Sachar v AMC Entertainment Inc.
2013 NY Slip Op 33393(U)
December 16, 2013
Supreme Court, New York County
Docket Number: 106847/2010
Judge: Shlomo S. Hagler
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[* 1] SCANNED ON 1/2/2014

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

PRESENT: Hon. Shlomo S. Hagler *Justice* PART: 17

FILED
DEC 26 2013
COUNTY CLERK'S OFFICE
NEW YORK

RANDI SACHAR,

Plaintiff,

-against-

INDEX NO.: 106847/2010

MOTION SEQ. NO.: 004

AMC ENTERTAINMENT INC., s/h/a LOEWS THEATRE; COLUMBIA PICTURES INDUSTRIES, INC., s/h/a COLUMBIA PICTURES; SONY PICTURES ENTERTAINMENT, INC.; REGAL CINEMAS, INC., s/h/a REGAL ENTERTAINMENT GROUP; JOHN DOE "THEATER MANAGER"; and JOHN DOE "PUSHER/S",

Defendants.

DECISION and ORDER

Motion by Defendant Regal Cinemas, Inc., s/h/a Regal Entertainment Group ("Regal"), pursuant to CPLR 3212, for summary judgment dismissing the complaint, and all cross-claims as against it.

	Papers Numbered
Defendant Regal's Notice of Motion for Summary Judgment Dismissing the Complaint and All Cross-Claims Against It	1
Affirmation of Defendant Regal's Counsel in Support of Motion with Exhibits A through G	2
Defendants Columbia & Sony's Cross-Motion for Summary Judgment	3
Affirmation of Defendants Columbia & Sony's Counsel in Support of Cross-Motion with Exhibits A through D	4
Affirmation of Defendants Columbia & Sony's Counsel in Partial Support and Partial Opposition to Defendant Regal's Motion	5
Affirmation of Defendant Regal's Counsel in Partial Opposition to Defendants Columbia & Sony's Cross-Motion with Exhibits A & B	6
Affirmation of Plaintiff's Counsel in Opposition to Defendant Regal's Motion and to Defendants Columbia & Sony's Cross-Motion	7
Reply Affirmation of Defendant Regal's Counsel in Reply to Plaintiff's Opposition to Regal's Motion	8
Reply Affirmation of Defendant Columbia & Sony's Counsel to Regal's Partial Opposition to the Cross-Motion	9
Reply Affirmation of Defendant Columbia & Sony's Counsel to Plaintiff's Opposition to the Cross-Motion	10
Transcript of Oral Argument of April 29, 2013	11

Cross-Motion: ☐ **No** ☑ **Yes** **Number of Cross-Motions:** 1

Cross-Motion by Defendants Columbia Pictures Industries, Inc., s/h/a Columbia Pictures ("Columbia") and Sony Pictures Entertainment Inc. ("Sony"), pursuant to CPLR 3212, for summary judgment dismissing the complaint, and all cross-claims as against it.

Upon the foregoing papers, it is hereby ordered that the Motion and the Cross-Motion are both granted as set forth in the attached separate written Decision and Order.

Dated: December 16, 2013
New York, New York

Hon. Shlomo S. Hagler, J.S.C.

Check one:	☐ **Final Disposition**		☐ **Non-Final Disposition**	
Motion is:	☐ Granted	☐ Denied	☐ Granted in Part	☐ Other
Cross -Motion is:	☐ Granted	☐ Denied	☐ Granted in Part	☐ Other

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 17

----------X

RANDI SACHAR,

Plaintiff,

-against-

AMC ENTERTAINMENT INC., s/h/a LOEWS THEATRES; COLUMBIA PICTURES INDUSTRIES, INC., s/h/a COLUMBIA PICTURES; SONY PICTURES ENTERTAINMENT, INC.; REGAL CINEMAS, INC., s/h/a REGAL ENTERTAINMENT GROUP; JOHN DOE "THEATER MANAGER"; JOHN DOE "PUSHER/S",

Defendants.

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Index No. 106847/10

Motion Seq. No.: 004
with Cross-Motion

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NEW YORK

DECISION & ORDER

Shlomo S. Hagler, J.:

In this personal injury action, defendant Regal Cinemas, Inc., s/h/a Regal Entertainment Group ("Regal") moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint, and all cross-claims as against it. Defendants Columbia Pictures Industries, Inc., s/h/a Columbia Pictures ("Columbia") and Sony Pictures Entertainment Inc. ("Sony") (together, "Columbia and Sony") cross-move, pursuant to CPLR 3212, for the same relief. Plaintiff Randi Sachar ("plaintiff" or "Sachar") opposes the motion and cross-motion. Both the motion and cross-motion are consolidated herein for disposition.

Background

Plaintiff brings this action to recover for injuries she sustained in a fall down a staircase on premises owned by Regal. Plaintiff's accident occurred on March 27, 2008, when plaintiff attended a screening of a movie called "21," produced by Columbia and Sony, and shown at Regal's theatre.

The movie was being shown for free to persons receiving passes from Columbia and Sony representatives outside the theatre. Plaintiff was accompanied by a group of teenage boys, and was one of perhaps several hundred people who lined up to see the movie. According to deposition testimony, plaintiff and her group, along with many others, were directed by a Regal employee, upon entering the theatre, to go upstairs to the balcony level, after it was determined that the first floor seating area was already filled. Plaintiff and numerous other patrons walked up three levels of stairs to the balcony floor. Upon reaching that point, plaintiff and the persons around her were directed to go back down to the first floor, as all of the seats in the balcony had been taken, and there might be seats on the first floor after all.

Plaintiff walked down the stairway holding on to the banister. She traveled down the first two levels without incident but, as she walked down the last flight, plaintiff recalls that she felt a "thud behind me like a pushing thud" (Sacher EBT transcript at 68), causing her to tumble at least eight steps down to the landing. Plaintiff allegedly sustained injuries as a result of the fall.

Plaintiff brought this action against Regal as the owner of the theatre, and against Columbia and Sony, which presented the movie and promoted the free passes. Regal is charged with ineffectual crowd control. Columbia and Sony are charged with the same, as well issuing many more tickets for the screening than there were seats to be filled. Such overbooking is, apparently, common in the industry, to ensure a full house.

Discussion

It is often noted that summary judgment is a "drastic remedy." *Vega v Restani Const. Corp.*, 18 NY3d 499, 503 (2012). "[T]he 'proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to

eliminate any material issues of fact from the case.'" *Meridian Mgt. Corp. v Cristi Cleaning Serv. Corp.*, 70 AD3d 508, 510 (1st Dept 2010), quoting *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 (1985). Once the proponent of the motion meets this requirement, "the burden then shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of a material issue of fact that precludes summary judgment and requires a trial." *Ostrov v Rozbruch*, 91 AD3d 147, 152 (1st Dept 2012), citing *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 (1986). If there is any doubt as to the existence of a triable issue of fact, summary judgment must be denied. *Rotuba Extruders v Ceppos*, 46 NY2d 223 (1978); *Grossman v Amalgamated Hous. Corp.*, 298 AD2d 224 (1st Dept 2002).

"To prove a prima facie case of negligence, a plaintiff must demonstrate the existence of a duty of care owed to the plaintiff, a breach of that duty, and that the breach of such duty was a proximate cause of his or her injuries." *Miglino v Bally Total Fitness of Greater N.Y., Inc.*, 92 AD3d 148, 159 (2d Dept 2011), *affd* 20 NY3d 342 (2013); *see also Kenney v City of New York*, 30 AD3d 261, 262 (1st Dept 2006), citing *Palsgraf v Long Is. R.R. Co.*, 248 NY 339 (1928).

Case law in this State has set forth a standard for the duty of care owed to a plaintiff where the condition complained of is insufficient crowd control. In such instances, the plaintiff must show that "'[s]he was unable to find a place of safety or that [her] free movement was restricted due to the alleged overcrowd[ing] conditions.'" *Greenberg v Sterling Doubleday Enters.*, 240 AD2d 702, 703 (2d Dept 1997), quoting *Palmieri v Ringling Bros. & Barnum & Bailey Combined Shows*, 237 AD2d 589, 589 (2d Dept 1997); *see also Benanti v Port Auth. of N.Y. & N.J.*, 176 AD2d 549 (1st Dept 1991).

