SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Index No. 35423/2019E

JEFFREY BRYLSKI, as Executor of the Estate of SHEILA BRYLSKI and JOHN BRYLSKI,

Plaintiffs,

-against-

SIMONE DEVELOPMENT CORPORATION, RESIDENCE INN BY MARRIOTT THE BRONX AT METRO CENTER ATRIUM, RESIDENCE INN BY MARRIOTT, LLC, 1776 ATRIUM HOTEL OWNER LLC, 1776 EASTCHESTER OPERATING LLC, 1776 ATRIUM HOTEL LLC, HUTCH HOSPITALITY MANAGEMENT, LLC, HUTCH REALTY PARTNERS LLC, and HUTCH MANAGEMENT LLC,

Defendants.

DECISION/ORDER

Present:
Hon. Laura G. Douglas
J. S. C.

Part 6

Recitation, as required by Rule 2219(a) of the C.P.L.R., of the papers considered in the review of this motion and cross-motion for summary judgment (seq. no. 3):

Papers	**Numbered**
Notice of Motion by Defendants Simone Development Corporation, 1776 Eastchester Operating LLC, Hutch Realty Partners LLC, and Hutch Management LLC, Statement of Facts by Michael G. Conway, Esq. dated June 6, 2024, Affirmation of Michael G. Conway, Esq. dated June 6, 2024 in Support of Motion, and Exhibits ("A" through "F")	**1**
Affirmation of Alyssa J. Held, Esq. dated July 29, 2024 in Opposition to Motion, Counterstatement of Material Facts by Alyssa J. Held, Esq. dated July 29, 2024, and Exhibits ("1" and "2")	**2**
Reply Affirmation of Michael G. Conway, Esq. dated August 22, 2024	**3**
Notice of Cross-Motion by Defendants Residence Inn by Marriott The Bronx at Metro Center Atrium, Residence Inn by Marriott, LLC, 1776 Atrium Hotel LLC, and Hutch Hospitality Management, LLC, Affirmation of Sim R. Shapiro, Esq. dated September 26, 2024 in Support of Cross-Motion and in Partial Opposition to Motion, Statement of Material Facts by Sim R. Shapiro, Esq. dated September 26, 2024, Counterstatement of Material Facts by Sim R. Shapiro, Esq. dated September 26, 2024, Memorandum of Law by Sim R. Shapiro, Esq. dated	

This motion and cross-motion are consolidated for purposes of Decision/Order and, upon the foregoing papers and after due deliberation, the Decision/Order on this motion and cross-motion is as follows:

Defendants Simone Development Corporation, ("SDC"), 1776 Eastchester Operating LLC, ("1776 Eastchester"), Hutch Realty Partners LLC ("Hutch Realty"), and Hutch Management LLC ("Hutch Management") seek summary judgment pursuant to CPLR § 3212 dismissing the plaintiffs' complaint in its entirety on the grounds that neither SDC nor Hutch Realty was the owner of, nor had any involvement with, the property at issue, that 1776 Eastchester was an out-of-possession landlord, and that Hutch Management had no duties or responsibilities as to the operation of the interior of the subject premises. This motion is granted.

Defendants Residence Inn by Marriott the Bronx at Metro Center Atrium, Residence Inn by Marriott, LLC, 1776 Atrium Hotel LLC, and Hutch Hospitality Management, LLC (collectively, "Residence Inn") cross-move for summary judgment pursuant to CPLR 3212 dismissing the plaintiffs' complaint and all cross-claims asserted against Residence Inn. This motion is denied.

The plaintiffs seek monetary damages for personal injuries purportedly sustained by the plaintiff's decedent ("Brylski") on September 11, 2017 in the lobby of the Marriott Residence Inn Hotel when she allegedly tripped and fell due to an unsecured swing chair located in the lobby. The defendants' liability is predicated on negligence in their ownership, operation, maintenance, management, and/or control of the premises and the swing chair. In their answer, SDC, 1776 Eastchester, Hutch Realty, and Hutch Management denied any such relationship to the subject premises or the swing chair.

