

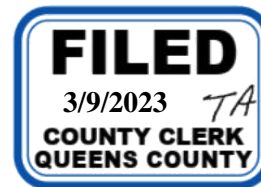
<b>Campbell v World Ice Arena</b>
2023 NY Slip Op 35039(U)
February 24, 2023
Supreme Court, Queens County
Docket Number: Index No. 712643/20
Judge: Kevin J. Kerrigan
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Short Form Order

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.: 2

-----X  
The following papers numbered E34-E46, E64-E75 & E83-E84 read on this motion by defendant, World Ice Arena, for summary judgment.

Papers  
Numbered

- Notice of Motion-Affirmation-Exhibits..... E34-46
- Affirmation in Opposition-Exhibits..... E64-69
- Affirmation in Opposition-Exhibits..... E70-75
- Reply-Exhibits..... E83-84

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

Motion by defendant, World Ice Arena ("WIA"), for summary judgment dismissing plaintiffs' complaint and all cross claims made by co-defendant the City of New York against it is denied.

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 WIA submits, inter alia, an attorney affirmation, and the transcript of the deposition testimony of Campbell wherein he testified that he was at WIA because he was taking his adult niece, Shantel Miller, skating to celebrate her birthday and they skated at a public session, had no problems with his rented skates and he skated continuously for an hour and 15 minutes, only stopping to use the bathroom. Campbell testified that he had no difficulty navigating the ice at any time and described himself and Shantel as having average skating ability. Further, Campbell testified that he observed 4 skating rink guards

wearing orange jackets skating around during the session and observed them assisting other skaters. He took photos and brief videos of Shantel with his phone and he recalled receiving and wearing a wristband while skating and recalled seeing the posted rink rules. Campbell testified that he was attempting to get off the ice when the accident happened. He 'was looking toward the exit and not down at the ice as he exited' and 'his skate hit on something and he fell'.

He did not collide with any other skaters and he described the particles on the ice as grayish matter. He could not say how many there were or their size, and while he was lying on the ice, he looked up and he concluded that the particles were part of the ceiling. Neither he nor anyone on his behalf ascertained what the particles were and he never saw any of the particles before he fell.

In support of the motion WIA submits the deposition testimony of Cristian Puchuela -a skating rink guard at 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.

In support of the motion WIA also submits the deposition testimony of non-party witness, Shantel Miller. 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.

In opposition to the motion plaintiffs submit, inter alia an attorney affirmation and the deposition testimony of plaintiff.

Plaintiff testified that at the time of the accident he "was skating normally and attempting to get off the ice" when his "skate hit on something and I fell." Campbell testified that after he slipped and fell onto the ice he saw that there were debris particles on the ice in that location and he "noticed that there was some, you know, particles or something on the floor, some raised matter" and described the particles of debris he observed on the surface of the ice as "a grayish matter...it was just a grayish matter that did not look like it belonged there." Campbell said the debris particles he observed were of "multiple sizes" and that after he fell he looked up at the ceiling and saw that there was netting hanging down across a portion of the ceiling, saying "I looked up at the ceiling and then I saw a netted ceiling and the particles of which it came from" and the grayish particles on the ice appeared to be the same color as the ceiling, stating "I observed that they were a part of the ceiling."

Campbell testified further that he mentioned the particles that he saw on the ice to the skating rink guard who came to his assistance, saying "I told him that I noticed that there were some particles that were coming from the ceiling and that's how I fell."

In further opposition to the motion, plaintiff submits the deposition transcript of Puchuela, the skating rink guard at WIA who came to Campbell's assistance after he fell, and Puchuela confirmed that netting had been put up on the ceiling over the skating rink and was there at the time of the accident, although he did not know why the netting had been installed on the ceiling.

To establish a prima facie case of negligence, a plaintiff in a slip and fall case must demonstrate the defendants either created the condition which caused the accident, or had actual or constructive notice of the condition (See Steisel v. Golden Reef Diner, 67 AD3d 670). On this record there has been no such showing that WIA or the City created a dangerous condition at the ice rink.

