deposition of the employee we do not know, for example, the last time the employee was present when the escalator stopped, whether the employee ever saw the escalator stop, or if the basis of knowledge is hearsay. Without deposing the escalator company, we do not know if there were ever service calls for a randomly stopping escalator, how often they were made, or what was done to fix it, etc. Too many questions remain about the accident and the events leading up to it.

The branch of the motion to dismiss the affirmative defenses is also denied. Plaintiff claims that because she was holding on to the railing of the escalator, there is no way she could have been responsible for her injuries. However, according to her deposition testimony, plaintiff states, "I *believe* my hand was sitting on the railing" (emphasis added) (NYSCEF Doc. No. 55 at pg. 24). Plaintiff's belief that her hand was sitting or resting on the railing is not enough to

establish that she was definitely and actually holding on to the railing; it is too equivocal. A belief is not a conclusive statement.

Accordingly, it is hereby

ORDERED that plaintiff's motion is denied.

Next Conference: 7-30-19

6/20/19

DATE

ARLENE P. BLUTH, J.S.C.

HON. ARLENE P. BLUTH

CHECK ONE:	☐	CASE DISPOSED		☒	NON-FINAL DISPOSITION	
	☐	GRANTED	☒ DENIED	☐	GRANTED IN PART	☐ OTHER
APPLICATION:	☐	SETTLE ORDER		☐	SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN		☐	FIDUCIARY APPOINTMENT	☐ REFERENCE