

Selkin v New York Convention Ctr. Operating Corp.
2018 NY Slip Op 33105(U)
November 21, 2018
Supreme Court, New York County
Docket Number: 155635/2016
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

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SUSAN SIEGEL SELKIN,

Index No. 155635/2016

Plaintiff

- against -

DECISION AND ORDER

NEW YORK CONVENTION CENTER OPERATING
CORP. and GREATER NEW YORK DENTAL
MEETING,

Defendants

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LUCY BILLINGS, J.S.C.:

Plaintiff sues defendants for personal injuries she sustained December 1, 2015, when she slipped and fell as she was descending steps in the food court at the Javits Convention Center, 655 West 34th Street, New York County, where she was attending defendant Greater New York Dental Meeting's annual dental convention. Greater New York Dental Meeting leased space in the Convention Center from co-defendant New York Convention Center Operating Corp. through a Licensing Agreement.

I. GREATER NEW YORK DENTAL MEETING'S MOTION FOR SUMMARY JUDGMENT

Greater New York Dental Meeting moves for summary judgment dismissing the complaint and New York Convention Center's cross-claims against Greater New York Dental Meeting. C.P.L.R. § 3212(b). Greater New York Dental Meeting's executive director, Dr. Robert Edwab, at his deposition testified that he signed the Licensing Agreement between the two defendants and authenticated it. Greater New York Dental Meeting establishes, without

rebuttal, that Greater New York Dental Meeting did not create any hazardous condition on the food court steps and, based on the Licensing Agreement and New York Convention Center public safety supervisor Philip DiSalvio's admission at his deposition, did not lease the space encompassing the food court steps or maintain that space. Therefore the court grants Greater New York Dental Meeting's motion insofar as it seeks summary judgment dismissing the complaint and New York Convention Center's cross-claims for non-contractual indemnification and contribution against Greater New York Dental Meeting. C.P.L.R. § 3212(b) and (e); Vivas v. VNO Bruckner Plaza LLC, 113 A.D.3d 401, 402 (1st Dep't 2014); Aiello v. Burns Intl. Sec. Servs. Corp., 110 A.D.3d 234, 247-48 (1st Dep't 2013); Casey v. New York El. & Elec. Corp., 107 A.D.3d 597, 599 (1st Dep't 2013); Vargas v. New York City Tr. Auth., 60 A.D.3d 438, 441 (1st Dep't 2009).

II. NEW YORK CONVENTION CENTER'S CROSS-MOTION FOR SUMMARY JUDGMENT

New York Convention Center cross-moves for summary judgment dismissing the complaint and Greater New York Dental Meeting's cross-claims against New York Convention Center. It also seeks summary judgment on its cross-claims against Greater New York Dental Meeting for contractual indemnification and for breach of a contract to procure insurance as provided in the Licensing Agreement. C.P.L.R. § 3212(b).

A. Plaintiff's Claims

Plaintiff discontinues any claim that defendants violated the New York City Building Code. Plaintiff claims only that the

design, construction, and maintenance of the three food court steps created an optical illusion that they were only two steps, so that the second of the three steps was unexpected, causing her to miss a step as she descended. Haibi v. 790 Riverside Dr. Owners, Inc., 156 A.D.3d 144, 147 (1st Dep't 2017); Buonchristiano v. Fordham Univ., 146 A.D.3d 711, 712 (1st Dep't 2017); Saretsky v. 85 Kenmare Realty Corp., 85 A.D.3d 89, 92-93 (1st Dep't 2011). Specifically, she alleges that the platform of the first step appeared to extend all the way to the edge of the platform of the second step, so that the apparent edge of the first step was actually the edge of the second step. As explained by her engineer:

The metal strip at the end of the upper platform . . . blends completely in with the white tiles, which causes the long silver strip at the end of the second step to stand out and make it appear to be the end of the upper platform, not the edge of one step down.

Due to this design, the edge of what is the second step appears to be the edge of the top step. As a result, when approaching and then descending the Subject Staircase, . . . there appears to be only two steps, when, in fact, there are three steps.

Aff. of Benjamin S. Goldstein Ex. C ¶¶ 9-10. The engineer also recommends how this optical illusion would be easily remedied by changing the metal strips or erecting a warning sign, without redesigning or reconstructing the steps.

Although no evidence demonstrates that New York Convention Center Operating Corp. owned the Convention Center, New York Convention Center Operating Corp. identified itself as the operator of the center in the Licensing Agreement. The operator

design, construction, and maintenance of the three food court steps created an optical illusion that they were only two steps, so that the second of the three steps was unexpected, causing her to miss a step as she descended. Haibi v. 790 Riverside Dr. Owners, Inc., 156 A.D.3d 144, 147 (1st Dep't 2017); Buonchristiano v. Fordham Univ., 146 A.D.3d 711, 712 (1st Dep't 2017); Saretsky v. 85 Kenmare Realty Corp., 85 A.D.3d 89, 92-93 (1st Dep't 2011). Specifically, she alleges that the platform of the first step appeared to extend all the way to the edge of the platform of the second step, so that the apparent edge of the first step was actually the edge of the second step. As explained by her engineer:

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or manager of the premises owed a duty of care to keep the premises reasonably safe. Branch v. County of Sullivan, 25 N.Y.3d 1079, 1082 (2015); Jackson v. Board of Educ. of City of N.Y., 30 A.D.3d 57, 60 (1st Dep't 2006). Thus New York Convention Center's control over the Convention Center as the Center's operator furnishes a basis for liability for a hazardous condition on the premises. Adriana G. v. Kipp Wash. Hgts. Middle School, 165 A.D.3d 469, 469-70 (1st Dep't 2018).

