

March v Town Sports Intl.

2020 NY Slip Op 31072(U)

April 27, 2020

Supreme Court, New York County

Docket Number: 159089/16

Judge: Lynn R. Kotler

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYNN R. KOTLER, J.S.C.

PART 8

LINDA MARCH

INDEX NO. 159089/16

MOT. DATE

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MOT. SEQ. NO. 012

TOWN SPORTS INTERNATIONAL et al.

The following papers, numbered 1 to 3 were read on this motion for <u>SUMMARY JUDGMENT</u>	
Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits	No(s). <u>1</u>
Answering Affidavits — Exhibits	No(s). <u>2</u>
Replying Affidavits	No(s). <u>3</u>

This is an action for personal injuries sustained by plaintiff as a result of a failed piece of gym equipment at a New York Sports Club (NYSC) located at 1372 Broadway, New York, New York on May 20, 2016. Defendants Town Sports International et al (TSI) moves for summary judgment. Plaintiff opposes the motion. Issue has been joined and the motion was timely brought after note of issue was filed. Therefore, summary judgment relief is available. For the reasons that follow, the motion is granted.

On May 20, 2016, at approximately 1 pm, plaintiff claims that she sustained an injury at defendant's gym located at 1372 Broadway, New York, New York. Plaintiff had been a member of defendant's gym since 2013 and visited various NYSC locations throughout the city five to six times a week. On the date of her accident, plaintiff claims that she performed three sets of twelve arm exercises on a pulley machine and after completing the three sets she crouched on the floor and checked her cellphone when she felt something hit her arm. Plaintiff claims that she never looked at the machine, the handlebar or the cable before the accident.

Plaintiff testified at her deposition as follows:

Q: At any time did you ever come to learn how you were hit by the handlebar?

A: Yes

Q: What is your understanding of how you were hit by the handlebar?

A: My understanding is that the cable snapped or broke and the weight came down and hit me.

Dated: 4/27/20

[Signature]
HON. LYNN R. KOTLER, J.S.C.

- 1. Check one:
- 2. Check as appropriate: Motion is
- 3. Check if appropriate:

- CASE DISPOSED NON-FINAL DISPOSITION
- GRANTED DENIED GRANTED IN PART OTHER
- SETTLE ORDER SUBMIT ORDER DO NOT POST
- FIDUCIARY APPOINTMENT REFERENCE

...
Q: Did you ever see the broken cable, for lack of a better word:

A: He showed me

...
Q: When you say the cable was broken, do you mean it snapped in half, like there were two different pieces or was it still in one piece?

A: It was still in one piece.

Q: If the cable was in one piece, what is your understand as to how the handlebar fell to the ground?

A: I have no idea.

Q: When you saw the handlebar on the ground, was it still attached to this clip that's at the top of Exhibit E?"

A: I don't remember that

Q: You don't know if it fell off the clip or it fell off the cable or anything like that?

A: No

...
Q: Before I keep saying for lack of a better term it was a broken cable, but I want to clarify that. When you spoke with Michael and he showed you the cable, it wasn't actually broken in half. You said it was frayed, like you could kind of see the inside of the cable or inside the rubber coating?

A: Yes and the wires inside, they were barely together.

Plaintiff claims that after performing her arm exercises and off the machine, she was struck by the "handlebar", and then she lost consciousness for a few minutes. When she regained consciousness, a personal trainer appeared by her side and she then went up to the first floor to report the incident. Plaintiff was given an ice pack for the redness/swelling on her arm. Plaintiff claims that the following week she contacted NYSC numerous times to get the general manager on the phone to report the accident. Subsequently, plaintiff sought and received treatment for pain stemming from her injuries. Plaintiff's bill of particulars alleges that she suffered injuries to her right wrist and shoulder.

Defendant produced 4 witnesses: Michael Alcantara and Peter Rancel, personal trainers, Anthony Seniquiz, technician and Tilkuram Rai, general manager for the NYSC. Alcantara testified that he observed that the carabiner attached to the v handlebar lying on the floor next to the pull-down machine and that a piece of the machine broke off. Senquiz testified that he appeared at the NYSC that day and checked the cable wire which was not broken and did not perform any repairs. Senquiz further testified that the machine was inspected on a weekly basis, including checking the carabiner clip/cable. Rancel testified that he only saw slack in the cable wire.

