

Focacci v One E. Riv. Place Realty Co., L.L.C.

2025 NY Slip Op 32781(U)

July 30, 2025

Supreme Court, New York County

Docket Number: Index No. 157599/2016

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MARY V. ROSADO PART 33M

Justice

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CLAUDIA FOCACCI,

Plaintiff,

- v -

ONE EAST RIVER PLACE REALTY COMPANY, L.L.C.,
SOLOW MANAGEMENT CORP., EAST RIVER POOL CLUB,
INC., AND IOWA SPORTS MANAGEMENT, INC.,

Defendants.

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ONE EAST RIVER PLACE REALTY COMPANY, L.L.C., SOLOW
MANAGEMENT CORP., EAST RIVER POOL CLUB, INC.

Plaintiffs,

-against-

HAYNEEDLE, INC.,

Defendant.

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DECISION + ORDER ON MOTION

Third-Party
Index No. 596047/2017

The following e-filed documents, listed by NYSCEF document number (Motion 007) 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 181, 212, 215, 219, 220, 223, 232, 235, 236, 237, 238

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, and after a final submission date of May 27, 2025, Defendant Iowa Sports Management, Inc. (“Iowa Sports”) motion for summary judgment dismissing Plaintiff Claudia Focacci’s (“Plaintiff”) Complaint and all crossclaims asserted against it is denied.

I. Background

Plaintiff lived at 525 E. 72nd Street (the “Building”) (NYSCEF Doc. 156 at 118). The Building is owned by Defendant One East River Place Realty Company, L.L.C. (“One East River Place”). Defendant Solow Management Corp. (“Solow”), manages the Building on behalf of One East

River Place. Defendant East River Pool Club, Inc. (“East River Pool Club”) is a health club consisting of the sundeck, a pool, and a gym in the Building (NYSCEF Doc. 160 at 18). Iowa Sports manages East River Pool Club, including the sundeck (NYSCEF Doc. 159 at 26; NYSCEF Doc. 160 at 18).

On May 26, 2014, Plaintiff was visiting the sundeck of the Building (NYSCEF Doc. 156 at 119). Solow was hosting a Memorial Day event on the 50th floor sundeck for tenants (NYSCEF Doc. 159 at 35-36). Plaintiff sat at a table with an open umbrella, felt a gust of wind, and was hit in the head with the umbrella pole that became dislodged from the table ((NYSCEF Doc. 157 at 215; 218; 225; NYSCEF Doc. 163 at 62-63). Plaintiff alleges a traumatic brain injury resulting from this incident.

According to Plaintiff’s mother, an employee allegedly told her the umbrella was not screwed properly (NYSCEF Doc. 163 at 84). The manager of the East River Pool Club on the date of the accident, Ms. Dujarric, testified she would conduct a walkthrough of the sundeck several times a day and check that umbrellas were fastened properly (NYSCEF Doc. 162 at 26). Now, Iowa Sports moves for summary judgment dismissing Plaintiff’s claims and all crossclaims asserted against it. Plaintiff, East River Pool Club, Solow, and One East River Place oppose the motion.

II. Discussion

Iowa Sports’ motion for summary judgment is denied. “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]).

Although Iowa Sports argues that there is no evidence that the umbrella was secured improperly, to show entitlement to summary judgment it must do more than point to gaps in Plaintiff's evidence (*see, e.g. Maria v Concourse Estate, LLC*, 200 AD3d 578 [1st Dept 2021] citing *Vargas v Riverbay Corp.*, 157 AD3d 642 [1st Dept 2018]). Iowa Sports has failed to establish affirmatively that at the time of Plaintiff's accident, the umbrella was properly secured (*see, e.g. O'Halloran v City of New York*, 78 AD3d 536, 537 [1st Dept 2010] [failure to establish affirmatively that defendant did not cause or contribute to accident warranted denial of summary judgment]). Iowa Sports' former employee admitted that it was Iowa Sports' responsibility to set up umbrellas on the sundeck and to ensure they were fastened properly, and admitted the umbrellas should not be set up if it was windy (NYSCEF Doc. 162 at 40). Moreover, the base in which the umbrellas were placed contained a warning that umbrellas should not be opened in windy conditions. Based on the record before this Court, a jury could find that Iowa Sports created or exacerbated a dangerous condition by installing an unfastened and opened umbrella on a 50th floor sundeck on a windy day (*see, e.g. Farrugia v 1440 Broadway Associates*, 163 AD3d 452, 455-56 [1st Dept 2018]; *Cornell v 360 West 51st Street Realty, LLC*, 51 AD3d 469, 470 [1st Dept 2008]).

Iowa Sports' argument that it was not foreseeable that the umbrella could be blown by a gust of wind is unavailing. As a preliminary matter, questions of proximate cause and foreseeability are generally issues of fact for the jury (*see generally Crandall v Equinox Holdings, Inc.*, 231 AD3d 472, 474 [1st Dept 2024]; *Gonzalez v City of New York*, 133 AD3d 65, 67 [1st Dept 2015]). Moreover, Iowa Sports' foreseeability argument is undercut by the warning label on

the base where the umbrellas were affixed, which explicitly warned Iowa Sports' employees that umbrellas should not be opened in windy conditions. Iowa Sports' own expert, Leonard P. Parkin, P.E., opined that in the location of Plaintiff's accident, there could be "expected wind gust speeds [which] exceed the maximum wind speed of 25 mph specified by [the umbrella manufacturer] for the installation and use of their umbrellas" (NYSCEF Doc. 168 at ¶¶ 6-7).

Mr. Parkin's affidavit likewise contradicts Iowa Sports' meteorological expert, Alan Nierow, Ph.D., who opined that there were no strong wind gusts at the time of Plaintiff's accident (NYSCEF Doc. 167). In any event, Mr. Nierow's opinion is also contradicted by Hayneedle, Inc.'s meteorologist affidavit from Fred Campagna, who stated that around the time of Plaintiff's accident, the 50th floor experienced a wind gust of approximately 30 miles per hour (NYSCEF Doc. 207). The competing expert opinions preclude summary judgment. Because Iowa Sports' failed to establish entitlement to summary judgment dismissing Plaintiff's Complaint, the crossclaims asserted against Iowa Sports remain viable. Therefore, Iowa Sports' motion for summary judgment dismissing Plaintiff's Complaint and all crossclaims asserted against it is denied in its entirety.

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Accordingly, it is hereby,

ORDERED that Iowa Sports' motion for summary judgment dismissing Plaintiff's Complaint and all crossclaims asserted against it is denied in its entirety; 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.

7/30/2025
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: