

Pereda v Time Warner Inc.

2020 NY Slip Op 30817(U)

March 6, 2020

Supreme Court, New York County

Docket Number: 155438/2016

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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MARIA PEREDA,

Index No. 155438/2016

Plaintiff

- against -

DECISION AND ORDER

TIME WARNER INC., WB STUDIO ENTERPRISES
INC., and WARNER BROS. WORLDWIDE
TELEVISION DISTRIBUTION INC.,

Defendants

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LUCY BILLINGS, J.S.C.:

Plaintiff sues for personal injuries sustained January 12, 2016, when she tripped and fell over cables and wires placed across the sidewalk by defendants' film crews on Old Slip between Water and Front Streets in New York County. Defendants Time Warner Inc., WB Studio Enterprises Inc., and Warner Bros. Worldwide Television Distribution Inc. move for summary judgment dismissing the complaint, contending they were not responsible for the cables or wires on the sidewalk over which plaintiff fell. C.P.L.R. § 3212(b). Defendants contend at minimum that neither Time Warner nor Warner Bros. Worldwide Television Distribution was associated with the television production for which the cables or wires were used.

I. DEFENDANTS' COLLECTIVE LIABILITY

Plaintiff fell at approximately 10:00 a.m. January 12, 2016. Defendants maintain that WB Studio Enterprises' hourly inspections of the cables laid for its television production

establish that the cables ran only along the curb and not on the sidewalk. Defendants rely on the deposition of Paul Mallick, whom all defendants produced as each one's own witness and whom defendants claim they collectively hired as the basecamp operator for their production. Mallick testified that he was in charge of running cables and wires to provide electricity to television production trailers on Old Slip between Water and South Street and on Front Street between Old Slip and Wall Street. He insisted that he was the only employee who ran the cables and wires; that he never ran them across the sidewalk; and that on January 12, 2016, he checked them every hour to ensure that they remained positioned along the curb line. He was unsure, however, whether he observed the cables out of place on the sidewalk. When asked whether the cables shifted January 12, 2016, he answered: "If it did, I don't recall because it might have, it might not have." Aff. of Shahin Y. Mashhadian Ex. E, at 84-85. He also checked the cables at the specific location where plaintiff was injured after he was advised of her injury and found them in place along the curb, but the evidence does not indicate how long after her injury he was advised of it or whether anyone in the aftermath of her fall had repositioned the cable over which she fell to a safe location.

Mallick undisputedly made special use of the sidewalk, rendering his employers liable for any unsafe condition caused by that use. Kellogg v. All Sts. Hous. Dev. Fund Co., Inc., 146 A.D.3d 615, 617 (1st Dep't 2017); O'Brien v. Prestige Bay Plaza

Dev. Corp., 103 A.D.3d 428, 429 (1st Dep't 2013); Abramson v. Eden Farm, Inc., 70 A.D.3d 514, 514 (1st Dep't 2010). In direct contradiction to Mallick's testimony, plaintiff at her deposition unequivocally testified that she observed the cable over which she tripped running across the sidewalk. Defendants present no witness who observed plaintiff's fall. Mallick himself admitted that, after he laid the cables, pedestrians and workers with carts walked onto the cables, pushed or pulled their carts into the cables, and kicked or otherwise shifted them out of position and onto the sidewalk. Although he inspected and repositioned them, he never taped them down or otherwise fixed them in position. His testimony, corroborated by plaintiff's observations, raises a factual question whether his measures were adequate to keep the sidewalk reasonably safe. Reaves v. Lakota Constr. Group, Inc., 154 A.D.3d 637, 638 (1st Dep't 2017); Hurley v. Related Mgt. Co., 74 A.D.3d 648, 649 (1st Dep't 2010); Cook v. Consolidated Edison Co. of NY, Inc., 51 A.D.3d 447, 447 (1st Dep't 2008). See Polini v. Schindler El. Corp., 146 A.D.3d 536, 536 (1st Dep't 2017); Johnson-Glover v. Fu Jun Hao Inc., 138 A.D.3d 499, 500 (1st Dep't 2016).

Mallick's testimony, moreover, is equivocal regarding where he laid the cables in the first instance. When asked whether he laid them only along the curb, he answered: "the sidewalk, the roadway, the curb," Mashhadian Aff. Ex. E, at 39. When asked whether the cables ran "along the narrow curb itself[,] in the roadway or on the sidewalk or a combination, he answered: "A

combination." Id. at 39.

II. DEFENDANTS' INDIVIDUAL LIABILITY

Finally, no evidence indicates that Mallick was not in fact employed by Time Warner or Warner Bros. Worldwide Television Distribution or that he was not laying cables on either of these corporations' behalf January 12, 2016. Mallick knew nothing about defendants' relationship to each other; their responsibilities for, control over, or other involvement with the filming project and its activities, including the laying of cables and wires over the sidewalk; or whether there were any contracts between defendants or between them and other entities related to the project.

At best, defendants admit that Time Warner was a parent corporation that wholly owned WB Studio Enterprises and that Warner Bros. Worldwide Television Distribution was a division of WB Studio Enterprises. Yet defendants nowhere show that, as a parent corporation of WB Studio Enterprises, Time Warner was disassociated from the television production or that, as a division of WB Studio Enterprises, Warner Bros. Worldwide Television Distribution was disassociated from the television production from which plaintiff's injury arose.

III. CONCLUSION

In sum, defendants' failure to present evidence disassociating any of defendants from the television production for which Mallick was running cables and Mallick's as well as plaintiff's testimony regarding the position of those cables

precludes summary judgment for any defendant. The testimony leaves factual questions regarding both whether Mallick laid the cables sufficiently away from the sidewalk to maintain a safe pathway for pedestrians along the sidewalk's full width and, even if he did, whether he took adequate measures to protect against the cables shifting from the curb onto the sidewalk. For these reasons, the court denies defendants' motion for summary judgment in its entirety. C.P.L.R. § 3212(b).

DATED: March 6, 2020



LUCY BILLINGS, J.S.C.

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