Parties arguments

Defendants argue that they are entitled to summary judgment because there is “absolutely no record evidence” that TSI caused or created a dangerous or defective condition on the pulley machine. Further, defendants argue that there is no evidence that they had actual or constructive notice of the alleged dangerous condition and that plaintiff cannot identify the cause of her accident.

In opposition, plaintiff argues that issues of fact exist as to whether defendants created the condition or had notice of it. Plaintiff contends that based on her testimony, that of two of defendants’ employees that the machine was broken and that defendants did not have any inspection, maintenance, repair or other records for the machine plaintiff was using at the time of her accident, defendants’ motion should be denied.

Discussion

On a motion for summary judgment, the proponent bears the initial burden of setting forth evidentiary facts to prove a prima facie case that would entitle it to judgment in its favor, without the need for a trial (CPLR 3212; *Winegrad v. NYU Medical Center*, 64 NY2d 851 [1985]; *Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]). If the proponent fails to make out its prima facie case for summary judgment, however, then its motion must be denied, regardless of the sufficiency of the opposing papers (*Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]; *Ayotte v. Gervasio*, 81 NY2d 1062 [1993]). Granting a motion for summary judgment is the functional equivalent of a trial, therefore it is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue (*Rotuba Extruders v. Ceppos*, 46 NY2d 223 [1977]). The court’s function on these motions is limited to “issue finding,” not “issue determination” (*Sillman v. Twentieth Century Fox Film*, 3 NY2d 395 [1957]).

Here, the court finds that defendant has met its burden on this motion and plaintiff has failed to raise triable issues of fact to warrant denial. Plaintiff’s expert opines that “the spring on the carabiner clip wears over time”, “that the V-Bar connected to the clip fell off” and that defendants’ did not have a routine for inspecting and/or replacing the clips on a regular basis which would have prevented the clips from breaking. There was no credible evidence that plaintiff’s expert could conclude that the carabiner either wore down over time, that it was broken or that defendants had notice of a defective or dangerous condition for this machine. Plaintiff’s expert’s conclusion is based on speculation.

Here, plaintiff not only completed 3 sets of 12 arm exercises that took her approximately 7 to 10 minutes including rest time between sets, but then she got off the machine, bent down to get her cell-phone in her handbag before the v handlebar allegedly dislodged from the machine and hit her on the hand/arm causing her to blackout for minutes. Moreover, in plaintiff’s deposition she testified that she was crouched on the ground for minutes before she was struck on the arm by the bar and then in her errata sheet she changed her testimony to reflect that she was crouched down for “seconds” before she was struck by the bar. This change in plaintiff’s position would support the conclusion of her expert. Moreover, there is no proof of notice regarding any defective condition.

Plaintiff and Peter Rancel both looked at the machine immediately following plaintiff’s incident and observed fraying wires at which time the machine was placed out of order and a repair ticket submitted. The tech came to repair the machine that day and only observed loose wire and that the machine parts were basically intact. Plaintiffs’ expert bases his conclusion because there is no other viable conclusion to reach as to how the v bar disengaged from the carabiner.

Moreover, plaintiff's argument that there are no maintenance records also fails. Plaintiff cites the Guero case which is inapposite to the case at bar. In Guero, defendants failed to come forward with any evidence regarding inspections of the defective gym equipment. Here, defendants have provided sworn testimony regarding inspections made to the subject equipment. That there are no written records does not necessarily raise a triable issue of fact on notice, where Senquiz stated that if the carabiner clip or cable wire were defective he would have noted it on a ticket. It is reasonable that where no defects were observed, no written record was generated.

Accordingly, defendants' motion for summary judgment is granted and the case is dismissed.

Conclusion


In accordance herewith, it is hereby:

ORDERED that defendants' motion for summary judgment is granted; and it is further

ORDERED that plaintiff's complaint is dismissed.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly denied and this constitutes the decision and order of the Court.

Dated: April 27, 2020
New York, New York

So Ordered:


Hon. Lynn R. Kotler, J.S.C.