

Borch v Anschutz Entertainment Group, Inc.

2022 NY Slip Op 34985(U)

March 29, 2022

Supreme Court, Kings County

Docket Number: Index No. 521565/2019

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73

Index No.: 521565/2019

Motion Date: 1-10-22

Mot. Seq. No.: 3

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ROBERT BORCH,

Plaintiff,

-against-

DECISION/ORDER

THE ANSCHUTZ ENTERTAINMENT GROUP, INC.,
ANSCHUTZ CORPORATION, AEG MANAGEMENT
BROOKLYN, LLC, AEG PRESENTS, LLC, AEG
PRESENTS NY, LLC, AEG PRESENTS
PRODUCTION, LLC, BROOKLYN EVENTS CENTER,
LLC, BROOKLYN ARENA, LLC, d/b/a BARCLAYS
CENTER, ABC CORPORATION, (fictitious name, real
name unknown), UNIVERSAL MUSIC GROUP, INC.,
EROS W.L. RAMAZZOTTI and GAETANO PUGLISI,
each individually, and "JOHN DOE" (The latter names
being fictitious and use to connote an unidentified person
or persons responsible for this occurrence),

Defendants.

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dismiss v.

Universal

Upon the following e-filed documents, listed by NYSCEF as item numbers 62-75, 77-79,
the motion is decided as follows:

In this action to recover damages for personal injuries, the defendant UNIVERSAL
MUSIC GROUP INC. moves for an Order pursuant to CPLR 3212 granting it summary
judgment dismissing plaintiff's Complaint insofar as asserted against it, as well as all cross
claims.

This action arises out of an accident that occurred on October 5, 2016, during a concert
that was taking place at 620 Atlantic Avenue, Brooklyn, New York which is known as the
"BARCLAYS CENTER". Defendant EROS W.L. RAMAZZOTTI was the performing artist.
The plaintiff Robert Borch, who was working at the Barclays Center at the time of the accident,
commenced the action claiming that at that time in place, he was injured when a speaker fell on
him. In the complaint, plaintiff alleges that "UNIVERSAL MUSIC GROUP, INC. ("Universal")
and its affiliates, managed, maintained, produced supervised, organized and controlled the

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October 5, 2016, concert at the subject premises” (Paragraph 105). He also alleges that Universal’s negligence was a substantial factor in causing the accident.

In support of the motion, defendant Universal relies primarily on the affidavit of SHERYL L. GOLD, who is Universal’s Senior Vice President of Business and Legal Affairs and who serves in the capacity of Corporate Secretary for all Universal Music Group related corporate entities within the United States, including UNIVERSAL MUSIC GROUP, INC. Ms. Gold averred as follows:

4. I have no personal knowledge of the Subject Accident. At no time did UNIVERSAL MUSIC GROUP, INC perform any work at 620 Atlantic Avenue, Brooklyn, New York, NY, also known as “BARCLAY’S CENTER,” in connection with the Subject Accident or the Concert.

5. Prior to and including October 5, 2016, UNIVERSAL MUSIC GROUP, INC., had nothing to do with the Concert or the world tour featuring the performances of EROS W.L. RAMAZZOTTI.

6. Prior to and including October 5, 2016, UNIVERSAL MUSIC GROUP, INC., did not manage, supervise, produce and/or oversee any stage work at 620 Atlantic Avenue, Brooklyn, New York, NY, also known as BARCLAYS CENTER, in connection with the Subject Accident or the Concert.

7. Prior to and including October 5, 2016, UNIVERSAL MUSIC GROUP, INC., did not employ or supervise plaintiff and had no control over plaintiff ROBERT BORCH ’s work at the premises known as 620 Atlantic Avenue, Brooklyn, New York, NY, also known as “BARCLAY’S CENTER.

8. Prior to and including October 5, 2016, UNIVERSAL MUSIC GROUP, INC., had no contracts with plaintiff’s employer “BARCLAY’S CENTER, or any of the defendants named in this action at the premises known as 620 Atlantic Avenue, Brooklyn, New York, NY, also known as “BARCLAY’S CENTER, in connection with the Subject Accident or the Concert.

9. UNIVERSAL MUSIC GROUP, INC., did not, and could not have, affected the subject matter at the premises of 620 Atlantic Avenue, Brooklyn, New York, NY, also known as “BARCLAY’S CENTER, nor caused the accident of October 5,

2016. 10. I have read the above, and the same is true to the best of my knowledge.

“To establish a prima facie case of negligence, a plaintiff must establish the existence of a duty owed by a defendant to the plaintiff, a breach of that duty, and that such breach was a proximate cause of injury to the plaintiff. Liability for a dangerous condition on property is generally predicated upon ownership, occupancy, control or special use of the property” (*Nappi v. Incorporated Vil. of Lynbrook*, 19 A.D.3d 565, 566, 796 N.Y.S.2d 537 [internal quotation marks and citation omitted]; see *Cerrato v. Rapistan Demag Corp.*, 84 A.D.3d 714, 716, 921 N.Y.S.2d 648; *Sanchez v. 1710 Broadway, Inc.*, 79 A.D.3d 845, 846, 915 N.Y.S.2d 272; *Gover v. Mastic Beach Prop. Owners Assn.*, 57 A.D.3d 729, 730, 869 N.Y.S.2d 593). “Where none of these factors [is] present, a party cannot be held liable for injuries caused by the allegedly defective condition” (*Gover v. Mastic Beach Prop. Owners Assn.*, 57 A.D.3d at 730, 869 N.Y.S.2d 593).

Here, Universal established, prima facie, that it neither owned, occupied, operated, maintained, controlled or made special use of the premises where the accident occurred on the day of the accident. Universal also established, prima facie, that it had no control over any of the employees that were working at the premises that day and that it cannot be held vicariously liable for the negligence of the other defendants. For these reasons, Universal demonstrated its prima facie entitlement to summary judgment.

Defendants, THE ANSCHUTZ ENTERTAINMENT GROUP, INC., ANSCHUTZ CORPORATION, AEG MANAGEMENT BROOKLYN, LLC, AEG PRESENTS, LLC., AEG PRESENTS NY, LLC., AEG PRESENTS PRODUCTIONS, LLC., BROOKLYN EVENTS CENTER, LLC. d/b/a BARCLAYS CENTER and BROOKLYN ARENA, LLC (collectively, the “Barclays Defendants”), the only parties who opposed the motion, failed to raise a triable issue of fact. Their contention that the motion is premature is without merit. In order to establish that a summary judgment motion is premature, the nonmoving party must “offer an evidentiary basis to suggest that discovery may lead to relevant evidence, or that facts essential to opposing the motion were exclusively within the knowledge and control of the [moving party]. The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be

uncovered during the discovery process is an insufficient basis for denying the ... motion”
(*Lazarre v. Gragston*, 164 A.D.3d 574, 575, 81 N.Y.S.3d 541 [citations omitted]; see *Suero–Sosa v. Cardona*, 112 A.D.3d at 708, 977 N.Y.S.2d 61). No such evidence was offered.

Accordingly, it is hereby

ORDRED that the motion is **GRANTED** and plaintiff’s complaint insofar as asserted against Universal, as well as all cross-claims asserted against it, are dismissed.

This constitutes the decision and order of the Court.

Dated: March 29, 2022

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PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020

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