Urbaetis v Lotte Hotel N.Y. Palace, LLC
2023 NY Slip Op 30214(U)
January 23, 2023
Supreme Court, New York County
Docket Number: Index No. 162242/2019
Judge: Lori S. Sattler
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LORI S. SATTLER** **PART** **02TR**

Justice

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STEPHANIE URBAETIS

Plaintiff,

- v -

LOTTE HOTEL NEW YORK PALACE, LLC,

Defendant.

---X

INDEX NO. 162242/2019

MOTION DATE 02/22/2022, 03/16/2022

MOTION SEQ. NO. 002 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 55, 56, 57, 62

were read on this motion to/for JUDGMENT - SUMMARY .

The following e-filed documents, listed by NYSCEF document number (Motion 003) 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 54, 58, 59, 60, 61

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER .

In Motion Sequence #002 of this negligence action, Defendant Lotte Hotel New York Palace, LLC ("Defendant") moves for summary judgment dismissing the Complaint in its entirety. In Motion Sequence #003, Plaintiff Stephanie Urbaetis ("Plaintiff") moves for partial summary judgment on the issue of liability based on the theory of res ipsa loquitur. Each party opposes the other's motion, which are consolidated for disposition.

The action stems from injuries allegedly sustained by Plaintiff on November 1, 2019 when, as a guest at Defendant's Lotte Hotel ("the hotel"), she was struck by a glass shower door after its top hinge broke in half. It is undisputed that Plaintiff was a guest in a triplex suite located between the 53rd and 55th floors of the hotel on the evening of October 31, 2019. The primary bedroom and primary bathroom, where the incident occurred, are on the second floor while the first and third floors consist of common areas. The shower opening in the primary bathroom consisted of three glass panels. The outer panels on the right and left were fixed, and

the middle panel opened out with a handle on the left side. Two hinges on the right side connected it to the adjacent fixed panel.

The evening before the incident, Plaintiff and another guest, Joon Hwang, hosted a party on the first and third floors of the suite. The following morning, Mr. Hwang used the shower in the primary bathroom without incident. Thereafter, Plaintiff attempted to use the shower and when she opened the shower door, the "angle bracket" on the top hinge connecting the door to the adjacent fixed panel snapped and the door fell on Plaintiff. Plaintiff testified that she was able to extract herself out from under the door, but while doing so she hit her head on the bathroom floor (NYSCEF Doc No. 34, Urbaetis EBT at 38-49). She further claims to have experienced emotional trauma as a result of the incident.

Plaintiff deposed the hotel's Director of Property Operations, Robert Smith, who testified that: he did not know when the shower door was installed but that it was already installed when he first started working at the hotel in 2012 (NYSCEF Doc No. 47, Smith EBT at 38); the door had not been replaced or repaired during his time at the hotel and "these were not bathrooms that had been modernized at any point" (*id.*); after a third party vendor inspected the door following the incident, he learned that the top hinge's angle bracket "snapped off through, and that's why the door panels separated from each other" (*id.* at 30, 35); "the bottom pin was bent and the top bracket was broken clean" (*id.* at 37).

Mr. Smith further testified that the hotel has a quarterly preventative maintenance program in the hotel "to do a general inspection of the room and make sure that everything is in proper working condition" (*id.* at 39-42); that the showers are regularly cleaned and "it's reasonable to assume that if the door was non-operable for any reason at any time during the servicing of the room that a housekeeping person or housekeeping manager would have become

aware of it and would have reported it . . . to the maintenance team" (*id.* at 39). The hotel also keeps records of repair requests, complaints, and prior work orders and there were none for this particular door or for this type of shower door in any other room that had one (*id.* at 16, 37-38).

Defendant retained an engineering expert, Peter Chen, P.E., who inspected the shower door hardware and concluded that it was "adequate to safely support the dimensions of the shower door and was properly installed," "well-maintained, without evidence of wear or corrosion," "reasonably safe," and not defective at the time of the incident (NYSCEF Doc No. 49, Chen aff ¶ 8, 10). Mr. Chen found "evidence of strength failure" but that "there were no lines of demarcation indicative of any kind of fatigue or fatigue failure" (*id.* ¶ 9). His affidavit states: "A strength failure occurs when the applied loads stress the metal beyond its yield and ultimate strength. This type of failure is inconsistent with the history of the shower door, which was installed more than ten years ago and did not undergo any repairs or replacement prior to Ms. Urbaetis' incident" (*id.* ¶ 10). He opined that "an overload of weight was applied to the top of the shower door at some point in time prior to the incident, causing one of the two angle brackets to fracture (the hinge side), which subsequently led to the failure of the other angle bracket (static panel side)" (*id.* ¶ 11).

The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Denial of the motion is required when the proponent fails to make this prima facie showing (*id.*). A court's function on summary judgment is issue finding rather than issue determination (*Kershaw v Hosp. for Special Surgery*, 114 AD3d 75, 82 [1st Dept 2013]). "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the

facts are jury functions" (*Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 315 [2004], quoting *Anderson v Liberty Lobby, Inc.*, 477 US 242, 255 [1986]).