In further opposition to the motion, plaintiff submits a news article from the QNS.com website posted on December 18, 2019, which ostensibly reports that NYC Parks announced emergency ceiling work at the Flushing Meadow Corona Aquatic Park Center, and that the Olympic-sized swimming pool would be closed and that installation of ceiling netting in the pool and ice rink areas would impact pool programming at the facility. Absent proper foundation, the Court does not credit this hearsay source. The QNS.com article would only serve, arguendo, to inform readers of the presence of the ceiling netting, which has not been disputed. There has been no evidence submitted to establish that the ceiling netting caused a dangerous condition at the ice rink.

A defendant who moves for summary judgment in a slip-and-fall case has the initial burden of making a prima facie showing that it neither created the hazardous condition nor had actual or constructive notice of its existence for a sufficient length of time to discover and remedy it (See Ross v. Half Hollow Hills Cent. Sch. Dist., 153 A.D.3d 745, 746, 60 N.Y.S.3d 323, 324 [2017]; Spano v. Apogee Retail NY, LLC, 164 A.D.3d 1495; Mandarano v. PND, LLC, 157 A.D.3d 664; Amendola v. City of New York, 89 A.D.3d 775). To constitute constructive notice, a condition must be visible and apparent for a sufficient length of time prior to the accident to permit the defendant's employees to discover and remedy it (See Gordon v. American Museum of Natural History, 67 N.Y.2d 836; Birnbaum v. New York Racing Assn., Inc., 57 A.D.3d 598; Bykofsky v. Waldbaum's Supermarkets, 210 A.D.2d 280, 281).

On this record Campbell testified that after he fell he observed some type of "grayish" material particles on the ice, and this caused him to slip and fall. He also testified that he saw netting hanging below the ceiling above the rink and the debris he saw on the ice appeared to come from the ceiling.

Here, movant has failed to meet its evidentiary burden under CPLR 3212 of demonstrating its entitlement to summary judgment by submitting evidence sufficient to eliminate all triable issues of fact as to whether the defendants had actual or constructive notice of any hazardous condition caused by debris particles, which only the plaintiff saw, on the surface of the ice skating rink. (See Rodriguez v BCRE 230 Riverdale, LLC, 91 A.D.3d 933 2d Dep't [2012])

When determining a motion for summary judgment, plaintiff is entitled to the benefit of every favorable inference which may be drawn from the evidence, pleadings, affidavits, and examinations before trial. (See Egan Real Estate, Inc. v. McGraw, 40 A.D.2d 299 4th Dep't [1973]; Lehrer McGovern Bovis, Inc. v. New York Yankees, 207 A.D.2d 256, 258 1st Dep't [1994]). Further, facts that are alleged by the non-moving party and all inferences which may be drawn from them must be accepted as true. (See O'Neill v. Town of Fishkill, 134 A.D.2d 487 2d Dep't [1987]).

The deposition testimony of Puchuela and Miller and that of Campbell raises a triable issue of fact as to whether the 'grey matter' on the ice fell from the ceiling and whether the WIA had notice of the falling material- as evinced by the presence of the netting.

It is of note that Puchuela testified that when he inspected the ice when he came to aid plaintiff 'there was nothing on the ice. The ice was normal'. Plaintiff testified that he believed that the material in the ice was from the ceiling and was present on the ice causing him to fall. This conflicting witness testimony underscores a triable issue of fact as to whether Campbell fell because of 'grey matter' on the ice.

Resolving questions of credibility, determining the accuracy of witnesses, and reconciling the testimony of witnesses are for the trier of fact. (See Torres v. Saint Vincent's Catholic Medical Centers of New York, 117 A.D.3d 717 2d Dep't [2014], quoting Kahan v. Spira, 88 A.D.3d 964 2d Dep't [2011]; see also Bravo v. Vargas, 113 A.D.3d 579 2d Dep't [2014]).

Accordingly, the motion by defendant, WIA for summary judgment dismissing plaintiffs' complaint and all cross claims made by co-defendant the City of New York against it is denied.

Dated: February 24, 2023

  
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KEVIN J. KERRIGAN, J.S.C.

