

Paul v 131 W. 35th St. Tenants Corp.

2021 NY Slip Op 32359(U)

November 19, 2021

Supreme Court, New York County

Docket Number: Index No. 159507/2016

Judge: Erika M. Edwards

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ERIKA EDWARDS

PART 11

Justice

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INDEX NO. 159507/2016

DEBORAH PAUL,

MOTION DATE 09/03/2020

Plaintiff,

MOTION SEQ. NO. 003

- v -

131 W. 35TH ST. TENANTS CORP., IRIDIUM
DEVELOPMENT INC. and ASSILE REALTY COMPANY,
LLC,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, applicable law and oral argument held on September 16, 2021, the court grants in part Defendant Iridium Development, Inc.'s ("Iridium") motion in that the court grants the portion of the motion seeking leave to renew Iridium's previous motion for summary judgment dismissal of Plaintiff Deborah Paul's ("Plaintiff") complaint and all cross-claims filed against it, but upon renewal, the court continues to deny Iridium's motion.

Plaintiff brought this personal injury action against Defendants 131 W. 35th St. Tenants Corp, Iridium and Assile Realty Company, LLC (collectively, "Defendants") for injuries she allegedly sustained on July 11, 2016 when she tripped and fell over metal planks in the offices of her employer, Elfa International, Inc. ("Elfa") located at 131 W. 35th Street, New York, New York.

Iridium moved for summary judgment under motion sequence 001. In its previous decision and order, dated April 2, 2018, the court denied the motion and held in substance that

Iridium failed to meet its initial burden of demonstrating “the absence of a material issue of fact as to whether it created the dangerous condition on the premises that led to plaintiff’s alleged fall” (NYSCEF Doc. No. 66).

Iridium now moves for leave to renew its previous motion for summary judgment dismissal of Plaintiff’s complaint and all cross-claims and upon renewal, for an order granting its motion to dismiss Plaintiff’s complaint. Plaintiff and the co-defendants oppose the motion.

Pursuant to CPLR 2221(e)(2), a motion for leave to renew shall be based on new facts not offered in the prior motion that would change the court’s prior determination or it shall demonstrate that there has been a change in the law that would change the court’s prior determination (CPLR §2221[e][2]). Just like a motion to reargue, a motion to renew is not designed to provide the unsuccessful party successive opportunities to reargue issues previously decided by the court or to present new evidence or different arguments than previously raised (*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992] [internal citations and quotation marks omitted]).

To prevail on a motion for summary judgment, the movant must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient admissible evidence to demonstrate the absence of any material issues of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Jacobsen v New York City Health and Hospitals Corp.*, 22 NY3d 824, 833 [2014]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The submission of evidentiary proof must be in admissible form (*Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065, 1067-68 [1979]). The movant’s initial burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party (*Jacobsen*,

22 NY3d at 833; *William J. Jenack Estate Appraisers and Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 [2013]).

If the moving party fails to make such prima facie showing, then the court is required to deny the motion, regardless of the sufficiency of the non-movant's papers (*Winegrad v New York Univ. Med. Center*, 4 NY2d 851, 853 [1985]). However, if the moving party meets its burden, then the burden shifts to the party opposing the motion to establish by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure to do so (*Zuckerman*, 49 NY2d at 560; *Jacobsen*, 22 NY3d at 833; *Vega v Restani Construction Corp.*, 18 NY3d 499, 503 [2012]).

Summary judgment is "often termed a drastic remedy and will not be granted if there is any doubt as to the existence of a triable issue" (Siegel, NY Prac § 278 at 476 [5th ed 2011], citing *Moskowitz v Garlock*, 23 AD2d 943 [3d Dept 1965]).

Here, the court grants the portion of Iridium's motion seeking renewal of its summary judgment motion based upon the new facts demonstrated through depositions and the discovery process which occurred after the court's decision. However, upon renewal, the court continues to deny Iridium's motion.

The court finds that Iridium failed to demonstrate its entitlement to judgment in its favor as a matter of law and material issues of fact remain to be determined by a trier of fact. Such issues, include, but are not necessarily limited to, whether Iridium's employees caused or created the allegedly dangerous condition, whether they launched an instrument of harm, whether Iridium was asked to remove the metal planks prior to Plaintiff's alleged accident, whether an Iridium employee or another individual placed the planks in the location of Plaintiff's accident and if it was an Iridium employee, whether it was reasonable for Iridium not to move or remove

the metal planks from said location at the time they left the project site or whether it created a dangerous condition.

Therefore, the court denies Iridium’s renewed motion for summary judgment.


The court considered the remaining arguments not expressly discussed herein and denies all additional requests for relief not expressly granted.

As such, it is hereby

ORDERED that the court grants in part Defendant Iridium Development, Inc.’s motion to renew, to the extent that the court grants the portion of the motion seeking leave to renew its previous motion for summary judgment dismissal of Plaintiff Deborah Paul’s complaint and all cross-claims filed against it, but upon renewal, the court denies Iridium’s motion for summary judgment.

This constitutes the decision and order of the court.

11/19/2021
DATE


ERIKA EDWARDS, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
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					REFERENCE