A property owner owes a duty to exercise reasonable care in maintaining its property in a reasonably safe condition under the circumstances (*Powers v 31 E 31 LLC*, 24 NY3d 84, 94 [2014]; *Galindo v Town of Clarkstown*, 2 NY3d 633, 636 [2004]). A defendant moving for summary judgment has the initial burden of showing that it did not create a dangerous or defective condition or did not have actual or constructive knowledge of the condition (*Langer v 116 Lexington Ave., Inc.*, 92 AD3d 597, 598 [1st Dept 2012]). What constitutes a dangerous or defective condition depends on the particular circumstances of the case and is thus generally a factual question for a jury (*Trincere v County of Suffolk*, 90 NY2d 976, 977 [1997]).

Under the doctrine of res ipsa loquitur, "an inference of negligence may be drawn solely from the happening of the accident upon the theory that certain occurrences contain within themselves a sufficient basis for an inference of negligence" (*Valdez v Upper Creston, LLC*, 201 AD3d 560, 561 [1st Dept 2022]). Res ipsa loquitur applies when a plaintiff establishes that "(1) the event is of the kind that ordinarily does not occur in the absence of someone's negligence; (2) the event was caused by an agency or instrumentality within the exclusive control of the defendant; (3) the accident was not due to any voluntary action or contribution on the part of the plaintiff" (*id.*, citing *Dermatossian v New York Tr. Auth.*, 67 NY2d 219, 226 [1986]). A plaintiff will prevail on summary judgment "only in the rarest of res ipsa loquitur cases" and "only when the plaintiff's circumstantial proof is so convincing and the defendant's response so weak that the inference of defendant's negligence is inescapable" (*Morejon v Rais Constr. Co.*, 7 NY3d 203, 209 [2006]; *see also Dyer-Crewe v Schindler El. Corp.*, 205 AD3d 474, 475 [1st Dept 2022]).

Plaintiff contends she has shown entitlement to summary judgment based on res ipsa loquitur, relying on case law holding that "doors mounted on hinges generally do not fall off in the absence of negligence" (*Levin v Mercedes-Benz Manhattan, Inc.*, 130 AD3d 487 [1st Dept 2015]; *see also Lukasinski v First New Amsterdam Realty, LLC*, 3AD3d 302 [1st Dept 2004]; *Pavon v Rudin*, 254 AD2d 143 [1st Dept 1998]). She further contends that the angle bracket was fully within Defendant's control, and that any implication that a party attendee or anyone else used the door improperly is purely speculative (*see Valdez*, 201 AD3d at 561). She states that there is nothing in the record to indicate that Plaintiff contributed to the accident in any way.

In support of its position that Defendant is entitled to summary judgment in its favor, Defendant relies on its expert's finding that the angle bracket was well-maintained, not defective at the time of the incident, and that the "strength failure" was not due to any negligence on its part. Defendant argues that by maintaining a quarterly preventative maintenance schedule and requiring regular cleanings, it fulfilled its duty to maintain its property in a reasonably safe condition. Defendant further points to the fact that there were no prior service requests on this door or any other similar door in the hotel, and contends that, to the extent any defect did exist, Defendant lacked notice.

Both parties' motions must be denied. While "doors mounted on hinges generally do not fall off in the absence of negligence" (*see, e.g.*, *Levin*, 130 AD3d 487), here, Defendant's expert attributed the angle bracket's strength failure to an overload of weight put on the door at some point prior to the incident, and this conclusion was not rebutted. This matter is therefore not one of the "rarest of res ipsa loquitur cases" where an inference of negligence is inescapable such that liability must be found at the summary judgment stage. Likewise, regardless of whether or not Defendant received complaints about the shower door, and even if it regularly inspected the door

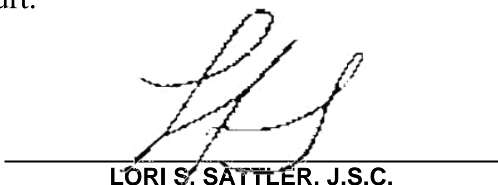
and found no problems, issues of fact exist, including the adequacy of Defendant's inspection and maintenance procedures (*Higgins-Barber v Raffles Intl.*, 45 AD3d 438 [1st Dept 2007]). Accordingly, the Court finds that there are triable issues of fact as to whether Defendant created a dangerous or defective condition by failing to maintain its property in a reasonably safe condition.

Accordingly, for the reasons set forth herein it is hereby:

ORDERED that Defendant's motion for summary judgment is denied; and it is further

ORDERED that Plaintiff's motion for summary judgment is denied.

This constitutes the Decision and Order of the Court.



1/23/2023
DATE

LORI S. SATTLER, J.S.C.

CHECK ONE:	[ ]	**CASE DISPOSED**		[X]	**NON-FINAL DISPOSITION**	
	[ ]	**GRANTED**	[X] **DENIED**	[ ]	**GRANTED IN PART**	[ ] **OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**	
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ] **REFERENCE**