

Turner v Manhattan Ctr. Studios, Inc.

2013 NY Slip Op 33490(U)

December 26, 2013

Supreme Court, New York County

Docket Number: 104184/2009

Judge: Shlomo S. Hagler

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

PRESENT: Hon. Shlomo S. Hagler
Justice

PART: 17

GLENN TURNER,

Plaintiff,

-against-

**MANHATTAN CENTER STUDIOS, INC.,
MANHATTAN CENTER PRODUCTIONS, INC.
and HAMMERSTEIN BALLROOM,**

Defendants.

INDEX NO.: 104184 / 2009

MOTION SEQ. NO.: 003

DECISION and ORDER

Motion by plaintiff to to reargue Court's decision and order in motion sequence no. 002, dated November 9, 2012.

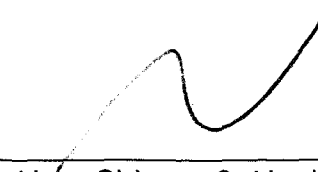
	<u>Papers Numbered</u>
Notice of Motion with Affirmation of Plaintiff's Counsel & Exhibits A through D	<u>1, 2</u>
Affirmation of Defendants' Counsel in Opposition to Plaintiff's Motion	<u>3</u>
Reply Affirmation of Plaintiff's Counsel	<u>4</u>
Letter from Defendants' Counsel dated June 11, 2013	<u>5</u>
Letter from Plaintiff's Counsel in Response to Defendants' Counsel's June 11, 2013 Letter	<u>6</u>

Cross-Motion: No Yes

Upon the foregoing papers, it is hereby ordered that this Motion is denied as set forth in the attached separate written Decision and Order.

FILED

Dated: December 26, 2013 **JAN 06 2014**
New York, New York
COUNTY CLERK'S OFFICE
NEW YORK



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

Check one: **Final Disposition** **Non-Final Disposition**

Motion is: **Granted** **Denied** **Granted in Part** **Other**

Check if Appropriate: **SETTLE ORDER** **SUBMIT ORDER**
 DO NOT POST **REFERENCE**

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

-----X

GLENN TURNER,

Plaintiff,

Index No. 104184/09

-against-

Motion Sequence No. 003

MANHATTAN CENTER STUDIOS, INC.,
MANHATTAN CENTER PRODUCTIONS, INC.
and HAMMERSTEIN BALLROOM,

Defendants.

FILED

JAN 06 2014

-----X

MANHATTAN CENTER STUDIOS, INC., d/b/a
HAMMERSTEIN BALLROOM and MANHATTAN
CENTER PRODUCTIONS, INC.,

COUNTY CLERK'S OFFICE
NEW YORK

Third-Party Plaintiffs,

Index No. 590537/09

-against-

EMPIRE ENTERTAINMENT, INC., and
CREATIVE EDGE CATERERS., INC.,

DECISION/ORDER

Third-Party Defendants.

-----X

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

In this slip and fall action, plaintiff Glenn Turner ("plaintiff" or "Turner") essentially moves to reargue this Court's prior order dated November 9, 2012 ("Prior Order"), which granted dismissal of plaintiff's complaint.

This Court will not reiterate all the facts set forth in the Prior Order, except to highlight some facts which were not

explicitly mentioned or is relevant to this discussion.

Defendant Manhattan Center Studios, Inc. ("MCS"), owns an entertainment venue at 311 West 34th Street, New York, New York ("Subject Premises"). The Hammerstein Ballroom ("Ballroom") is located within the Subject Premises and is capable of hosting large events. On November 10, 2008, the Ballroom was rented by a non-party bank for an event ("Event").

Lorraine Robinson ("Robinson") was the maintenance supervisor working for MCS on the date of the accident, November 10, 2008. Her duties included assisting clients and preparing the bathrooms in anticipation of events, including the Event on the date of the accident. (See Deposition of Robinson at p. 8-9, attached as Exhibit "F" to the moving papers). Robinson's shift began at 3pm and the bathrooms are checked at that time. (*Id.* at 48, 50). Robinson testified that her maintenance employees had a regular schedule and they checked the bathroom every twenty (20) to twenty-five (25) minutes. (*Id.* at 29). On the date of the accident, Robinson averred that she did not receive any complaints about the restrooms or that the hand dryers were not working. (*Id.* at 28, 46). Moreover, Robinson testified that she did not receive complaints about leaks from the men's restroom sinks or toilets and there was no issue with water leaking therefrom onto the stairs outside the restroom. (*Id.* at 48-49). Robinson neither saw nor was advised that there was water on the

stairs. (*Id.*) Robinson stated that she arrived on the scene shortly after the incident, but that plaintiff was already gone. (*Id.* at 19). However, Robinson did not see water on the stairs at that time and did not enter the men's restroom to view its condition. (*Id.* at 49).

Motion for Reargument

To succeed on a motion for reargument, plaintiff must establish that the court "overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law." (*Foley v Roche*, 68 AD2d 558, 567 [1st Dept 1979]).

Plaintiff argues that defendants failed to submit evidence of (1) any specific inspections or cleaning procedure and (2) there was constructive notice that water was being tracked from the bathroom to the stairs outside. As stated above, defendants submitted uncontroverted evidence of MCS's regular practice of checking the bathrooms during very short intervals of twenty (20) to twenty-five (25) minutes. Robinson testified that she neither saw nor had notice of any water on the stairs.

Significantly, plaintiff also did not observe any water on the steps when he entered the men's restroom either the first or the second time. (See Deposition of Plaintiff at p. 67, 69, 84, attached as Exhibit "E" to the moving papers). (*Id.* at 48-49).


Even if plaintiff is alleging that water might have been tracked out of the men's restroom by others between the time he entered for the second time (and saw no water on the steps) and the time he left shortly thereafter, it also would be insufficient time for defendants to discover and remedy the condition. In addition, it is merely speculation on the part of plaintiff that the water on the steps was water that was tracked from the men's restroom. (*Papoters v 40-01 N. Blvd. Corp.*, 11 AD3D 368 [1st Dept 2004]).

Thus, plaintiff failed to meet the above standard in moving to reargue this Court's Prior Order dated November 9, 2012.

Conclusion

Accordingly, this Court denies the motion for reargument. The foregoing constitutes the decision and order of the Court. Courtesy copies of this decision and order have been sent to counsel for the parties.

Dated: December 26, 2013
New York, New York



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

FILED

JAN 06 2014

COUNTY CLERK'S OFFICE
NEW YORK