SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAVID BENJAMIN COHEN PART 58
Justice

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BARBARA QUIGLEY,

Plaintiff,

- v -

NEDERLANDER ORGANIZATION, INC., CONSOLIDATED EDISON OF NEW YORK, INC., MECC CONTRACTING INC.

Defendant.

INDEX NO. 154474/2014

MOTION DATE 4/20/2016

MOTION SEQ. NO. 003

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121

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

Upon the foregoing documents, it is

Plaintiff was going to see the Broadway show Motown: The Musical at defendant Nederlander's Lunt-Fontanne Theatre located at 205 W 46th St, New York, NY 10036. The theatre is located on the north side of 46th Street between Broadway and Eighth Avenue. As she approached the theatre, there was a line to enter and she was allegedly told by a theatre employee to go the back of the line. Plaintiff and her group of friends proceeded west down the north side of 46th street. Plaintiff alleges that because the crowd was large and the sidewalk was full of people she was did not have a clear direct path to the end of the line. In an attempt to get to the end of the line plaintiff and her group stepped off the curb several times to avoid people in her attempt to proceed. Plaintiff was following directly behind her friend and, at one point, plaintiff

stepped off the sidewalk onto the street where she stepped on a metal plate that had been placed for construction. Plaintiff alleges that she tripped on the plate and was injured. Plaintiff alleges two causes of action against defendant Nederlander: (1) negligence due to improper control over the crowd, and (2) negligent supervision of the usher who did not control the crowd and did not warn plaintiff of the dangerous condition of the large crowd.

Summary judgment is a drastic remedy that should not be granted where there exists a triable issue of fact (*Integrated Logistics Consultants v. Fidata Corp.*, 131 AD2d 338 [1st Dept 1987]; *Ratner v. Elovitz*, 198 AD2d 184 [1st Dept 1993]). On a summary judgment motion, the court must view all evidence in a light most favorable to the non-moving party (*Rodriguez v. Parkchester South Condominium Inc.*, 178 AD2d 231 [1st Dept 1991]). The moving party must show that as a matter of law it is entitled to judgment [*Alvarez v. Prospect Hosp.*, 68 NY2d 320 324 [1986]). The 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 (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). After the moving party has demonstrated its *prima facie* entitlement to summary judgment, the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring a trial (*Zuckerman v. City of New York*, 49 NY2d 557 [1980]).

As a threshold issue, this Court could not find and neither counsel could provide the Court with any State or City statute or regulation relating to what a store/theatre or similar entity's obligations are with respect to controlling an anticipated crowd. This is distinct from a landowner's duty of care once inside the premises, or if the area is subject to special use (*Sachar v Columbia Pictures Indus., Inc.*, 129 AD3d 420 [1st Dept 2015][theatre company owed a duty of care to provide appropriate crowd control for people on their property for a screening]). Thus,

the question here is what are the obligations of such an entity while people are waiting on a line to get into the premises but not on the landowner's property.

When a plaintiff's negligence claim is premised on the theory that her injuries were caused by overcrowding and inadequate crowd control, the plaintiff must establish that "[she] was unable to find a place of safety or that plaintiff's free movement was restricted due to the alleged overcrowding (*Alexopoulos v Metro. Transp. Auth.*, 41 AD3d 171 [1st Dept 2007]; *Greenberg v Sterling Doubleday Enterprises, L.P.*, 240 AD2d 702 [2d Dept 1997]; *Benanti v Port Auth. of New York and New Jersey*, 176 AD2d 549 [1st Dept 1991]). In *Alexopoulos v Metro. Transp. Auth.*, summary judgment was granted to defendant because "[t]he uncontradicted testimony of a witness indicated that the accident was caused solely by decedent's own conduct in attempting to maneuver his way through a large but orderly crowd of subway riders who were waiting to get onto the exit escalator when he miscalculated the distance to the end of the platform and fell onto the tracks" (*id.* at 172).

Here, it is alleged that plaintiff and her large group decided to walk to the back of the line into a large crowd. The Court notes that there is no indication that the entire width of the sidewalk was full of patrons for the theatre as opposed to a mix of patrons and other pedestrians or even mostly other pedestrians. Plaintiff did not have to go to the back of the line and could have waited for the crowd to go into the theatre. Similarly, plaintiff and her group could have waited for the sidewalk to clear or could have crossed the street to avoid the crowd. Instead, plaintiff walked to her destination through a crowd of people that she willingly joined and added to with her group of seventeen people. Plaintiff did not state that she was forced on to the street or was pushed by the crowd. Rather, plaintiff admits that she and her group navigated through the heavy crowd toward the back of the line and that she was following her friend when she

stepped off the curb. Thus, as plaintiff voluntarily followed her friend on to the street and was not forced there, she cannot establish that she was unable to find a place of safety or that her free movement was restricted due to the alleged overcrowding.

Additionally, plaintiff's injury did not occur as a result of something done by defendant or the crowd. Rather, her injury occurred down the block, on the street, on a metal plate placed by some other entity over which defendant had no control. In a crowd control case, when an injury is the result of an independent act that is beyond the control of security, summary judgment is appropriate (*Maheshwari v City of New York*, 307 AD2d 797, 799 [1st Dept 2003], *affd,* 2 NY3d 288 [2004] ["[E]ven assuming a lapse in the security afforded in the parking lot, plaintiff's injuries are the result of the independent, intervening [in this case criminal] act ... that did not flow from any lack of security.... Thus, the complaint should be dismissed against all the remaining defendants, including [the non-moving and non-appealing City defendants] (*Florman v. City of New York, supra* at 127, 741 N.Y.S.2d 233)]").

Finally, plaintiff's action for negligent supervision is premised on defendant's failures related to the crowd. As this Court has noted that plaintiff cannot maintain a cause of action for overcrowding and inadequate crowd control, the negligent supervision cause of action must fail as well. It is therefore

ORDERED, that defendant Nederlander is granted summary judgment. The remaining parties shall appear for a compliance conference on the previously scheduled date of January 17, 2018 in the related matter, index number 155301/2016.

This constitutes the decision and order of the Court.

9/19/2017
DATE

DAVID BENJAMIN COHEN, J.S.C.

CHECK ONE: [ ] CASE DISPOSED [X] NON-FINAL DISPOSITION
[X] GRANTED [ ] DENIED [ ] GRANTED IN PART [ ] OTHER

APPLICATION:
CHECK IF APPROPRIATE:

☐ SETTLE ORDER
☐ DO NOT POST

☐ SUBMIT ORDER
☐ FIDUCIARY APPOINTMENT

☐ REFERENCE