SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. WILLIAM PERRY** **PART** **23**

Justice

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JASON IGLESIA, ANA IGLESIA

Plaintiff,

- v -

ALLIED AVIATION SERVICE COMPANY OF NEW YORK, INC.,

Defendant.

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INDEX NO. 155661/2019

MOTION DATE 2/14/2022

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70

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

Plaintiff Jason Iglesia brings this action against Allied Aviation Service Company of New York Inc. ("Allied"), an aircraft fueling service company, for alleged injuries sustained on March 22, 2019, when he fell off an Allied ladder while off-loading baggage from an aircraft on the tarmac at John F. Kennedy Airport. Plaintiff Ana Mineros Iglesia sets forth a derivative claim for loss of consortium.

In motion sequence 002, Allied moves for summary judgment, on the grounds that Allied owed no duty to Plaintiff. The motion is fully submitted.

Background

On March 22, 2019, Plaintiff was employed by DNATA, a company which provided baggage services for aircraft at JFK Airport, and was working in the area near Terminal 1, Gate 2. Plaintiff testified that there were two ladders in the area, one belonging to Allied and one to DNATA. Plaintiff testified that near the beginning of his employment with DNATA, approximately five years prior to the accident, or in 2014, he had asked a certain Allied employee

for permission to use an Allied ladder, and that permission was granted, but that Plaintiff made no subsequent requests for permission. On the day of the accident, Plaintiff opted to use the five-foot, A-Frame Allied ladder to open the front cargo door of an aircraft and was standing on the ladder's apex when it wobbled, and he fell.

Plaintiff commenced this action on June 6, 2019, setting forth a cause of action against Allied for negligence, on the basis that Allied allowed him to use the defective ladder. (NYSCEF Doc No. 1, Complaint, at ¶ 15.)

Defendant moves for summary judgment, arguing that there is no evidence establishing that Allied controlled or placed the ladder near the gate where Plaintiff found it, that Plaintiff's use of the ladder was unauthorized by both Allied and DNATA, that there is no evidence that the ladder was defective aside from Plaintiff's testimony, and that Plaintiff is unable to meet the standard of gross negligence in this case involving a gratuitous bailment. (NYSCEF Doc No. 32, Ms001 Memo.)

In support, Defendant submits the affidavit of its safety manager, Michael Gottuso, who avers that Allied has never given other companies permission to use Allied ladders, and that on January 17, 2019, Allied had prohibited its employees from using the A-Frame ladder due to an incident in which one such ladder was blown into an aircraft's engine due to a jet blast. (NYSCEF Doc No. 43, Affidavit; NYSCEF Doc No. 46, Memo.) Defendant also submits the affidavit of M. Simmonds-Little, Plaintiff's supervisor at DNATA, who avers that Plaintiff's use of Allied's ladder was unauthorized as it "did not meet the stability, height, and safety features needed for the tasks performed" and that Plaintiff fell because he "attempted to open the cargo door panel in wind gusts up to 43 MPH[.] (NYSCEF Doc No. 47 at ¶¶ 4, 5.) M. Simmons-Little avers that Plaintiff's actions of extending his body to reach out away from the ladder while using the top rung as a step

violate the policies and procedures to which he expressly agreed via a January 6, 2015 "Ladder Usage" document. (*Id*. at ¶ 10, *citing* NYSCEF Doc No. 48.)

In opposition, Plaintiff argues that the ladder clearly belongs to Defendant because it says "Allied" on it. (NYSCEF Doc No. 60, Opposition, at 4-5.) Plaintiff also argues that Allied's January 17, 2019 Memo provides evidence that Allied knew of the defective nature of their A-frame ladders. (*Id*. at 5-7.) Finally, Plaintiff argues that Defendant should be sanctioned for spoliation because it failed to preserve the ladder. (*Id*. at 8-9.)

Defendant replies that sanctions for spoliation are unwarranted because it did not own or control the ladder and thus had no obligation to preserve it. Defendant also argues that its personnel were not near the accident site or aware of its occurrence until months after. (NYSCEF Doc No. 63, Reply.)