To obtain summary judgment, the defendants must demonstrate that there are no material issues of fact in dispute and that they are entitled to judgment as a matter of law under these undisputed facts

(*see Winegrad v. New York University Medical Center*, 64 NY2d 851 [Ct App 1985] and *Flores v. City of New York*, 29 AD3d 356 [1st Dept 2006]). To defeat such a showing, Brylski must present facts in admissible form demonstrating that a genuine, triable issue(s) of fact exists precluding summary judgment (*see Zuckerman v. City of New York*, 49 NY2d 557 [Ct App 1980] and *Flores v. City of New York*, 29 AD3d 356 [1st Dept 2006]).

Defendants' Motion

In support of their motion, these defendants submit a lease agreement between 1776 Eastchester and co-defendant 1776 Atrium Hotel LLC ("1776 Atrium") for the subject hotel premises. As the lessee, 1776 Atrium agreed to keep the leased property in good order and repair, including making all necessary and appropriate repairs, replacements, and improvements at its sole expense. In addition, 1776 Atrium agreed to indemnify and hold 1776 Eastchester harmless against all claims of injury occurring on the leased property.

The defendants also submit an agreement between 1776 Eastchester and Hutch Management whereby the latter was to serve as agent for the subject property, except for that portion to be operated as a hotel. In addition, the defendants submit a Declaration of Condominium for the premises at that address which lists the property owner as 1776 Eastchester.

Finally, the defendants rely on an affidavit from Joseph Simone ("Simone") dated March 2, 2022. Simone is President of SDC and Manager of 1776 Eastchester, Hutch Realty, and Hutch Management. In pertinent part, he attests that the property owner was non-party 1776 Eastchester Realty LLC, with defendant 1776 Eastchester holding a ground lease for the premises and leasing them to co-defendant 1776 Atrium as tenant. Simone further avers that 1776 Atrium owns the Marriott Residence Inn situated on the premises. He acknowledges that Hutch Management did serve as 1776 Eastchester's agent for this property, but not as to maintenance of the hotel's interior.

In opposition, the plaintiffs contend that this motion should be denied as premature, especially since a Preliminary Conference has not been held and depositions of all parties have not yet been conducted. In addition, the plaintiffs argue that there are issues of fact that preclude summary judgment, including whether these defendants retained any control or right of inspection over the premises and whether they directed or approved the placement of the swing chair at its location in the hotel lobby. Finally, the plaintiffs argue that the failure to submit the ground lease raises questions of actual

ownership and management of the subject property.

Liability for a hazardous condition on real property is predicated on ownership, occupancy, control, or special use of the property (*see Gibbs v. Port Authority of New York*, 170 AD3d 252 [1st Dept 2005]). An out-of-possession landlord is generally not liable for the condition of demised premises unless the landlord has a contractual obligation to maintain the premises, or right to re-enter in order to inspect or repair, and the defective condition is a significant structural or design defect that is contrary to a specific statutory safety provision (*see Padilla v. Holrod Associates LLC*, 215 AD3d 573 [1st Dept 2023]).

Here, these defendants have satisfied their initial burden of proof by submission of documents setting forth the defendants' relationship to the subject property and Simone's supporting affidavit averring that they did not own or manage the hotel. This demonstrates a *prima facie* entitlement to judgment as a matter of law, since the defendants would have no duty to Brylski absent ownership, operation, or control of the hotel or management its day-to-day operations (*see Ingrao v. New York City Transit Authority,* 161 AD3d 683 [1st Dept 2018]). These defendants have been shown to be non-owners or out-of-possession owners and property managers with no liability for injuries arising from the placement of a swing chair in a lessee's hotel lobby. The plaintiffs have failed to raise any triable issue of fact that these defendants had any connection to the existence and/or placement of furniture in the hotel lobby.

While CPLR 3212(f) permits a summary judgment motion to be denied where evidence essential to oppose the motion is exclusively within the knowledge and control of the party seeking summary judgment, the party opposing the motion must identify what that information is; the mere hope that such evidence may be uncovered is insufficient to defeat the motion (*see Erkan v. McDonald's Corporation*, 146 AD3d 466 [1st Dept 2017]). Here, the plaintiffs have failed to show what specific additional disclosure would defeat the submitted evidence of the ownership of the hotel premises, an issue that is especially suited for summary disposition (*see Suero-Rosa v. Cardona*, 112 AD3d 706 [2nd Dept 2013] (deposition of defendant's witness that may lead to evidence about its right to enter and inspect the premises insufficient to defeat motion) and *Martens v. County of Suffolk*, 100 AD3d 839 [2nd Dept 2012]). Public records as to property ownership were available to the plaintiffs. More importantly, the other defendants, including the hotel itself (1776 Atrium Hotel Owner LLC), have not challenged these claims of ownership, management, and maintenance.

