Fernandez v Laser Bounce of Li, Inc.
2020 NY Slip Op 31916(U)
June 17, 2020
Supreme Court, Kings County
Docket Number: 508093/16
Judge: Karen B. Rothenberg
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: TRIAL TERM PART 35 X
SAMANTHA FERNANDEZ,

Plaintiff,

Decision and Order

-against-

Index No. 508093/16

LASER BOUNCE OF LI, INC., individually and doing business as LONG ISLAND LASER BOUNCE,

Defendant,
_____X

Recitation as required by CPLR 2219(a), of the papers considered in this motion for summary judgment.

Papers	Numbered
Order to Show Cause/Motion and Affidavits Annexed.	1
Answering Affidavits.....	2
Reply Papers.....	3

Upon the foregoing cited papers, the Decision/Order on this motion for summary judgment is as follows:

In this action to recover damages for personal injuries, the defendant moves for an order pursuant to CPLR 3212 granting summary judgment in its favor and dismissing the plaintiff's complaint with prejudice.

On the afternoon of March 29, 2015, the 26-year old plaintiff injured her left foot while inside an inflatable rubber bounce house at the defendant's children's entertainment center in Levittown, New York. Plaintiff commenced this action against defendant alleging various theories of liability include violations of the New York State Labor Law as well as provisions set forth in bulletins issued by the U.S. Consumer Product Safety Commission. In response to the defendant's motion, plaintiff now states that her exclusive theory of liability in this matter is defendant's negligent failure to provide adequate supervision of the bounce house which it owned, operated, maintained, and which it had a responsibility to supervise.

Plaintiff's testimony reflects that on the date of this accident she went to the defendant's entertainment center to attend her niece's birthday party. The party consisted

of approximately 15 family members, including roughly 5 adults and 10 children. About an hour after she arrived, plaintiff's group went to the children's bouncy house section of the facility. Their group was the only group in the bouncy house section at that time. To enter that area, the group passed through a gate that was attended by a teenage employee. Plaintiff did not recall seeing any rules posted on the gate and did not remember if the employee gave them any instructions before entering. Aside from the employee stationed at the gate, plaintiff testified that she did not see any other employee in that area for the entire 15-20 minutes she was there prior to her accident but made no complaints make about the lack of adequate supervision.

Inside the play area there were approximately 6 to 8 bounce houses. One of the bounce houses contained an obstacle course. Plaintiff described the obstacle course bounce house as approximately 6- to 10-feet wide by at least 20-feet long. The inside had holes to crawl through, rubber pillars to maneuver around, and a hill to climb over. The roof was open, the sides were covered with mesh, and the floor was made of inflatable rubber. At a certain point, plaintiff observed her 4-year old niece follow two older "rambunctious" cousins into the obstacle course bounce house. Plaintiff soon became concerned for her niece's safety and decided to go in after her as no one was around supervising. Although not panicked, plaintiff wanted to make sure her niece "wasn't in harms' way." Before entering the bounce house, plaintiff did not hear any screaming or crying, nor look for her niece through the house's mesh sides. Plaintiff also did not attempt to seek the assistance of an employee to help her locate her niece. Plaintiff testified that she was not aware of any posted signs stating that management should be notified of any problems or concerns, but that even if she had been aware, she would not have notified anyone because she did not assume her niece was hurt.

Once inside the bounce house, plaintiff had to maneuver around the obstacles, and also try to maintain her balance on the inflatable floor. The accident happened while she was descending a hill before the exit. As plaintiff stepped off the rubber step attached to the hill, her left foot folded causing her to fall and sustain an injury. Plaintiff testified that the bounce house was fully inflated, the lighting was sufficient, and that there was no debris, wetness, or other conditions that caused her foot to fold. She attributed her injury solely to the way she planted her foot on the floor, combined with the fact that the inflatable floor by its very nature was not steady. Plaintiff had been aware of the instability of bounce house floors and the need to maintain balance, having been inside bounce houses when she was younger.

