

Beer v Equinox Holdings, Inc.
2019 NY Slip Op 33814(U)
December 24, 2019
Supreme Court, New York County
Docket Number: 156484/2016
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

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WENDY BEER,

Index No. 156484/2016

Plaintiff

- against -

DECISION AND ORDER

EQUINOX HOLDINGS, INC., EQUINOX
COLUMBUS CIRCLE, and EQUINOX COLUMBUS
CENTRE INC.

Defendants

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LUCY BILLINGS, J.S.C.:

Plaintiff sues for injuries she sustained May 10, 2016, when her foot became entangled in a handheld hair blower's electrical cord that hung underneath a sink countertop in the women's locker room at defendants' health club. Defendants Equinox Holdings, Inc., and Equinox Columbus Centre Inc. move to preclude the testimony at trial by plaintiff's expert engineer James Pugh Ph.D. Defendants claim that Dr. Pugh's anticipated testimony on whether a hair blower cord hanging underneath a sink countertop created an unsafe condition is within the knowledge of laypersons, such that the jury may determine the ultimate issue of defendants' liability without an expert's opinion.

To support the preclusion of Dr. Pugh's testimony, defendants rely on authority holding that expert opinion is not required to establish a unsafe condition. This authority does not necessarily support the proposition that expert opinion on whether a condition was unsafe is impermissible. See, e.g.,

People v. Samba, 97 A.D.3d 411, 415 (1st Dep't 2012); Hendricks v. Baksh, 46 A.D.3d 259, 260 (1st Dep't 2007). The sufficiency of the factual evidence to determine whether a condition was unsafe does not bar the admission of opinion evidence to assist the factfinder. Therefore Dr. Pugh may explain why and how the hanging cord posed a hazard, without drawing the ultimate conclusions whether the condition in the locker room May 10, 2016, was or was not reasonably safe and whether defendants did or did not exercise reasonable care, which are to be left to the jury. States v. Lourdes Hosp., 100 N.Y.2d 208, 213 (2003); Hendricks v. Baksh, 46 A.D.3d at 259-60; Nevins v. Great Atl. & Pac. Tea Co., 164 A.D.2d 807, 808-809 (1st Dep't 1990)

Plaintiff's bill of particulars alleges defendants' negligent design of the locker room, "by placing the blow dryer near the sink of said locker room in a careless and reckless manner" and "creating a trap or snare or other trip hazard in an area known to be open to female patrons, guests, visitors and frequented by the female patrons, guests and visitors." V. Bill of Particulars ¶ 4 (Dec. 12, 2016). Therefore Dr. Pugh also may explain how the hair blower, cord, and countertop could have been safely installed so as not to pose a tripping hazard. These design considerations, as well as any explanation why the design, arrangement, or placement of the hair blower, cord, and countertop on May 10, 2016, posed a hazard, well may involve technical issues requiring a technical explanation for jurors to best comprehend the issues. Adams v. Genie Indus., Inc., 14

N.Y.3d 535, 543-44 (2010); Adams v. Hilton Hotels. Inc., 13 A.D.3d 175, 178 (1st Dep't 2004)). See Hendricks v. Baksh, 46 A.D.3d at 260; Ortiz v. City of New York, 39 A.D.3d 359, 360 (1st Dep't 2007); Nevins v. Great Atl. & Pac. Tea Co., 164 A.D.2d at 808.

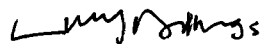
In sum, the admissibility of Dr. Pugh's opinions will depend on whether they will help the jurors bridge the gap between their own common knowledge and the specialized knowledge and experience of an engineer and enlarge their understanding of the factual issues that the jury, not the engineer, is to decide. States v. Lourdes Hosp., 100 N.Y.2d at 212-13; Styles v. General Motors Corp., 20 A.D.3d 338, 340 (1st Dep't 2005). If no such expertise would assist the jurors in their interpretation of the evidence, the trial justice may exclude the expert testimony. People v. Clyde, 18 N.Y.3d 145, 154 (2011); People v. Santi, 3 N.Y.3d 234, 246-47 (2004).

Contrary to defendants's suggestion, plaintiff does not offer Dr. Pugh to testify that defendants' disregard of an unsafe condition caused plaintiff's injury or otherwise how plaintiff's injury occurred. Nor may Dr. Pugh testify beyond the scope of his expert disclosure, about accepted industry standards not included in his disclosure, for example.

Consequently, the court grants defendants' motion to the extent of precluding James Pugh Ph.D. from testifying whether defendants' locker room May 16, 2016, was reasonably safe; whether defendants exercised reasonable care; how plaintiff's

injury occurred, including whether it was caused by defendants' disregard of an unsafe condition; or beyond the scope of his disclosure. He still may testify why and how the the design, arrangement, or placement of the hair blower, cord, and countertop posed a hazard. The court otherwise denies defendants' motion, without prejudice to defendants' objections at trial.

DATED: December 24, 2019



LUCY BILLINGS, J.S.C.

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