That the various corporations have identical shareholders, officers, and/or directors does not, by itself, disrupt their status as separate legal entities (*see Ioviero v. Ciga Hotels, Inc.*, 101 AD2d 852 [2nd Dept 1984]). The evidence makes clear that the moving defendants relinquished control and inspection duties over the conditions in the hotel lobby, as is to be expected in a commercial setting. The management agreement explicitly excludes the hotel premises, which certainly contemplates the hotel's lobby.

Having identified an "unsecured swing chair" in a hotel lobby as the cause of her injuries, Brylski has failed to raise an issue of fact regarding any duty that any of the moving defendants had over the condition of that chair, let alone that they installed it in the lobby.

For these reasons, the motion is granted.

Defendants' Cross-Motion

Residence Inn notes that the plaintiffs' bill of particulars alleges that Brylski's injuries were caused by Residence Inn's negligence in owning, managing, operating, maintaining, and/or controlling a certain swing chair located in the lobby, which caused her to fall. Residence Inn concedes that the lobby did contain a "standard swing chair" at the time of Brylski's alleged accident (*see* Shapiro Aff., ¶ 10). The swing chair is said to have been in an unsafe and dangerous condition which constituted a trap of which Brylski was not warned. Residence Inn further notes that Bryski died of unrelated causes before she could be deposed.

In support of their motion, Residence Inn submits a surveillance video depicting Brylski's accident. Residence Inn opines that this video shows Brylski take notice of the swing chair and walk up to it. She is then said to spin the chair for some 45 seconds and squeeze behind it to look out the window. She then falls, with her legs remaining in camera view. Residence Inn maintains that the video reveals that Brylski did not attempt to sit in the chair and does not show Brylski tripping over any part of the swing chair as she Brylski claims. Residence Inn concludes that this video demonstrates that there was nothing unsafe about the swing chair. Residence Inn also contends that the video shows that the lobby was well lit and uncrowded at the time of Brylski's accident, with the swing chair being clearly visible. In addition, there was space to walk in front of the swing chair. Since the swing chair moved when Brylski leaned on it, Residence Inn maintains that she was the sole proximate cause of her injuries.

Residence Inn also submits a photograph purportedly depicting Brylski standing next to the

swing chair. Finally, Residence Inn relies on an incident report apparently prepared by its security personnel. It states that Brylski was found on the floor receiving medical attention. Brylski is reported to have stated that she tripped on the black bar while trying to look out the window.

Residence Inn contends that summary judgment is warranted under this evidence because the allegedly hazardous condition was readily observable or open and obvious (*see Casamassa v. Waldbaum's Inc.*, 276 AD2d 659 [2nd Dept 2000]). There is nothing about the swing chair that was inherently dangerous. It was plainly visible for all to see, including Brylski. There is no evidence of any prior complaints regarding the condition of the swing chair. Residence Inn maintains that it should not incur a duty and be subject to liability merely for having a large swing chair in its hotel lobby.

The plaintiffs contend that this cross-motion should be denied as premature for the same reasons as the main motion. With respect to the surveillance video, the plaintiffs do not dispute its authenticity, but claim that it shows that Brylski did not swing the chair at any point while standing next to it prior to her accident. The plaintiffs do admit that the video shows Brylski approaching the swing chair, touching it, and turning and moving towards the window behind the chair, with the chair jerking and Brylski falling to the ground immediately thereafter. The plaintiffs claim that 10 seconds elapsed between the moment that Brylski approached the swing chair and her accident. They note that the legs of the swing chair extend beyond the boundaries of the chair itself. Without obtaining these specific dimensions, as well as those of the space available to circumvent these legs, obtainable via discovery from Residence Inn, the plaintiffs cannot adequately raise triable issues of fact that the swing chair's placement at that location constituted a hazard condition. If the plaintiffs were able to make that showing, issues of prior notice would be irrelevant.

