

Godden v New York Racing Assn.

2019 NY Slip Op 33285(U)

September 3, 2019

Supreme Court, Queens County

Docket Number: 709259/2015

Judge: Cheree A. Buggs

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Short Form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

Present: HONORABLE CHEREÉ A. BUGGS
Justice

IAS PART 30

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MAURICE GODDEN,

Index No.: 709259/2015

Plaintiff,

Motion

Date: July 31, 2019

-against-

Motion Cal. No.: 21

NEW YORK RACING ASSOCIATION, INC.
AND GENTING NEW YORK LLC D/B/A
RESORTS WORLD CASINO,

Motion Sequence No.: 3

Defendants.

-----X
The following efile papers numbered 75-80, 85-86 submitted and considered on this motion by defendants New York Racing Association, Inc. and Genting New York LLC d/b/a Resorts World Casino seeking an Order pursuant to Civil Practice Law and Rules (CPLR) 2221 granting defendants reargument and/or renewal of their motion seeking an Order granting summary judgment pursuant to CPLR 3212 against plaintiff Maurice Godden.

	<u>Papers Numbered</u>
Notice of Motion-Affidavits-Exhibits.....	EF 75-80
Affirmation in Support-Affidavits-Exhibits.....	EF 85-86

This premises liability litigation was commenced by plaintiff Maurice Godden (hereinafter "Godden") on September 3, 2015 as a result of a slip and fall accident which occurred on May 30, 2015 inside a men's restroom of the premises known as 110-00 Rockaway Boulevard, County of Queens, State of New York. Defendants New York Racing Association, Inc. (hereinafter "NYRA") and Genting New York LLC (hereinafter "Genting") d/b/a Resorts World Casino (hereinafter "Resorts World") seeks an Order pursuant to Civil Practice Law and Rules 221 granting defendants reargument and/or renewal of their motion seeking an Order granting summary judgment pursuant to Civil Practice Law and Rules (CPLR) 3212 against Godden. NYRA, Genting and Resorts World previously made a prior application for the same relief which was denied by the undersigned on May 2, 2019 due to their failure to properly e-file the exhibits in support of the motion.

In support of the branch of the motion seeking renewal and reargument, NYRA, Genting and Resorts World maintained that they inadvertently incorrectly filed the prior papers and request relief under CPLR §2001. Pursuant to CPLR 2221 (d) (2), a motion for leave to reargue “shall be based upon matters of fact or law allegedly overlooked or misapprehended by the Court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion.” Pursuant to CPLR 2221 (e) a motion for leave to renew “shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination.”

Upon the Courts consideration of arguments set forth in the papers, the Court grants the branch of NYRA and Resort World’s motion seeking leave to renew based upon its explained law office failure (*see In re Defendini*, 142 AD3d 500 [2d Dept 2016]; *Castor v Cuevas*, 137 AD3d 734 [2d Dept 2016]; *Gordon v Boyd*, 96 AD3d 719 [2d Dept 2012]).

Turning next to the documentary evidence submitted in support of the motion, in addition to the pleadings, defendants submitted the affidavit of the President of Genting d/b/a Resorts World Casino New York City, Scott Molina (hereinafter “Molina”). Since about September 12, 2008 Resorts World has operated a casino pursuant to a series of agreements between the State of New York, NYRA and Genting. On or about September 12, 2008 NYRA entered into a Grounds Facilities Lease for the subject property and on September 13, 2010 Genting and the State of New York entered into a Memorandum of Understanding under which Genting was granted the authority to operate video gaming at the location and on the same date Genting assumed the lease between NYRA and the State of New York. A copy of this agreement is a public record. Genting operates the casino facility the location of which is housed and responsible for the physical maintenance of the facility, and that NYRA has no responsibility for the physical maintenance of the casino.