Discussion

"The proponent of a motion for summary judgment must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law." (*Dallas-Stephenson v Waisman*, 39 AD3d 303, 306 [1st Dept 2007], citing *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985].) "To establish a prima facie case of negligence, a plaintiff must demonstrate (1) a duty owed by the defendant to the plaintiff, (2) a breach thereof, and (3) injury proximately resulting therefrom." (*Solomon by Solomon v City of New York*, 66 NY2d 1026, 1027 [1985].)

"It is settled that negligence cases by their very nature do not lend themselves to summary dismissal since often, even if all parties are in agreement as to the underlying facts, the very question of negligence is itself a question for jury determination." (*McCummings v New York City Transit Auth.*, 81 NY2d 923, 926 [1993], quoting *Ugarrizza v Schmieder*, 46 NY2d

471, 474 [1979]). "The proponent of summary judgment must establish its defense or cause of action sufficiently to warrant a court's directing judgment in its favor as a matter of law." (*Ryan v Trustees of Columbia Univ. in the City of N.Y., Inc.*, 96 AD3d 551, 553, 947 N.Y.S.2d 85 [1st Dept 2012] [internal quotation marks and citation omitted]). If there is any doubt as to the existence of a triable issue of fact, summary judgment must be denied. (*Grossman v Amalgamated Hous. Corp*., 298 AD2d 224, 226, 750 N.Y.S.2d 1 [1st Dept 2002]).

Once a defendant has made a prima facie showing, the burden shifts to the plaintiff to "produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim or must demonstrate acceptable excuse for his failure to meet the requirement of tender in admissible form; mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient." (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980].)

Here, Defendant fails to meet its prima facie burden for summary judgment. The January 17, 2019 memo marked "Interoffice Correspondence" which includes the statement that "all type A-frame ladders to service aircraft SHALL BE DISCONTINUED" (NYSCEF Doc No. 46), does not warrant the court's directing judgment in favor of Defendant as a matter of law. The memo does not eliminate issues of fact related to the ladder being left on the tarmac and whether Defendant warned employees of other companies that the A-frame ladder was unfit for use on the runway due to dangers posed by gusts of wind and jet blasts. Nor does Defendant dispute the veracity of Plaintiff's testimony indicating that he had received permission from Allied employees on prior occasions. (NYSCEF Doc No. 57, Pl. Transcript, at 21:20-28:24.) As such, issues of fact exist that are not resolved by the memo relied upon by Defendant which issues preclude summary judgment on this record, as a matter of law.

While Defendant argues that Plaintiff's use of the ladder is a gratuitous bailment, as it was lent solely for Plaintiff's benefit, Plaintiff testified that, in addition to DNATA employees regularly using Allied ladders, he had often seen the reverse: Allied employees using DNATA ladders. (NYSCEF Doc No. 57, Pl. Transcript, at 185:11-188:17.) This testimony corroborates the allegations contained in Plaintiff's affidavit submitted with his opposition, deemed by Defendant to be self-serving (NYSCEF Doc No. 63, Reply, at 6-11), wherein Plaintiff avers that "[i]t was the regular custom and practice of [Plaintiff], as well as other ramp agents, to use those ladders that were readily available in the staging area, regardless of what company actually owned the ladder. Supervision was well aware of this as there was always a supervisor present on the tarmac when [Plaintiff] and others serviced an airplane." (NYSCEF Doc No. 59, Pl. Aff., at ¶ 8.)

Accordingly, the record presents the possibility of an informal relationship of mutual benefit, which "[gives] rise to a question of fact as to the nature of the bailment and the correlative duty of defendant to discover and warn plaintiff of potential hazards inherent in the condition of the [ladder]." (*Daoust v Palmenteri*, 109 AD2d 774, 775 [2d Dept 1985].) It is hereby

ORDERED that Defendant's motion sequence 002 for summary judgment is denied.

8/12/2022
DATE

WILLIAM PERRY, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	X DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE