Portera v Equinox Columbus Ctr., Inc.

2025 NY Slip Op 31861(U)

May 23, 2025

Supreme Court, New York County

Docket Number: Index No. 151738/2020

Judge: Mary V. Rosado

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. MARY V. ROSADO** **PART** **33M**

Justice

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BARBARA PORTERA,

Plaintiff,

- v -

EQUINOX COLUMBUS CENTER, INC.,[1]

Defendant.

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INDEX NO. 151738/2020

MOTION DATE 06/06/2024

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93

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

Upon the foregoing documents, and after oral argument, which took place on April 8, 2025, where Steven L. Salzman, Esq. appeared for Plaintiff Barbara Portera ("Plaintiff"), and Thomas R. Fanizzi, Esq. appeared for all Defendant Equinox Holdings, Inc.'s, ("Defendant" or "Equinox"), motion for summary judgment dismissing Plaintiff's Complaint is denied.

I. Background

On July 7, 2018, Plaintiff exercised at the Equinox on Columbus Avenue between 57th and 68th Street in Manhattan (the "Premises"). After her workout, she was going to get changed into a blouse, but the blouse was wrinkled (NYSCEF Doc. 55 at 49-50). She testified she was using a steamer in the Equinox locker room to remove the wrinkles from the blouse when the steamer "spewed water. Steaming, scolding hot water…" (NYSCEF Doc. 55 at 58). Plaintiff testified she

[1] The parties stipulated to amend the caption on June 25, 2021, and the caption was ordered amended by Justice Alexander Tisch on that date (NYSCEF Doc. 16). However, it appears the County Clerk either did not amend the caption as ordered, or the parties did not serve the County Clerk properly with the order amending the caption.

operated the steamer with her right hand and held the blouse with her left hand, and she used the steamer "over my left hand, and it started steaming, spewing…" (NYSCEF Doc. 58 at 64).

The manufacturer of the steamer included specific instructions and warnings in its use manual. Equinox's representative admitted that there were no warnings or instructions posted in the locker room regarding steamer use, admitted it would have been smarter to post the instructions and warnings near the steamer to prevent accidents (NYSCEF Doc. 57 at 61-62). Plaintiff sues for burns from the steamer, and Defendant moves for summary judgment dismissing Plaintiff's Complaint.

II. Discussion

"Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact." (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]). The moving party's "burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party." (*Jacobsen v New York City Health and Hosps. Corp.*, 22 NY3d 824, 833 [2014]). Once this showing is made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial (*See e.g., Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

Viewing the facts in the light most favorable to the non-movant, the Court denies Defendant's motion. Although Defendant claims that Plaintiff caused her own injuries by steaming her arm, they ignore Plaintiff's testimony that scolding hot water spewed out of the steamer. Defendant's witness also admitted that they failed to post instructions and warnings regarding steamer use in the locker room, even though instructions and warnings were provided by the manufacturer in the steamer's use manual. The manual specifically warned that using the steamer

in a certain way could result in water discharge, yet Equinox provided no instructions or warnings to its members of this potential hazard (NYSCEF Docs. 78 and 83).

Moreover, although the manufacturer warns that water may spit from the steamer if it is not properly maintained, there are no maintenance records provided by Defendant showing that the steamer was maintained per the manufacturer's instructions (*Qeliqi v Gladden Properties LLC*, 226 AD3d 543, 545 [1st Dept 2024] [lack of documentary evidence regarding when last cleaning, inspection, or maintenance took place precluded finding that defendant lacked constructive notice]; *see also Williams v Beth Israel Hosp. Assn.*, 201 AD3d 429, 430 [1st Dept 2022]). Indeed, the manual specifically stated that water could spit from the steam cap if the unit was over-filled or needed to be cleaned – and Defendant has presented no evidence to negate the issues of fact of whether one of its employees over-filled the steamer prior to Plaintiff's use or failed to clean the steamer as instructed to remove sediment deposits (NYSCEF Doc. 78). In analogous cases where personal injury plaintiffs were burned by hot water, summary judgment is frequently denied based on issues of fact as to a defendant's proper maintenance of the system that dispenses the hot water and injuries the plaintiff (*Eaderesto v 22 Leroy Owners Corp.*, 101 AD3d 450, 451 [1st Dept 2012]; *Lindsey v H.B. Associates, L.L.C.*, 24 AD3d 274 [1st Dept 2005]; *Gottlieb v 31 Gramercy Park South Owners Corp.*, 276 AD2d 417, 417-18 [1st Dept 2000]).

Contrary to Defendant's contention, Plaintiff cannot be considered the sole proximate cause of her injury if it was at least partially caused by Defendant's failure to properly maintain the steamer or to properly instruct and warn Plaintiff regarding steamer use. Defendant's framing of the duty to warn misses the mark – Defendant did not need to warn Plaintiff that steam may be hot, but it did have to warn users that improper use of the steamer may result in hot water spewing out of the steamer's head.

Defendant's argument that the complaint should be dismissed because Plaintiff cannot identify the cause of her accident is without merit – her testimony clearly stated that hot scalding water spewed out of the steamer and burned her. Nor is Defendant's expert opinion dispositive, as prior to his inspection of the steamer he flushed out the steam head, the hose attachment, the base unit, and filled the water caddy with fresh cold water, while Plaintiff's theory of the case, which Defendant has not conclusively disproven, is that Defendant failed to properly maintain and fill the steamer in the way Defendant's expert did (*see, e.g. Valverde v Great Expectations, LLC*, 126 AD3d 633, 633 [1st Dept 2015]; *see also Garcia v Jesuits of Fordham, Inc.*, 6 AD3d 163, 166 [1st Dept 2004] [affidavit of "engineer was based upon an inspection made years after plaintiff's accident and there was no evidence that the conditions he observed were the same as those that existed at the time plaintiff was injured"]). Therefore, Defendant's motion for summary judgment is denied.

Accordingly, it is hereby,

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

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

5/23/2025
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, 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