The deposition transcript and affidavit of Samuel Rodriguez (hereinafter “Rodriguez”) was also annexed to the papers. Rodriguez testified that he is employed by Genting New York LLC d/b/a Resorts World Casino and was the Supervisor for Environmental Services (“EVS”) at the subject location and working at the subject premises on the day and time of Godden’s accident. He had been employed as a Supervisor for about two to three years. Generally EVS performs cleaning services such as sweeping, disinfecting, changing garbage, mopping, refilling soap dispensers and changing toilet tissue as needed in the bathrooms. His responsibilities included oversight of the cleaning staff responsible for the cleanliness of the bathrooms, gaming area, main entrance, bus depot and decks. He was working on the date of Godden’s accident. He had not seen the accident report prepared after Godden’s accident, but stated it is customary practice to have one filled out after someone is injured, and the form would be prepared by security in the building. Generally EVS would be notified about an accident in the bathroom, however he testified that he was not notified about Godden’s accident. On the date of the accident, he worked the 7 A.M. to 4 P.M. shift. Approximately twelve to seventeen people were employed and working during these same hours. Cleaning duties included making sure the floor was dry and mopped, and workers were given verbal guidelines to inspect the bathrooms every fifteen minutes to half an hour. He had only recently become aware of Godden’s accident. He did not review any surveillance footage relating to the

incident but did look at photographs of the bathroom, but was not sure if they depicted the bathroom where Godden had his accident, although the tile looked similar. He had not previously seen the photographs he was shown at the deposition, but he believed that maybe security took them.

He also testified about the Master Sheet and maintenance logs for the subject bathroom which he identified at the deposition. The Master Sheet is generated daily. The employee assigned to the bathroom where Godden fell was Daniel Vargas (hereinafter "Vargas") who was working from 8 A.M. to 4:00 P.M. Employees would not fill out a logbook during their work. Part of the Master Sheet was not filled out, including the portion which states when a task would be completed, and he did not know why. He stated that he was supervising Vargas on the date of the accident and that Vargas is not available because he has passed away. It is custom and practice for every floor of the casino to be inspected by either him or at the time two other supervisors who no longer work there. He believed he checked the subject bathroom several times that day but could not give specific times and did not keep a record when bathrooms are checked. Rodriguez testified that Vargas worked at the Fifth Avenue, Memphis 2 men's room from 10:00 A.M. to 4 P.M. When mopping employees are supposed to place caution signs down, and they mop the floor in stages so that the entire floor is not wet at one time. If the toilets were not working properly the cleaning employees would report the problem to the Facilities department, which is part of the Maintenance Department. To his knowledge there was no problem with the functioning of the toilets in the subject men's room on the date of the accident, although he did not search e-mails for six months prior to see if there had been an issue. He was not aware of any prior complaints before May 30, 2015 concerning a wet floor in the subject bathroom. If he had observed a wet condition, he would have placed a sign and rectify the situation by calling the employee responsible to come clean, but he would not make a record of the condition. The accident occurred on Saturday and he stated that the casino opens at 10:00 A.M. on Saturdays. He testified that he inspected the Memphis 2 bathroom between 9:30 A.M. and 10 A.M. but there is no written record of that. He did not know who owned the building, and had no familiarity with the lease agreements related to the property.

Rodriguez also submitted his affidavit dated January 15, 2019, reiterating that he is employed by Genting d/b/a Resorts World Casino and was the Supervisor for EVS at the subject location at the time of Godden's accident. He stated that Godden fell in the men's bathroom on the second floor of the casino known as Fifth Avenue Casino, Memphis 2 at approximately 10:15 A.M. due to a wet floor condition. As Supervisor, his duties included ensuring the Casino bathroom were clean and that workers' were performing their cleaning tasks related to same. All bathrooms are cleaned before opening at 10:00 A.M. On the date of the accident, he worked from 7 A.M. to 4 P.M. David Vargas was the employee responsible for cleaning the bathroom that date and he has since died. Mr. Vargas' duties included cleaning the bathroom and ensuring the floor was dry. The Guideline in effect at the time required employees to clean the bathroom prior to opening and every fifteen minutes to a half an hour thereafter after opening at 10:00 A.M. Based upon ordinary practice and procedure, he performed one inspection between 9:30 A.M. and 10:00 A.M. and the bathroom was cleaned sometime between 8:00 A.M. on the morning of the accident. His inspection would include the bathroom floor and stalls. He stated that when he performed his inspection between 9:30 A.M. and 10:00 A.M. He did not observe any wet or dirty conditions or other substances on the floor in the

bathroom stalls and the entire bathroom floor including the inside stalls were clean and dry. He stated he was also unaware of any complaints about any wet condition on the floor prior to Godden's accident, and not aware of any similar accidents occurring in the subject bathroom.

Law and Application

It is well-settled that the proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law by tendering admissible evidence to eliminate any material issues of fact from the case. (*Winegrad v New York Univeristy Medical Center*, 64 NY2d 851 [1985].) Summary judgment eliminates cases from the Court's trial calendar which can be properly resolved by the Court as a matter of law (*Andre v Pomeroy*, 35 NY2d 361 [1974]). As summary judgment is a drastic remedy, it should not be granted where there is doubt about the existence of any issues (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957]).


"As a general rule, liability for a dangerous or defective condition on real property must be predicated upon ownership, occupancy, control, or special use of that property." (*See Calabro v Harbour at Blue Point Home Owners Assn., Inc.*, 120 AD3d 462 [2d Dept 2014].) Defendant has the burden of demonstrating *prima facie* that it did not create the hazardous condition, and did not have actual or constructive knowledge of the condition for a sufficient length of time to remedy it (*see Levine v G.F. Holding, Inc.*, 139 AD3d 910 [2d Dept 2016]; *Amendola v City of New York*, 89 AD3d 775 [2d Dept 2011]). To meet its initial burden on the issue of constructive notice, defendant must offer evidence as to when the area in question was last cleaned or inspected in relation to the time that plaintiff fell. (*See Lauture v Board of Managers at Vista at Kingsgate, Section II*, 172 AD3d 1351 [2d Dept 2019]; *Ahmetaj v Mountainview Condominium*, 171 AD3d 683 [2d Dept 2019]; *Baez v Willow Wood Assocs., LP*, 159 AD3d 785 [2d Dept 2018].) "A defendant has constructive notice of a hazardous condition on property when the condition is visible and apparent, and has existed for a length of time sufficient to afford the defendant a reasonable opportunity to discover and remedy it." (*See Williams v NYCHA*, 119 AD3d 857 [2d Dept 2017]; *see also Adamson v Radford Mgmt. Assocs.*, 151 AD3d 913 [2d Dept 2017]; *Amendola v City of New York*, 89 AD3d 775 [2d Dept 2011].)

Here, defendants failed to establish their entitlement to judgment as a matter of law. Defendants failed to demonstrate that it lacked constructive notice. Its cleaning Supervisor Rodriguez testified to general cleaning practices and provided no evidence regarding any specific cleaning or inspection of the area in question relative to the time when Godden fell (*see Goodyear v Putnam/Northern Westchester Board of Coop. Educ. Servs.*, 86 AD3d 551 [2d Dept 2011]). Defendants' documentary evidence failed to demonstrate that the area in the stall in the bathroom where Godden fell was cleaned, and if cleaned, that it was not negligently cleaned and water was left on the floor of the stall. The Master Sheet produced by defendant is not completed and it failed to state what time the subject men's bathroom was last inspected prior to the accident. The Court finds that Rodriguez' affidavit is a feigned attempt to contradict his earlier testimony (*see Hernandez-Vega v Zwanger-Pesiri Radiology Group*, 39 AD3d 710 [2d Dept 2007]; *Stancil v Supermarkets General*, 16 AD3d 402 [2d Dept 2005]).

Therefore, based upon the foregoing, defendants' motion is denied.

The foregoing constitutes the decision and Order of the Court.

Dated: September 3, 2019



Hon. Chereé A. Buggs, JSC

FILED
SEP 09 2019
COUNTY CLERK
QUEENS COUNTY