

**Lee v FJC Sec. Servs., Inc.**

2019 NY Slip Op 32460(U)

August 16, 2019

Supreme Court, New York County

Docket Number: 152309/2016

Judge: Paul A. Goetz

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. PAUL A. GOETZ PART IAS MOTION 47EFM**

*Justice*

-----X

DEBBIE LEE,

Plaintiff,

- v -

FJC SECURITY SERVICES, INC., MAJIB HOQUE,  
HIRSCHFELD PROPERTIES, LLC, ABLE EMPIRE GROUP,  
L.P., ABLE EMPIRE GROUP, INC., MANHATTAN MINI  
STORAGE, LLC, CBRE

Defendants.

-----X

INDEX NO. 152309/2016  
MOTION DATE 05/08/2019  
MOTION SEQ. NO. 007

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 007) 135-160, 162-163, 167-169

were read on this motion to/for JUDGMENT - SUMMARY

On March 19, 2014, Plaintiff Debbie Lee was struck across her face and shoulders by an overhead garage door while walking into the employee entrance at 99 Tenth Avenue, New York, New York 10011. Plaintiff commenced this action against Defendants FJC Security Services, Inc., ("FJC"), the security contractor for the subject building, Majib Hoque ("Hoque"), the FJC employee assigned to the door at the time of the accident (collectively "FJC defendants"), ABLE Empire Group ("ABLE"), the owner of the first nine floors of the subject building, and CBRE, the property manager for the building. Defendants ABLE and CBRE (Owner Defendants) now move pursuant to CPLR 3212 for summary judgment dismissing plaintiff's complaint against them, for summary judgment on their cross-claims against the FJC Defendants for common law indemnification and contribution, and an order determining that the FJC Defendants engaged in frivolous conduct pursuant to 22 NYCRR 130-1.1.

The Owner Defendants first argue that plaintiff's complaint against them should be dismissed because there was neither a defective condition on the property nor did they have actual or constructive notice of such conditions. They also argue that they were not the proximate cause of plaintiff's accident. In support, the Owner Defendants submit the deposition testimony of FJC employee, defendant Hoque, in which Hoque admits pressing the close button to close the garage door while plaintiff was walking underneath because he did not see her as he was distracted by another person. (Affirmation of Patrick Prager, dated March 20, 2019, Exh. L [Dep. Tr. Hoque p. 45]). The Owner Defendants also rely on the deposition testimony of Richard Bletsch, property manager for CBRE, who testified that he had both inspected the garage door periodically prior to the accident and examined the garage door after the accident, finding no issues with the garage door or its sensors. (Prager Aff. Exh. O [Dep. Tr. Bletsch p. 77]). The Owner Defendants also submit repair reports from Thompson Overhead Doors, the subcontractor for the maintenance and repair of the door, which show the door had been periodically inspected and repaired as needed leading up to the accident. (Affirmation in Reply of Patrick Prager, dated May 1, 2019, Exh. A). This evidence is sufficient to meet the Owner Defendants' burden on summary judgment to show that they did not proximately cause plaintiff's accident.

In opposition, the FJC Defendants fail to raise a triable issue of fact. The FJC Defendants claim that the Owner Defendants have failed to make a showing to establish that the subject garage door was in good working order at the time of the accident. However, the FJC defendants arguments are insufficient without more since they rely on "mere conclusions, expressions of hope, or unsubstantiated allegations or assertions," in support and do not submit admissible evidence which would show even the possibility of a dispute in fact as to the maintenance and repair of the door. (*Zuckerman v. New York*, 40 N.Y.2d 557, 562 [1980]). Though summary

judgment requires the facts “be viewed in the light most favorable to the non-moving party,” the FJC defendants have not put forward an argument which would lead to a conclusion in favor of them. (*Matter of NYC Asbestos Litig.*, 33 N.Y.3d 20, 25 [2019]; citing *Ortiz v. Varsity Holdings, LLC*, 18 N.Y.2d 335, 339 [2011]). The FJC Defendants have failed to raise a triable issue of fact in opposition to the Owner Defendants’ prima facie showing and thus summary judgment must be granted to them.

In light of this decision, the Owner Defendants’ cross-claims for contribution are moot and should be dismissed. With respect to the cross-claims for common law indemnification, summary judgment on this claim must be denied and the claims dismissed since the Owner Defendants’ liability for this personal injury action is not derivative of the FJC Defendants. *Williams v. New York City. Tr. Auth.*, 9 A.D.3d 308, 309 (1st Dep’t 2004).

Finally, the Owner Defendants failed to show that plaintiff’s counsel’s conduct in failing to notify defendants about the subpoena or the production of the documents was intentional or rose to the level of frivolousness so as to warrant sanctions (22 NYCRR 130-1.1; *Highland Capital Mgmt. v. Stern*, 157 A.D.3d 501 [1st Dep’t 2018]); therefore, it must be denied.

Accordingly, it is hereby

ORDERED that Defendants ABLE and CBRE’s summary judgment motion is GRANTED and the complaint and any cross-claims against said defendants are dismissed, and the Clerk is directed to enter judgement accordingly, with costs and disbursements to said defendants; and it is further

ORDERED that Defendants ABLE and CBRE’s cross-claims against defendants FJC Security and Majib Hoque are dismissed, and the Clerk shall enter judgment accordingly; and it is further

ORDERED that the caption shall be amended as follows:

Debbie Lee,

Plaintiff,

v.

FJC Security Services, Inc. and Majib Hoque,

Defendants.

ORDERED that the plaintiff's remaining claims against defendants FJC Security and Majib Hoque are severed and continued; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh));

ORDERED that Defendants ABLE and CBRE's request for attorney's fees and expenses pursuant to 22 NYCRR 130-1.1 is DENIED.

8/14/19  
DATE

  
PAUL A. GOETZ, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					REFERENCE