Plaintiff, at her deposition, describes the conditions right before she was pushed as follows. After turning to descend the stairs back to the first floor, "there was a stampede of people rushing out from behind me . . . ." Sacher EBT transcript at 68. Plaintiff told the boys in her group to "walk quietly" down the steps, while she could hear a "commotion" behind her. *Id.* "[L]ots and lots of people" were around her. *Id.* at 77. Plaintiff, however, "kept [her] pace steady," as she had been "trained" to keep the boys walking in an orderly manner. *Id.* at 79. Plaintiff did not hear anyone tell the crowd to hurry.

Plaintiff descended the steps with her group all together around her. One person in the group, a boy named Alex, was to plaintiff's left, "[m]aybe one or two steps down." *Id.* at 96. She recalls that the people directly in front of her were "[her] boys" (*id.*), and that "some were in front of me, some to the left of me, some were below me." *Id.*

Plaintiff does not recall hitting any person in front of her as she tumbled down the stairs, but remembers "feeling that I was hitting steps" as she fell. *Id.* She claims to have done "[t]wo or three" somersaults, and that it all happened "in slow motion." *Id.* at 101.

In *Palmieri* (237 AD2d 589), a plaintiff was pushed from behind by an unidentified person as she descended a crowded flight of stairs. She recalled that there were "three or four steps separating her from her daughter," descending in front of the plaintiff when the plaintiff fell. *Id.* at 590. Her daughter testified that people were "'bumping into' her" as she descended, but that no one pushed her or caused her to lose her balance. *Id.* In *Palmieri*, the Court found no evidence that the plaintiff's "freedom of movement was unduly restricted, or that she was unable to find a place of safety." *Id.*

Likewise, in *Benanti* (176 AD2d 549), a plaintiff was jostled from behind and fell as he merged with a crowd of commuters disembarking from a bus. The plaintiff indicated that, while plaintiff was surrounded by people, he had a "space of several feet to the next person in front of him ... ." *Id.* at 549. The plaintiff in *Benanti* was unable to show that, under the circumstances, "he was unable to find a place of safety or that his free movement was restricted due to the alleged overcrowded conditions." *Id.*

In *Hsieh v New York City Tr. Auth.* (216 AD2d 531 [2d Dept 1995]), a plaintiff was injured when he was riding down an escalator, when someone in front of the plaintiff fell, and other passengers, as well as plaintiff, fell "one after another." *Id.* at 531. While the evidence showed that "there were only four or five" people in front of the plaintiff on the escalator, and "approximately one hundred" more on, or waiting to get on, the escalator, there was still no evidence that "plaintiff's freedom of movement was unduly restricted by the crowd or that the crowd was [so] unruly and unmanageable" as to allow for liability against the defendant. *Id.*

In the present case, while there is evidence of commotion and noise behind plaintiff, her own testimony indicates that she was descending the steps at her own chosen pace, and was not hemmed in by an unruly crowd. Under the circumstances, it cannot be said that plaintiff "was unable to find a place of safety or that [her] free movement was restricted due to the alleged overcrowded conditions." *Benanti*, 176 AD2d at 549. Plaintiff's reference to the overall excitement and anxiety of the crowd waiting to enter the theatre does not amount to evidence that plaintiff was endangered by the crowd later, upon having entered the premises.

As a result of the foregoing, both Regal's motion for summary dismissal, and Columbia and Sony's cross-motion for the same relief must be granted. Columbia and Sony should be dismissed

from the case on the additional ground that there is no evidence that they had anything to do with crowd control within the premises. Columbia and Sony appear to have had security personnel outside the theatre, not inside.

Conclusion

Accordingly, it is hereby

ORDERED that the motion brought by Regal Cinemas, Inc., s/h/a Regal Entertainment Group, for summary judgment dismissing the complaint and all cross-claims as against it is granted, and the complaint is dismissed as to this defendant; and it is further

ORDERED that the cross-motion brought by defendants Columbia Pictures Industries, Inc., s/h/a Columbia Pictures, and Sony Pictures Entertainment Inc. for summary judgment dismissing the complaint and all cross-claims as against them is granted, and the complaint is dismissed as to these defendants.

ORDERED that the Clerk is directed to enter judgment accordingly.

The foregoing constitutes the decision and order of this Court.

FILED
DEC 26 2013
COUNTY CLERK'S OFFICE
NEW YORK

ENTER:

Dated: December 16, 2013
New York, New York

Hon. Shlomo S. Hagler, J.S.C.

Shlomo Hagler
J.S.C.