To commence the statutory time period for appeals
as of right (CPLR 5513[a]), you are advised to serve
a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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NICHOLAS PARASHIS and JOSIE PARASHIS,

Plaintiff,

-against-

SHOWCASE CINEMA DE LUX, RIDGE HILL SECURITY, QUINCY AMUSEMENTS, QIC US MANAGEMENT, INC., YONKERS ASSOCIATES, LLC A/K/A FC YONKERS ASSOCIATES, LLC, RIDGE HILL, ONE RIDGE HILL D/B/A RIDGE HILL, SAFE ENVIRONMENT BUSINESS SOLUTIONS, INC. d/b/a SEB SECURITY,

Defendants.

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DECISION & ORDER
Index No. 53655/2020
Sequence Nos. 2,3,4

WOOD, J.

New York State Courts Electronic Filing ("NYSCEF") Documents Numbers 75-220 were read in connection with the following motions for summary judgment pursuant to CPLR 3212 dismissing plaintiffs' Amended Verified Complaint:

Seq 2- by QIC US Management, Inc., ("QIC") Yonkers Associates, LLC a/k/a FC Yonkers Associates, LLC ("FC"), and One Ridge Hill d/b/a Ridge Hill (collectively, "Ridge Hill defendants"), and to dismiss all cross-claims; and for contractual indemnification against Quincy.
Seq 3-Safe Environmental Business Solutions, Inc. d/b/a SEB Security ("SEB").
Seq 4- Quincy Amusements ("Quincy") dismissing all cross-claims with prejudice.

According to the amended complaint, plaintiffs (husband and wife) were movie patrons attending the Black Panther movie at Ridge Hill in Yonkers (at the theatre known as Showcase Cinema DeLux) on March 10, 2018, around 10 pm, when a dispute erupted in the back of the theater and an unknown individual yelled "gun" causing a stampede. Plaintiffs fell or were pushed to the ground, and trampled on by other audience members while attempting to exit the

theater, causing personal injuries. It is alleged that defendants failed to provide adequate security to properly secure the subject premises.

Based upon the foregoing, the motions are decided as follows:

Turning to the merits of the motions,[1] it is well-settled that a 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 demonstrate the absence of any material issues of fact" (Alvarez v Prospect Hosp. 68 NY2d 320, 324 [1986]; *see Orange County-Poughkeepsie Ltd. Partnership v Bonte* 37 AD3d 684, 686-687 [2d Dept 2007]). Once the movant has met this threshold burden, the opposing party must present the existence of triable issues of fact (see *Zuckerman v New York* 49 NY2d 557, 562 [1980]; *see also Khan v Nelson*, 68 AD3d1062 [2d Dept 2009]). Conclusory, unsubstantiated assertions will not suffice to defeat a motion for summary judgment (*Barclays Bank of New York, N.A. v Sokol* 128 AD2d 492 [2d Dept 1987]). A party opposing a summary judgment motion may do so on the basis of deposition testimony as well as other admissible forms of evidence, including an expert's affidavit, and eyewitness testimony (*Marconi v Reilly* 254 AD2d 463 [2d Dept 1998]). In deciding a summary judgment motion, the court is required to view the evidence presented "in the light most favorable to the party opposing the motion and to draw every reasonable inference from the pleadings and the proof submitted by the parties in favor of the opponent to the motion" (*Yelder v Walters* 64 AD3d 762, 767 [2d Dept 2009]; see *Nicklas v Tedlen Realty Corp.* 305 AD2d 385, 386 [2d Dept

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[1] As an initial procedural matter, it is undisputed that plaintiffs' opposition papers were filed (via NYSCEF) 8 days late (in express violation of a stipulation between the parties). However, according to plaintiff, all defendants were asked, 10 days in advance of the return date of May 9, 2023, if any of them objected to the timing of plaintiff's opposition, which would have prompted plaintiff to request an adjournment from the court. None of the defendants responded with any objection and all of the defendants submitted their replies without objecting except Quincy. Under these circumstances, in the interests of justice, and consistent with the strong public policy favoring on the merits, the Court, in its exercise of its discretion, will consider plaintiff's opposition papers, as no prejudice has been shown, and defendants have filed replies to plaintiffs' opposition.