A landlord does not have a duty to warn a plaintiff of a condition on its premises that is readily observable with normal use of one's senses, as long as the condition is not inherently dangerous (*see Melendez v. City of New York*, 76 AD3d [1st Dept 2010]). Whether a condition is open and obvious is generally a question of fact for a jury to determine (*see Tagle v. Jakob*, 97 NY2d 165[Ct App 2001]). However, even if the swing chair qualified as an open and obvious hazard, that would only free Residence Inn from a duty to warn about its dangers, not from its greater duty to maintain the premises in a reasonably safe condition (*see Westbrook v. WR Activities-Cabrera Markets*, 5 AD3d 69 [1st Dept 2004]). Here, the defendants' argument that the swing chair presented an open and obvious condition that absolves all defendants of liability is unavailing.

Having viewed the surveillance video, this Court is of the opinion that Brylski did swing the chair for a bit prior to her fall. However, both the video and the photograph submitted by Residence Inn show the swing chair being supported by what appear to be two tubular black legs on the floor in a "U" or "C" shape. While Brylski does approach and touch the swing chair, causing it to swivel, she does not sit in it. Instead, she appears to move to her left, stepping over one of the legs with her left foot, but tripping over the leg with her right foot. The Court notes that the chair's previously obscured left leg (as one faces the chair) swings into view upon Brylski's fall as the chair structure moves upon contact.

The Court cannot say, as a matter of law, that the video conclusively excludes the possibility that Brylski tripped on one of the swing chair legs in her attempt to reach the window. A jury could reasonably conclude that this was the "black bar" which Brylski purportedly identifies in Residence Inn's own incident report as the cause of her trip and fall. While Residence Inn insists that Brylski stated that she tripped on the "black chair" (*see* Shapiro Aff. In Support, ¶ 12), the incident report has her stating that she tripped on the "black bar." Since Brylski died prior to testifying as to how exactly she fell, and there appear to have been no eyewitnesses to the accident, the video appears to be the best and only version of how the accident occurred.

This scenario would call into question the appropriateness of placing the swing chair at that location (*see Johnson-Glover v. Fu Jun Hao, Inc.,* 138 AD3d 499 [1st Dept 2016]). Although the pulley bag that caused the plaintiff in *Johnson-Glover* to trip was an "open and obvious" condition, the Court held that the defendant failed to demonstrate that it fulfilled its broad obligation to maintain the store in a reasonably safe condition. An issue of fact remained as to whether the placement of the pulley bag, with its protruding metal stand, was an inherently dangerous condition that presented a tripping hazard. In *Jackson v. Paramount Decorators, Inc.*, 132 AD3d 583 [1st Dept 2015], the defendant store was denied summary judgment where it failed to demonstrate that certain stools that it displayed leaning against aisle shelves with their feet protruding into the aisle did not create an inherently dangerous condition, even though the stools' positioning was open and obvious.

The Court cannot determine from the evidence presented whether the swing chair's leg obstructed a pedestrian pathway. Without more details, including the dimensions of the swing chair and the surrounding space, the Court cannot conclude, as a matter of law, that the placement of the swing chair in that location did not create a tripping hazard (*see Shermazanova v. Amerihealth Medical, P.C.*,

173 AD3d 796 [2nd Dept 2019], *Elfassi v. Hollister Co.*, 167 AD3d 569 [2nd Dept 2018], and *Clark v. AMF Bowling Centers, Inc.*, 83 AD3d 761 [2nd Dept 2011]). Since Residence Inn essentially relied only on the "open and obvious" grounds for dismissal, questions of fact remain regarding whether Residence Inn maintained its hotel lobby in a reasonably safe condition, specifically, free of tripping hazards.

For these reasons, the cross-motion is denied.

Accordingly, it is hereby

ORDERED that the main motion is granted and defendants Simone Development Corporation, 1776 Eastchester Operating LLC, Hutch Realty Partners LLC, and Hutch Management LLC have summary judgment dismissing the plaintiffs' complaint and all cross-claims asserted against them; and it is further

ORDERED that the cross-motion is denied; and it is further

ORDERED that the Clerk of the Court make all entries necessary to effectuate the terms of this Order, including entry of judgment(s) of dismissal.

The foregoing constitutes the Decision/Order of this Court.

DATED: January 17, 2025
Bronx, New York

HON. LAURA G. DOUGLAS
J.S.C.