

Torchia v Manhattan Plaza Inc.
2022 NY Slip Op 34303(U)
December 20, 2022
Supreme Court, New York County
Docket Number: Index No. 160177/2020
Judge: David B. Cohen
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DAVID B. COHEN **PART 58**

Justice

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INDEX NO. 160177/2020

NANCY TORCHIA,

Plaintiff,

MOTION SEQ. NO. 004

- v -

MANHATTAN PLAZA INC., RELATED MANAGEMENT
COMPANY, L.P., and THE RELATED COMPANIES, L.P.,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 71, 73, 74, 75, 76, 77, 78, 79

were read on this motion to/for SUMMARY JUDGMENT.

In this premises liability action, plaintiff Nancy Torchia moves, pursuant to CPLR 3212, for: 1) partial summary judgment on liability against defendants Manhattan Plaza Inc. (“MPI”), Related Management Company, L.P. (“RMC”), and The Related Companies, L.P. (“TRC”); and 2) for summary judgment dismissing defendants’ affirmative defenses asserting comparative fault and an open and obvious condition. Defendants oppose the motion. After consideration of the parties’ contentions, as well as a review of the relevant statutes and case law, the motion is decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff commenced this negligence action against MPI after she was allegedly injured on July 24, 2020 when she tripped over a water hose on the sidewalk in front of 400 West 43rd Street in Manhattan (“the premises”) (Doc. 28 at 3-4). In her complaint, plaintiff alleged, among other things, that MPI owned and managed the premises (Doc. 1 at 1-2). Following joinder of

issue (Doc. 3), plaintiff moved for leave to amend her complaint to add defendants RMC and TRC as additional defendants (Doc. 9). In so moving, plaintiff argued that MPI owned and managed the premises and that RMC and TRC were management companies which owned and/or managed the premises (Doc. 10 at 1; Doc. 15 at 3-6). By order entered November 22, 2021, this Court granted plaintiff leave to amend her complaint to name RMC and TRC as additional defendants. Doc. 16. Plaintiff filed an amended complaint on November 29, 2021. Doc. 20. Defendants joined issue by their verified answer filed December 10, 2021, in which they denied all substantive allegations of wrongdoing and asserted various affirmative defenses, including the culpable conduct of plaintiff (second affirmative defense) and that the condition was open and obvious (ninth affirmative defense). Doc. 21.¹

Plaintiff filed a note of issue and certificate of readiness on June 10, 2022. Doc. 41.

Plaintiff now moves for summary judgment against defendants as to liability on the ground that she was injured as a result of their negligence. Doc. 53. She also seeks dismissal of defendants' second and ninth affirmative defenses. Doc. 53. In support of the motion, plaintiff submits, inter alia, a purported statement of material facts. Doc. 54.

In opposition, defendants argue the motion must be denied because a question of fact exists regarding whether they owed plaintiff a duty. Doc. 75. They further assert that the branch of the motion seeking dismissal of their affirmative defenses must be denied since there are issues of fact regarding plaintiff's culpable conduct and whether the hose was an open and obvious condition. Doc. 75. Additionally, defendants assert that the statement of material facts submitted by plaintiff "violates the scope and breadth of Rule 202.8-g(a) as it is not short and concise, being over 3,100 words, and largely in dispute." Doc. 74 at 1.

¹ For reasons not readily apparent from a review of the motion papers, MPI filed an additional answer to the amended complaint dated January 15, 2021. Doc. 31.

In reply, plaintiff substantially reiterates her initial arguments in support of the motion.

Doc. 78.

LEGAL CONCLUSIONS

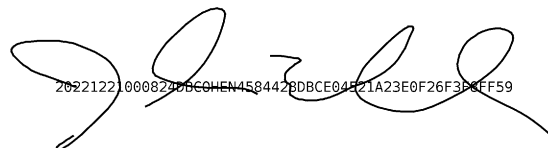
Initially, plaintiff's motion is denied on procedural grounds insofar as it violates 22 NYCRR § 202.8-g(a), which requires a party moving for summary judgment to submit a "separate, short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried" (*see also* Siegel, NY Prac § 281 [2021 supp]). The numbered paragraphs in the statement of facts must specifically cite to evidence separately submitted in support of the motion (*see* 22 NYCRR § 202.8-g[d]). Here, plaintiff's purported statement of facts is not comprised of "short" and "concise" statements of fact "as to which [she] contends there is no genuine issue to be tried." Rather, she has submitted, among other things, lengthy excerpts of deposition transcripts; characterizations of what is depicted in exhibits; and a comprehensive recitation of her expert engineer's report, including his opinions, which are clearly in dispute in this matter. Doc. 54.

The failure to comply with § 202.8-g(a) is an omission that is not merely a technical violation, but rather is a substantive defect, which a Court cannot correct in its own discretion pursuant to CPLR 2101(f) or 2001 (*See Larsen v Elgart*, 2022 NY Slip Op 30982[U], *4 [Sup Ct, NY County 2022] [Wan, J.] citing *Great Wall Medical, P.C. v Hye Suk Kim*, 2021 WL 3834807 [Sup Ct, NY County 2021] [Hom, J.]). Therefore, this Court denies the motion without prejudice to renew upon compliance with § 202.8-g(a) (*see* 22 NYCRR § 202.8-g(e)).

Accordingly, it is hereby:

ORDERED that the motion by plaintiff Nancy Torchia seeking: 1) partial summary judgment on liability as against defendants Manhattan Plaza Inc., Related Management

Company, L.P., and The Related Companies, L.P. and 2) for summary judgment dismissing defendants' affirmative defenses of comparative fault and an open and obvious condition, is denied without prejudice to renew, by January 31, 2023, upon proper papers in accordance with 22 NYCRR § 202.8-g(a).



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12/20/2022
DATE

DAVID B. COHEN, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER			OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			REFERENCE
	<input type="checkbox"/>				