In support of its motion, defendant makes a prima facie showing of entitlement to judgment as a matter of law by demonstrating that, under the doctrine of primary assumption of risk, the plaintiff assumed the risks inherent in a bounce house, including the risk of sustaining injury in the manner in which plaintiff did in this case *(see Augustin v Grand Prix New York Racing, LLC*, 138 AD3d 902 [2d Dept 2016]. The doctrine applies when a consenting participant in a qualified activity "is aware of the risks; has an

appreciation of the nature of the risks; and voluntarily assumes the risks" (*Custodi v Town of Amherst*, 20 NY3d 83, 88 [2012] quoting *Bukowski v Clarkson Univ*., 19 NY3d 353, 356 [2012]. "If the risks of the activity are fully comprehended or perfectly obvious, plaintiff has consented to them and defendant has performed its duty" (*Turcotte v Fell*, 68 NY2d 432, 439 [1986]). Plaintiff's testimony makes it clear that she was aware of the risks of walking through a bouncy house, having been in similar houses when she was younger, had an appreciation of those risks, and voluntarily assumed the risks inherent in the activity she was undertaking *(see Loewenthal v Catskill Funland, Inc*., 237 AD2d 262 [2d Dept 1997]). Therefore, defendant is relieved of its legal duty and cannot be charged with negligence (*see M.F. v Jericho Union Free School District*, 172 AD3d 1056 [2d Dept 2019]).

In opposition, plaintiff fails to raise a triable issue of fact. There is no merit to plaintiff's argument that primary assumption of risk does not apply here. Once plaintiff voluntarily chose to enter the bounce house, she implicitly consented to the risks inherent in the activity, which included the prospect of an injury *(see generally Morales v Coram Materials Corp*., 64 AD3d 756, 758 [2d Dept 2009]). Plaintiff's testimony does not support her contention that she was compelled to enter the bounce house out of concern for her niece's safety due to a lack of adequate supervision. Plaintiff entered the bounce house without any belief that her niece was hurt or in any distress. There was no screaming, crying or any other indicators of trouble. The plaintiff could have looked for her niece through the house's mesh siding but made no attempt to do so. Plaintiff also had the option to seek assistance from the employee stationed at the entry gate, if she deemed it necessary. Plaintiff was not faced with an emergency and her decision to enter the house was purely volitional.

Moreover, even if the doctrine of assumption of risk was inapplicable here, defendant still meets its prima facie burden of demonstrating that plaintiff's injuries were not proximately caused by the alleged inadequate supervision. To sustain the burden of proving a prima facie case of negligence, a "plaintiff must generally show that the defendant's negligence was a substantial cause of the events which produced the injury'" (*Lapidus v State of New York*, 57 AD3d 83 [2d Dept 2008] *quoting Derdiarian v Felix Contr. Corp*., 51 NY2d 308 [1980]). Although, in general, the issue of proximate cause is for the jury (*Derdiarian* at 315), liability may not be imposed upon a party who merely furnishes the condition or occasion for the occurrence of the event but is not one of its causes (*see Raldiris v Enlarged City School District of Middletown*, 179 AD3d 1111, 1114 [2d Dept 2020]). Here, even if defendant was negligent in failing to adequately supervise the bouncy house area, such negligence only furnished the occasion for the plaintiff's accident but was not a proximate cause of the accident (*see id*.). In opposition, plaintiff fails to raise a triable issue of fact (*see Rattray v City of New York*, 123 AD3d 688 [2d Dept 2014]).

Finally, the "danger invites rescue" doctrine does not apply here, as the testimony establishes that the plaintiff's niece was not facing an "imminent, life threatening peril" (*see Ely v Pierce*, 302 AD2d 489 [2d Dept 2003]).

Accordingly, the defendant's motion is granted and the plaintiff's complaint is dismissed in its entirety.

This constitutes the decision/order of the court.

Dated: June 17, 2020

Enter,

Karen B. Rothenberg
J.S.C.