

Sigall v American Multi-Cinema, Inc.

2022 NY Slip Op 33373(U)

October 6, 2022

Supreme Court, New York County

Docket Number: Index No. 156974/2019

Judge: James d'Auguste

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JAMES d'AUGUSTE PART 55

Justice

-----X

ROBERTA SIGALL,

Plaintiff,

- v -

AMERICAN MULTI-CINEMA, INC., EXCEL ELEVATOR &
ESCALATOR, CORP.

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41, 42, 43, 44, 45

were read on this motion to/for

SUMMARY JUDGMENT (AFTER JOINDER)

**DECISION + ORDER ON
MOTION**

Defendant Excel Elevator & Escalator Corp. (“Excel”) seeks summary judgment dismissing plaintiff Roberta Sigall’s (“Sigall”) complaint, and any cross-claims against it by co-defendant American Multi-Cinema Inc. (“AMC”). Sigall claims she was injured after slipping and falling on a “watery substance puddle and M&Ms” located on a platform—the non-moving part--of the escalator at the AMC movie theatre on August 7, 2017 (NYSCEF Doc. No. 39). Sigall’s Bill of Particulars states “she slipped because of a puddle of sticky liquid” on the floor of defendants’ premises (NYSCEF Doc. No. 27).

In moving for summary judgment as to Sigall’s claims, Excel alleges it did not create any defect or dangerous condition concerning the escalator, nor did it have constructive notice of any alleged dangerous condition. In opposition, Sigall heavily relies on the testimony of Steven Blevins, Excel’s General Manager, which reflects that in performing regular maintenance on the escalator once a month, as required by its contract with AMC, technicians used some grease or

lubricant to ensure the escalator properly worked (NYSCEF Doc. No. 39). However, Blevins qualified his testimony by stating that he did not know exactly to which part of the escalator the grease or lubricant is applied (NYSCEF Doc. No. 40). Sigall essentially surmises, based upon Blevins' testimony, that Excel regularly maintained the escalator where she fell, with grease, coinciding with her testimony that she fell due to a slippery substance on the escalator (NYSCEF Doc. No. 39). Further, Sigall contends that Blevins could not state when the escalator was most recently greased, nor serviced, thus, could not affirmatively allege Excel did not apply the slippery substance to the escalator's surface which ultimately caused her to fall, and as such, could not make out a prima facie case that Excel was not negligent (NYSCEF Doc. No. 39).

The Court of Appeals in *Espinal v. Melville Snow Contrs.*, 98 N.Y. 2d 136, 139-140 (2002), ruled "if there is a disputed issue of material fact over whether a maintenance company 'launched a force or instrument of harm' which ultimately caused the injury to the plaintiff, summary judgment to that defendant must be denied" (NYSCEF Doc. No. 39). Indeed, this Court previously applied in another case, and the Appellate Division, First Department upheld, the ruling in *Espinal* to deny summary judgment to an elevator maintenance company finding there were factual issues of whether the maintenance company launched an instrument of harm that caused plaintiff's injuries. *Orea v. NH Hotels USA, Inc.* 187 A.D. 3d 476, 477 (1st Dep't 2020). But, as set forth below the facts of this case do not support a conclusion that an issue of fact exists relating to Excel's potential liability for Sigall's injuries.

In her Bill of Particulars, Sigall states she slipped and fell because of a puddle of sticky liquid on the floor of defendants' premises (NYSCEF Doc. No. 30). Sigall's testimony shows the liquid she claims she fell on was not a brown/black opaque substance, but a clear watery puddle. Dan Narciso ("Narciso"), Excel's ex-foreman/manager, and currently an escalator

foreman/supervisor for 3 Phase Elevator Co. (3 Phase)—to whom Excel was sold--states, “to a reasonable degree of mechanical certainty, the substance described by plaintiff in her bill of particulars and deposition testimony could not have been grease that would have been used by Excel employees” (NYSCEF Doc. No. 43). Narciso alleges “grease is only applied to internal moving components inside the escalator frame which are not visible or accessible to passengers. There is no grease or any other type of lubricant that would be applied to either the top landing plate/platform where plaintiff claims to have fallen or the top portions of the steps.” Further, he claims the grease used for the escalator lubrication is a thick, dark brown/black opaque substance, and there are no clear watery-type substances used by escalator mechanics for lubrication. Finally, Narciso asserts grease would never be applied to the top plate/platform where Sigall alleges she fell (NYSCEF Doc. No. 43). Sigall did not submit an expert affidavit or other proof rebutting Excel’s undisputed proof the grease used for escalators was a dark substance, and not placed where Sigall allegedly fell. In the absence of admissible evidence and a non-speculative basis for potential liability, Excel’s motion for summary judgment dismissing Sigall’s complaint as against it is granted.

Next, in seeking summary judgment as to AMC’s cross-claim for contractual indemnification, Excel asserts that AMC cannot maintain a claim against it for contractual indemnification where the contract clearly excludes liability when an “accident did not result from, or are in connection with...” Excel’s performance of services, thus, contractual indemnification does not lie (NYSCEF Doc. No. 27). Excel further asserts that the spill of the clear liquid was at the stop of the escalator, on the platform, and was the responsibility of AMC, not Excel (NYSCEF Doc. No. 43). AMC contends that Excel failed to meet its prima facie case of demonstrating that its maintenance, including the application of grease and lubricant to the

escalator where Sigall’s slip and fall occurred, did not contribute to her injuries. AMC, like Sigall, provides no expert affidavit, nor rebuts Narciso’s undisputed statements that the grease used for escalators was a dark, brown or black opaque substance, and not a watery or sticky substance, as Sigall alleged. Further, AMC’s own witness, General Manager Sherryl Ramlall, testified that if Excel found an issue with the escalator during its monthly maintenance it would report it to her, and she did not recall any reported issues before Sigall’s August 2017 accident (NYSCEF Doc. Nos. 28, 43). As such, there is no potential liability to AMC for contractual indemnification.

Finally, AMC seeks dismissal of Excel’s cross-claim for common law indemnification because there is no evidence there was ever improper maintenance concerning the subject escalator, nor a showing that Excel created or exacerbated any condition that contributed to the subject accident (NYSCEF Doc. No. 43). As AMC failed to refute this showing, the Court finds that Excel is entitled to dismissal of AMC’s cross-claim for common law indemnification.

Accordingly, it is,

ORDERED that the branch of Excel’s motion for summary judgment dismissing the negligence cause of action against it by Sigall is granted.

ORDERED that the branch of Excel’s motion for summary judgment dismissing the cross-claim for contractual, and common-law indemnification against it by AMC is granted.

This constitutes the decision and order of this Court.



<u>10/6/2022</u> DATE					<u>JAMES D'AUGUSTE, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE