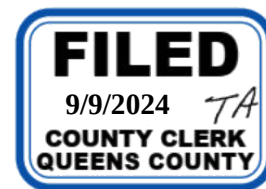


Public Admr. of Queens County v Genting N.Y. LLC
2024 NY Slip Op 35356(U)
September 4, 2024
Supreme Court, Queens County
Docket Number: Index No. 702963/2016
Judge: Maurice E. Muir
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This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT – QUEENS COUNTY

Present: HONORABLE MAURICE E. MUIR
Justice



PUBLIC ADMINISTRATOR OF QUEENS COUNTY,
as Administrator of the Goods, Chattels and Credits of
GUI WU CHENG, Deceased,

IAS Part - 42

Plaintiff,

Index No.: 702963/2016

-against-

Motion Date: 3/28/24

GENTING NEW YORK LLC d/b/a RESORTS WORLD
CASINO NEW YORK CITY,

Motion Cal. No. 53

Motion Seq. No. 4

Defendant.

The following electronically filed (“EF”) documents read on this motion by Genting New York LLC d/b/a Resorts World Casino New York City (“Resort Casino” or “defendant”) for an order: a) pursuant to CPLR §3212 granting summary judgment, dismissing each and every one of Plaintiff’s claims against Defendant upon the ground that the plaintiff’s causes of action are without merit; or, in the alternative; b) granting such other and further relief this court deems just and proper.

	Papers Numbered
Notice of Motion-Affirmation-Video-Exhibits.....	EF 082 – 93
Affirmation in Opposition-Exhibits-Service.....	EF 105 – 111
Reply Affirmation.....	EF 121

Upon the foregoing papers, it is ordered that this motion is determined as follows:

This is an action to recover damages for personal injuries Gui Wu Cheng (“Mr. Cheng” or “decedent”) allegedly sustained at Resorts World Casino. In particular, the plaintiff alleges that on September 26, 2015, while waiting in the Bus Lobby Waiting Area of Resorts World Casino, Queens, New York, he was caused to trip over a 1 - 1 ½ foot shin-high, black colored, end-table

affixed to the end of a row of chairs which was protruding into an egress aisle. As a result, on March 14, 2016, he commenced the instant action; and on April 20, 2016, issue was joined. However, on April 19, 2019, Mr. Cheng passed away due to causes unrelated to the subject accident. However, before his death, he was deposed by defense counsel. Now, the latter seeks the above-captioned relief.

In support of the instant motion, the defendant argues that the following: “[t]he applicable precedents confirm that the subject table was open and obvious and not inherently dangerous. The evidentiary record confirms that the alleged condition was readily observable through a reasonable use of the plaintiff’s senses, and that Plaintiff had an ample path to get around the table had he simply observed where he was walking. * * * This was nothing more, or less, than a black rectangular table with rounded edges and there were no prior incidents or complaints regarding it. Based on the photographic evidence in this case, as well as the governing case law in the Second Department, the table in question, which Plaintiff observed on previous occasions, must be deemed open and obvious and not inherently dangerous as a matter of law. Instead, the incident can be attributed to nothing other than his failure to pay any attention to his surroundings. By his own admission, as Plaintiff walked forward and straight into the table, he was gazing off to his right side.”

In opposition, the plaintiff argues that “[a]dmittedly plaintiff was at the casino approximately once a week and at times used the casino’s shuttle bus service, however owing to the movability of the seating and the capability of the subject low, visually obscured end-table to be placed in different configurations, there is no evidence submitted that the plaintiff had ever encountered this particular configuration in the bus lobby area on any prior occasion. . . . There is no testimony offered by movant that the seating was arranged in a specific manner on a daily basis nor is there any evidence submitted as to when the area was last cleaned or inspected with regard to the seating lay-out.” Furthermore, according to the plaintiff’s expert, Jerry Birnbach (“Mr. Birnbach”), who is a Commercial Designer, Interior Designer and Trip and Fall Safety Expert, he opines to the following: a) Resort World Casino should have to properly position the seating and if necessary, permanently secure it to the ground to avoid maintenance workers and patrons from positioning the sections in an unsafe manner; b) the choice of flooring material positioned under the seating was confusing to the eye and did not provide adequate contrast to low tripping elements such as the table; c) the selection of the seating system in a similar color

way as the flooring created a hazardous condition due to the eyes inability to distinguish between the flat floor and unelevated table surface; d) the alignment of the seating was offset which situate the table into the middle of a straight line of pathway established by row one of the seating area; e) a defined path, using matting, runners, or equivalent commercial flooring should have been installed to direct traffic toward the exit door or direct traffic entering the lobby; and f) the design approval committee for Resort World Casino should have recognized in the planning stages that the busy floor pattern selection was dangerous and distracting when combined with seating that were a similar color match to the floor colors located in offset rows and allowing the table to be located at the end of the seating section allowing the table to protrude into the egress aisle leading to the exit.

