

Allison-Jabbie v Collins Bldg. Servs., Inc.

2023 NY Slip Op 34240(U)

December 6, 2023

Supreme Court, Kings County

Docket Number: Index No. 519633/2016

Judge: Wayne P. Saitta

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 29 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 6th day of December 2023.

P R E S E N T:

HON. WAYNE SAIITA, Justice.

-----X
Tareshe Allison-Jabbie,

Plaintiff,

Index No. 519633/2016

-against-

MS # 7 MS #8 & MS #9

Decision and Order

Collins Building Services, Inc., Brooklyn Arena Local Development Corporation, Brooklyn Events Center, LLC, Anschutz Entertainment Group, Inc., And the Barclays Center,

Defendants.

-----X

The following papers read on this motion:

NYSCEF Doc Nos

Notice of Motion/Order to Show Cause/
Petition/Affidavits (Affirmations) and Exhibits

128-148, 149-170

Cross-motions Affidavits (Affirmations) and Exhibits

174-176, 201-208, 215-217

Answering Affidavit (Affirmation)

218-219, 221-222

Reply Affidavit (Affirmation)

Supplemental Affidavit (Affirmation)

Defendants Brooklyn Arena Local Development Corporation, Brooklyn Events Center, LLC, Anschutz Entertainment Group, Inc., and the Barclays Center, (the Barclay Defendants) move to dismiss the complaint and cross claims against them and for summary judgement on their cross claims against co Defendant Collins Building Services (CBS) for indemnification.

Defendant CBS moves to dismiss the complaint and the cross motions against it.

Plaintiff moves for spoliation sanctions including preclusion and a negative inference for the Barclay Defendants failure to preserve portions of the videotape preceding the accident.

Plaintiffs alleges that she slipped on clear liquid on the floor of the Barclays center near a concession stand. An arena employee testified that there was ice mixed in with the liquid.

There remain questions of fact whether under the circumstance existing at the time of Plaintiff accident the spilled liquid on the crowded floor was open and obvious. Further it cannot be said as a matter law whether the condition of the spill was inherently dangerous.

There also are questions of fact as to whether the defendants had constructive notice of the transient condition. There only evidence presented was that there was an inspection of the area at 7 o'clock and Plaintiff estimated that time of her accident as 8:30 to 8:45. Defendants can not rely on gaps in Plaintiff's evidence as a basis for granting them summary judgement. This is particularly so where Defendants did not preserve portions of the video proceeding the accident.

While Defendants submitted evidence that there was ice mixed in with the spilled liquid, they provided no evidence on how long it would have taken the ice to melt so the Court cannot conclude from the presence of ice how long the liquid had been there.

CBS argued additionally that it had no duty to plaintiff, however pursuant to *Espinal* CBS did totally displace the Barclay defendant's duty to maintain the area. While CBS's duties did not cover the restaurants or kitchen in the arena it did cover the area where Plaintiff fell.

However, Brooklyn Arena Local Development LLC has shown that they are entitled to summary judgment as an out of possession landlord.

The Barclay defendants have not met their burden for summary judgment on the claims for contractual indemnification against CBS. The contract submitted is unsigned and the indemnification agreement submitted post-dates Plaintiff's accident although it pre-dates the commencement of this action. Indemnification agreement must be strictly construed. There remain questions of fact whether the parties were operating under the unsigned contract at the time of the accident and whether the parties intended the indemnification agreement to cover this accident.

For these same reasons CBS has not met its burden to dismiss the indemnification claim. CBS cannot meet its burden for summary judgment by relying on gaps in co-Defendants proofs.

Plaintiff is not entitled to spoliation sanctions against the Barclay Defendants nor preclusion of the preserved portion of the videotape, as Plaintiff only requested Defendants to preserve "videotaped footage which may have recorded the claimant as she slipped and fell". However, that portion of Plaintiff's motion which seeks a negative inference for the failure to produce the videotape of the hours before Plaintiff's accident is reserved for the trial judge.

Wherefore after argument it is hereby ORDERED that Brooklyn Arena Local Development LLC is granted summary judgment dismissing the complaint as against it; and it is further


ORDERED that the remainder of the motion of Brooklyn Arena Local Development Corporation, Brooklyn Events Center, LLC, Anschutz Entertainment Group, Inc., and the Barclays Center is denied; and it is further

ORDERED that the motion of Collins Building Services is denied; and it is further,

ORDERED that Plaintiffs motion for spoliation sanctions and preclusion of the preserved portions of the videotape is denied; and it is further

ORDERED that Plaintiff's motion for a negative inference for Defendants failure to produce portions of the videotape preceding Plaintiff's accident is denied with leave to renew before the trial judge.

ENTER:



JSC

HON. WAYNE SAITTA
J.S.C.