Emrani v Equinox Holdings Inc.
2024 NY Slip Op 32242(U)
July 1, 2024
Supreme Court, New York County
Docket Number: Index No. 154033/2018
Judge: Mary V. Rosado

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. MARY V. ROSADO** **PART** **33M**

Justice

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MICHELLE EMRANI

Plaintiff,

- v -

EQUINOX HOLDINGS INC. HAVING A FICTITIOUS NAME OF EQUINOX FITNESS CLUB AND A D/B/A OF E FITNESS,

Defendant.

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INDEX NO. 154033/2018

MOTION DATE 06/08/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34

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

Upon the foregoing documents, Defendant Equinox Holdings Inc. ("Defendant" or "Equinox") motion for summary judgment dismissing Plaintiff Michelle Emrani's ("Plaintiff") Complaint is granted.

I. Background

This is an action for personal injuries as a result of Plaintiff's slip and fall in a shower on May 2, 2015 (NYSCEF Doc. 1). Plaintiff was injured in Equinox's High Line Club (NYSCEF Doc. 22 at 38:10-12). Plaintiff described the shower area of the women's locker room as consisting of separate stalls with spaces where you could rest your towel and clothes (*id.* at 45:2-5). She also testified that the showers had a plastic curtain with a little ledge to get into the shower (*id.* at 45:6-10). Plaintiff testified she took her shoes off, undressed, and grabbed a towel to go towards the shower (*id.* at 48:6-8). There were two or three other people showering (*id.* at 49:20-24). Plaintiff chose an empty stall, placed her towel in the changing area immediately adjacent to the shower, attempted to enter the shower, and fell (*id.* at 53-54).

The floor in the shower area is tile and Plaintiff testified there were no mats (*id.* at 57:3-16). She testified the floor area in the shower area was slippery and she fell backwards (*id.* at 58:15-24). After she fell, she testified she saw blood on the floor but did not see any accumulation of water (*id.* at 65:8-20). Plaintiff also submitted an affidavit stating the floor was wet when she slipped (NYSCEF Doc. 30). She further stated there was no mat on the floor nor were there warning signs regarding slippery floors (*id.*).

Defendant argues it is entitled to summary judgment because water on a floor immediately adjacent to a shower is incidental to the shower's use and insufficient to give rise to a cause of action for negligence. In opposition, Plaintiff argues there is a triable issue of fact because there was no non-slip mat and Defendant's manager did not testify with certainty that the women's locker room had non-slip mats. In reply, Equinox argues that pursuant to First Department precedent it has no duty to place mats in the area where Plaintiff fell.

II. Discussion

"Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact." (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]). The moving party's "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 v New York City Health and Hosps. Corp.*, 22 NY3d 824, 833 [2014]). Once this showing is made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial. *See e.g., Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Pemberton v New York City Tr. Auth.*, 304 AD2d 340, 342 [1st Dept 2003]). Mere conclusions of

law or fact are insufficient to defeat a motion for summary judgment (*see Banco Popular North Am. v Victory Taxi Mgt., Inc.*, 1 NY3d 381 [2004]).

The First Department has repeatedly held that water on a tile floor that is necessarily incidental to the use of a sports facility does not give rise to a claim for negligence, especially where the amount of water is not above and beyond what one might ordinarily expect to encounter (*Noboa-Jacquez v Town Sports Intern., LLC*, 138 AD3d 493 [1st Dept 2016]; citing *Dove v Manhattan Plaza Health Club*, 113 AD3d 455, 455-56 [1st Dept 2014] *lv. denied* 24 NY3d 901 [2014]). The First Department has likewise held that liability cannot be premised upon a lack of mats near a shower stall in a gym (*Noboa-Jaquez, supra*).

Although Plaintiff relies on *Grossman v TCR*, 142 A.D.3d 854 (1st Dept 2016), this reliance is misplaced. In *Grossman*, the First Department found the water on the floor was not incidental to the use of the facilities as it was not directly adjacent to the pool. Here, the cases of *Noboa-Jacquez* and *Dove* apply because Plaintiff testified she was immediately adjacent to the shower. The floor in the area where Plaintiff fell, therefore, was wet as an incident of being immediately adjacent to the shower stall, bringing the facts of this case within *Noboa-Jaquez*'s ambit. Thus, pursuant to *Noboa-Jacquez* and *Dove*, the mere fact that the floor was wet is insufficient to defeat summary judgment. Indeed, all other Appellate Divisions in this state have adopted the First Department's holdings in *Noboa-Jacquez* and *Dove*, (*see Briggs v PF HV Management, Inc.*, 199 AD3d 1106 [3d Dept 2021]; *Barron v Eastern Athletic, Inc.*, 150 AD3d 654 [2d Dept 2017]; *Keller v Keller*, 153 AD3d 1613 [4th Dept 2017]).

The First Department has likewise held failure to place non-skid mats in the location of plaintiff's fall does not create a material issue of fact in a premises liability summary judgment motion (*see Noboa-Jacquez, supra* [liability cannot be premised upon lack of mats in gym locker

locker room shower]; *see also Azzaro v Super 8 Motels, Inc.*, 62 AD3d 525, 526 [1st Dept 2009]; *Lunan v Mormile*, 290 AD2d 249 [1st Dept 2002] [summary judgment appropriate where plaintiff failed to identify common law or statutory requirement imposed upon owners' duty to supply non-skid surfacing in bathtubs]).

Plaintiff has failed to raise an issue as to some dangerous defect or hazardous condition with the tile floor and has failed to distinguish the facts of this case from the incredibly analogous facts of *Noboa-Jacquez*. In the cases Plaintiff relies on, the falls on wet tile floors all occurred some distance from a pool or shower, while Plaintiff's fall occurred quite literally as she was attempting to step into the shower. Moreover, Plaintiff did not testify she saw any excessive pooling of water, and in fact admitted she did not see any accumulation of water. Being constrained by First Department precedent, this Court grants Defendant's motion for summary judgment.

Accordingly, it is hereby,

ORDERED that Defendant Equinox Holdings Inc.'s motion for summary judgment is granted; and it is further

ORDERED that Plaintiff's Complaint is dismissed against Defendant Equinox Holdings Inc, with prejudice; and it is further

[*The remainder of this page is intentionally left blank.*]

ORDERED that within ten days of entry, counsel for Defendant shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

7/1/2024
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

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