It is well settled law that a landowner has a duty to maintain its premises in a reasonably safe condition (*see Holmes v. Macy's Retail Holding, Inc.*, 184 AD3d 811 [2d Dept 2020] citing *Peralta v. Henriquez*, 100 NY2d 139 [2003]; *Basso v. Miller*, 40 NY2d 233 [1976]). There is, however, no duty to protect or warn against conditions that are open and obvious and not inherently dangerous (*see Cupo v. Karfunkel*, 1 AD3d 48 [2d Dept 2003]). Proof that a dangerous condition is open and obvious does not preclude a finding of liability against an owner for failure to maintain property in a safe condition (*see Gradwohl v. Stop & Shop Supermarket Co., LLC*, 70 AD3d 634 [2d Dept 2010]; *Cupo v. Karfunkel*, 1 AD3d 48 [2d Dept 2003]). "The determination of '[w]hether an asserted hazard is open and obvious cannot be divorced from the surrounding circumstances'" (*Clark v. AMF Bowling Ctrs., Inc.*, 83 AD3d 761 [2d Dept 2011], quoting *Mazzarelli v. 54 Plus Realty Corp.*, 54 AD3d 1008 [2d Dept 2008]), and whether a condition is not inherently dangerous, or constitutes a reasonably safe environment, depends on the totality of the specific facts of each case (*see Robbins v. 237 Ave. X, LLC*, 177 AD3d 799 [2d Dept 2019]; *Clark v. AMF Bowling Ctrs., Inc.*, 83 AD3d 761 [2d Dept 2011]; *Mazzarelli v. 54 Plus Realty Corp.*, 54 AD3d 1008 [2d Dept 2008]; *Mauriello v. Port Auth. of N.Y. & N.J.*, 8 AD3d 200 [1st Dept 2004]).

Here, the courts finds that the defendant failed to establish, *prima facie*, that the end-table which protruded into an egress aisle was not a hazardous condition and that defendant maintained their premises in a reasonably safe condition (*see Holmes v. Macy's Retail Holding, Inc.*, 184 AD3d 811 [2d Dept 2020]; *Clark v. AMF Bowling Ctrs., Inc.*, 83 AD3d 761 [2d Dept 2011]; *Russo v. Home Goods, Inc.*, 119 AD3d 924 [2d Dept 2019]; *Gradwohl v. Stop & Shop*

Supermarket Co., LLC, 70 AD3d 634 [2d Dept 2010]; *Salomon v. Prainito*, 52 AD3d 803 [2d Dept 2008]). In fact, the court finds that the case at bar is very similar to *Holmes v. Macy's Retail Holding, Inc.*, 184 AD3d 811 [2d Dept 2020], where the Appellate Division, Second Department, found that "... the defendants failed to establish, prima facie, that the wooden pallet that partially blocked the doorway was not a hazardous condition and that they maintained their premises in a reasonably safe condition." Similarly, in *Clark v. AMF Bowling Ctrs., Inc.*, 83 AD3d 761 [2d Dept 2011], the court held that "[i]n view of the surrounding circumstances, which included dim lighting and the unusual way in which certain furniture was placed, the evidence submitted by the defendant did not eliminate triable issues of fact as to whether the table was an open and obvious, and not inherently dangerous, condition [internal citations omitted]."

Lastly, it is well settled law that summary judgment should not be granted where, as here, the facts are in dispute, where conflicting inference may be drawn from the evidence, or where there are issues of credibility. (*Collado v. Jiacono*, 126 AD3d 927 [2d Dept 2014] citing *Scott v. Long Island Power Authority*, 294 AD2d 348 [2d Dept 2002]; see also *Fobbs v. Shore*, 171 AD3d 874 [2d Dept 2019]).

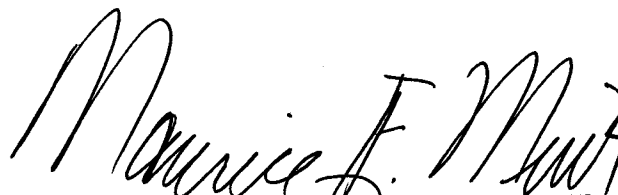
Accordingly, it is hereby

ORDERED that defendant's motion for summary judgment, pursuant to CPLR § 3212, denied, in its entirety; and it is further,

ORDERED that plaintiff shall serve a copy of this decision and order with notice of entry upon the defendant on or before September 20, 2024.

The foregoing constitutes the decision and order of the court.

Dated: September 4, 2024
Long Island City, NY


MAURICE E. MUIR, J.S.C.