New York Convention Center does not rebut the described optical illusion, nor disclaim control over the steps. Instead, New York Convention Center insists that any optical illusion created by the steps could not have caused plaintiff to miss a step, because at her deposition she could not recall whether she was even looking at the steps before she fell. See Abraido v. 2001 Marcus Ave. LLC, 126 A.D.3d 571, 572 (1st Dep't 2015); Franchini v. American Legion Post, 107 A.D.3d 432, 432 (1st Dep't 2013). Yet New York Convention Center acknowledges her testimony that she was aware when she reached the top of the steps, expressing confidence that she did in fact observe the steps: "I know I saw them." Aff. of Heidi M. Weiss Ex. C, at 43. See Buonchristiano v. Fordham Univ., 146 A.D.3d at 712. Thus, even if at other points in her testimony plaintiff could not recall or was unsure whether she was looking at the steps, this conflict in her testimony only raises a factual question precluding summary judgment.

B. Cross-Claims by New York Convention Center

Dr. Edwab admitted that Greater New York Dental meeting was required to procure insurance covering New York Convention Center as an insured, as set forth in the Licensing Agreement, Yet New York Convention Center fails to show that Greater New York Dental Meeting did not satisfy that requirement. The Licensing Agreement also establishes that, even though Greater New York Dental Meeting's leased space did not encompass the food court, since its attendees were permitted use of the entire Convention Center, which included the food court, its obligation to indemnify New York Convention Center extends to any injury in connection with its attendees' use of the Center. Yet New York Convention Center concedes that the indemnification provision is inapplicable if New York Convention Center's sole negligence caused the injury. See Great N. Ins. Co. v. Interior Constr. Corp., 7 N.Y.3d 412, 417 (2006); Hogeland v. Sibley, Lindsay & Curr Co., 42 N.Y.2d 153, 156 n.2 (1977).

New York Convention Center relies on evidence of plaintiff's negligence to establish that New York Convention Center was not solely negligent in causing her fall: the testimony that plaintiff could not recall whether she was looking at the steps and that she did not avail herself of the handrail as she took the first step down before she fell. See Parra v. Ardmere Mgt. Co., 258 A.D.2d 267, 268 (1st Dep't 1999); Armstrong v. Ogden Allied Facilities Mgt. Co., 234 A.D.2d 235, 236 (1st Dep't 1996). As set forth above, however, plaintiff's testimony raises a

factual question whether she was looking at the steps. Regarding her failure to use the handrail, New York Convention Center provides no basis to conclude that such a failure when taking one step on a set of stairs appearing to consist of only two steps and in fact consisting of only three steps amounts to negligence that caused plaintiff's injury as a matter of law. See Rountree v. Manhattan & Bronx Surface Tr. Operating Auth., 261 A.D.2d 324, 328 (1st Dep't 1999); Fijal v. American Export Isbrandtsen Lines, 127 A.D.2d 167, 171 (1st Dep't 1987); Hyman v. Queens County Bancorp., 307 A.D.2d 984, 987 (2d Dep't 2003); Kanarvogel v. Tops Appliance City, 271 A.D.2d 409, 411 (2d Dep't 2000). Since New York Convention Center has established neither that it was not negligent in designing, constructing, or maintaining the food court steps, nor that any other party was negligent, the record at this stage does not permit the court to award New York Convention Center summary judgment on the indemnification cross-claim.

III. CONCLUSION

Consequently, for the reasons explained above, the court denies defendant New York Convention Center Operating Corp.'s cross-motion for summary judgment dismissing the complaint against New York Convention Center Operating Corp. and for summary judgment on the contractual indemnification and breach of contract cross-claims against defendant Greater New York Dental Meeting. C.P.L.R. § 3212(b). Nevertheless, the court denies Greater New York Dental Meeting's motion for summary judgment

dismissing those cross-claims and converts them to a third party action. C.P.L.R. § 3212(b); Franklin-Hood v. 80th St., LLC, 138 A.D.3d 609, 609 (1st Dep't 2016); Cole v. Mraz, 77 A.D.3d 526, 527 (1st Dep't 2010); Eddine v. Federated Dept. Stores, Inc., 72 A.D.3d 487, 487 (1st Dep't 2010); Patterson v. New York City Tr. Auth., 5 A.D.3d 454, 454-55 (2d Dep't 2004). As set forth above, the court grants Greater New York Dental Meeting's motion for summary judgment dismissing the complaint and New York Convention Center's cross-claims for non-contractual indemnification and contribution against Greater New York Dental Meeting. C.P.L.R. § 3212(b) and (e). Since this disposition renders Greater New York Dental Meeting's cross-claims against New York Convention Center Operating Corp. moot, the court dismisses them as well. Eckardt v. Starr Bldg. Realty LLC, 106 A.D.3d 447, 448 (1st Dep't 2013); Abetta Boiler & Welding Serv., Inc. v. American Intl. Specialty Lines Ins. Co., 76 A.D. 412, 414 (1st Dep't 2010); Reyes v. Morton Williams Associated Supermarkets, Inc., 50 A.D.3d 496, 498 (1st Dep't 2008); Butler-Francis v. New York City Hous. Auth., 38 A.D.3d 433, 435 1st Dep't 2007).

DATED: November 21, 2018



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