

Campbell v World Ice Arena
2023 NY Slip Op 35038(U)
February 24, 2023
Supreme Court, Queens County
Docket Number: Index No. 712643/20
Judge: Kevin J. Kerrigan
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE KEVIN J. KERRIGAN
Justice

Part 10



-----X
Patrick Campbell and Julian Jones Campbell,

Index
Number: 712643/20

Plaintiff,
- against -

Motion
Date: 1/30/23

World Ice Arena and the City of New York,
Defendants.

Motion Seq. No.: 3

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The following papers numbered E47-E63 & E76-E82 read on this motion by defendant, The City of New York, for an order to dismiss.

Papers
Numbered

- Notice of Motion-Affirmation-Exhibits..... E47-63
- Affirmation in Opposition-Exhibits..... E76-81
- Reply-Exhibits..... E82

Upon the foregoing papers it is ordered that the motion is decided as follows:

Motion by defendant, The City of New York ("City"), for an order to dismiss the complaint and any cross-claims is granted.

This is an action for personal injuries allegedly sustained by plaintiff Patrick Campbell ("Campbell") when, after he had been skating for an hour and 15 minutes on the ice during a public skating session, he fell while exiting the ice at the ice rink, located in Flushing Meadows Corona Park, County of Queens ("Location") on January 4, 2020.

In support of the motion the City submits, inter alia, an attorney affirmation and the License Agreement dated August 12, 2008, executed between the City and World Ice Arena ("License"), the transcript of the deposition testimony of Patrick Campbell, the transcript of the deposition testimony of Shantel Miller, and the transcript of the deposition testimony of Cristian Puchuela.

Cristian Puchuela is a skating rink guard at World Ice Arena ("WIA"), with duties that were to ensure safety, clean up, and check the rink and surrounding area. He was working at the ice skating rink at the time of the accident and testified that the ice was resurfaced prior to the evening skate session on the date of the accident.

Puchuela testified that he saw plaintiff and his niece before the accident happened, that he rented them their skates, and he saw plaintiff skating and observed that plaintiff was unsteady and kept grabbing onto the wall and that he heard a bang and saw plaintiff by the entrance to the rink. He testified that he prepared an accident report and he checked the box in the report indicating the ice surface was inspected, that there were 3 skating rink guard attendants on the ice at the time of plaintiff's accident -as well as their respective locations- and he signed the report.

Puchuela testified that he spoke with plaintiff after the accident and plaintiff told him he was trying to move out of the way for another skater, which caused him to lose his balance and then fall. Puchuela testified that he did a thorough inspection of the ice, and it was normal. There was nothing on it, and there were no ruts or pitting, and after assisting plaintiff, Puchuela went back to the ice and inspected it again. He looked at the entire rink, including the specific area where plaintiff had fallen, and he did not see anything abnormal or any gray particles on the ice, and in fact he had never seen any gray particles on the ice, and that the ice had been resurfaced at the beginning of the session.

Puchuela stated that during the year prior to plaintiff's accident, the ceiling above the ice rink was not leaking and nothing was falling from it.

Shantel Miller testified that she is plaintiff's niece, and to celebrate her birthday, she and her uncle decided to go ice skating.

Miller testified that she had learned to skate as a child and considered herself an advanced beginner and that her uncle, Campbell, was a beginner and needed to hold onto the ledge, that when they first entered the ice, they skated together for 10-15 minutes but thereafter she saw her uncle spending more time holding onto the ledge and she observed that he wasn't comfortable skating without support. Miller testified that Campbells' legs were close together when he was skating, that she often saw him holding onto the ledge and skating very slowly. Miller began skating separately from her uncle and she would do laps and then meet him again to see how he was doing. Miller observed Campbell with bent knees, back arched, arms spread out, skating very slowly.

Miller testified she did not see Campbell fall- after hearing him cry out, she turned and she saw her uncle on the ice, 6-10 feet from an exit area and a skating rink guard was at his side. Miller spoke with her uncle while he was on the ice and he told Miller he fell and couldn't get up, but he didn't tell her why or how he fell.

Miller testified she saw nothing on the ice near or on his body other than ice shavings. She saw no debris, garbage or

substances. She did not hear her uncle tell anyone how the accident happened and she observed the skating rink guards slowly move her uncle off the ice in a wheelchair to a secluded area. When she saw her uncle at the hospital, he said the accident happened when he slipped, and said nothing else about how the accident happened. No one, including her uncle, ever told her that there was anything on the ice in the area where her uncle fell.

It is undisputed that WIA operated the Location at the time of the subject accident pursuant to a License Agreement with the City and that the License was in effect at all times relevant to the instant action and that according to the License, WIA agreed, inter alia, to maintain the premises in a manner consistent with a typical high-quality ice skating rink and provide regular cleaning, collecting and removal of all litter, debris, snow and garbage, and further, to indemnify and hold the harmless the City against "any and all loss liability, obligations, fines, damages, penalties, claims, costs, charges, or expenses, including reasonable attorneys' fees, for which they are or may be liable as a result of any personal injury, death or property damage arising, in whole or in part, from any negligent or intentional conduct on the part of Licensee, or others, in connection with Licensee's operations pursuant to this License".

Counsel for the City avers that based on its limited role at the ice rink pursuant to the License, the City has established that it did not owe or breach a duty of care under the circumstances, as any duties with respect to the maintenance and operation of the ice rink were contracted to WIA.

Further, the City avers that it is entitled to summary judgment based upon the terms of the License, which the City argues, shields the City because at all times relevant to plaintiffs' action, WIA possessed the duty to inspect and maintain the ice rink and it possessed the duty to advise the City of any conditions requiring its attention. The Court agrees.

Generally, a landowner owes a duty of care to maintain his or her property in a reasonably safe condition. That duty is premised on the landowner's exercise of control over the property, as the person in possession and control of [the] property is best able to identify and prevent any harm to others (See Gronski v. County of Monroe, 18 N.Y.3d 374, 379, 940 N.Y.S.2d 518, 963 N.E.2d 1219; Basso v. Miller, 40 N.Y.2d 233, 241, 386 N.Y.S.2d 564, 352 N.E.2d 868).

Indeed, "[i]t has been held uniformly that control is the test which measures generally the responsibility in tort of the owner of real property" (See Ritto v. Goldberg, 27 N.Y.2d 887, 889, 317 N.Y.S.2d 361, 265 N.E.2d 772; Santiago v. City of New York, 206 A.D.3d 679, 681, 169 N.Y.S.3d 671, 673 (2022))

Based upon the foregoing, the City has established, prima facie, that they relinquished control of the premises to WIA such that the City owed no duty to the plaintiff to remedy the allegedly defective condition of a substance on the ice at the rink (See Aponte v. Lee, 191 A.D.3d 626, 137 N.Y.S.3d 728; Sawicka v. Schwimmer, 187 A.D.3d 957, 958, 130 N.Y.S.3d 711; Whittington v. Champlain Ctr. N. LLC, 123 A.D.3d 1253, 1254, 999 N.Y.S.2d 231; cf. D'Angelo v. City of New York, 179 A.D.3d 1015, 1017, 118 N.Y.S.3d 167; Agbosasa v. City of New York, 168 A.D.3d 794, 796, 92 N.Y.S.3d 100).

The movant on a motion for summary judgment has the initial burden of making a prima facie showing that it is entitled to judgment as a matter of law. (See Winegrad v. New York Univ. Med. Ctr., 64 N.Y.2d 851, 487 N.Y.S.2d 316, [1995]). On this record the City has met this burden.

Accordingly, the motion by the City for an order to dismiss the complaint and any cross-claims is granted.

Dated: February 24, 2023



KEVIN J. KERRIGAN, J.S.C.