2003]). The court must accept as true the evidence presented by the nonmoving party and must deny the motion if there is "even arguably any doubt as to the existence of a triable issue" (*Kolivas v Kirchoff* 14 AD3d 493 [2d Dept 2005]); *Baker v Briarcliff School Dist.*, 205 AD2d 652, 661-662 [2d Dept 1994]). Summary judgment is a drastic remedy and should not be granted where there is any doubt as to existence of a triable issue *(Alvarez v Prospect Hosp.*, 68 N.Y.2d 320, 32 [1986]). CPLR 3212(b) specifically provides that "the motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact". The court's function on a motion for summary judgment is "issue-finding, rather than issue-determination" (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). A defendant's showing on a motion for summary judgment is governed by the allegations of liability made by the plaintiff in the pleadings (*Bader v River Edge at Hastings Owners Corp.*, 159 AD3d 780, 781 [2d Dept], leave to appeal denied, 31 NY3d 913 [2018]).

Plaintiff Nicholas Parashis testified that right before the incident he heard grumbling, like the beginning of a fight, some shuffling towards the back of the theater, a loud bang, screaming and the word "gun," and a stampede ensued. Plaintiffs stayed low, made their way to the stairs, got out in the hallway and funneled out of the area. About halfway through the corridor, his wife fell down as she got caught up in the stampede of people. He fell down right after her and got stepped on. He heard no theater employees or any personnel make any announcements (NYSCEF#165 at pp 87-89). Parashis also stated that on the multiple prior occasions that he had been to this theater, he had never felt unsafe (NYSCEF #165 at pp 191-192). On the date of the incident, before it occurred, he did not make any complaints to the theater's employees. He does not recall anyone else having made a complaint to the theater's employee prior to when the incident occurred. Parishis testified:

Q. Okay. Now, I believe you said after you heard the shuffling, you heard a commotion; is that right?

A. Uh, I guess so, if you want to put it like that.

Q. Well, tell me what you mean by commotion. Did something occur before the sound or ——

A. Like some audible --somebody saying -- grumbling something like the beginnings of a fight or something, like I couldn't hear what the words were.

A. Or I just heard voices of --whoever was making the noise.

Q. Okay. And then after that, is that when you heard the bang sound you described earlier?

A. It wasn't like—it didn't take long for that to happen and I don't know exactly, but I would say—**I don't know what to say, but it happened very quicky after that sound, the shuffling, the grumbling and then the loud bang, and it was quick.**

Q. Well, I mean, put aside the timing just now. I just want to get the sequence correct, okay? So, tell me if I have this right so far. You heard a shuffling, and then you heard a commotion, voices that you didn't quite make out, and then you heard a bang, and then there was a stampede. Is the sequence I just laid out correct?

A. To the best of my memory, I would say yes (NYSCEF#165 at pp.83-84)

Q. Okay. How much time passed between when you heard the shuffling and then the bang went off and then the stampede started. How much time would you estimate passed?

A. Seconds.

Q. Like less than five seconds?

A. I can't give that to you. Sorry.

Q. But definitely seconds and not minutes, correct?

A. Yes. definitely. (NYSCEF#165 at p 87).

Plaintiff Josie Parishis also testified as to the stampede out of the theatre after someone yelled "gun" (NYSCEF #88). She testified that she and her husband went towards the aisle and tried to exit the theater. Nicholas was behind her. When they got to the little hallway it seemed like someone pushed her. She fell face first onto the ground and blacked out. Her husband got her up and carried her on one side. During the time of the stampede she did not observe any employees from the theater in the auditorium. She further admitted that nothing happened prior to the incident that would have led her to believe that an incident, such as the one described, was about to occur. (NYSCEF#88 at p. 57).

On behalf of defendant QIC, Joan Glenn, in house counsel, testified that at the time of the incident, QIC was one of the owners of Ridge Hill (NYSCEF#89). Glenn testified that QIC did not play any role in conducting the day to day operations of the theater, nor did it play a role in identifying, hiring or arranging the security personnel.

For Defendant SEB, Robert DiNozzi testified that he is currently unemployed and retired. (NYSCEF#90). Prior to his retirement, he was the CEO of SEB, a security company. DiNozzi continued that SEB provided security services at the request of the client. DiNozzi explained that before being allowed to work in a National Amusements theater, a security guard is required to understand post orders, job expectations, where they should be working, what they are doing. They would have received at least three days of training on site with a road supervisor. Security officers in New York need to be registered, licensed and bonded. The customer had nothing to do with training the guards. DiNozzi was unaware of a stampede that occurred on March 10, 2018 at the Ridge Hill Yonkers cinema (NYSCEF#90).

Christopher Ward testified on behalf of defendant Quincy. Ward is employed by National Amusements which is the parent company of Quincy. On the date of the subject incident, he was the on-site manager of the Ridge Hill Cinema. As part of his responsibilities, he manages employees of movie theaters. Somebody from the corporate office either National Amusements or Quincy would make the decision on how many SEB guards would be assigned to the theater on a particular night. However, on a typical Saturday night they would usually have two unarmed guards from SEB and one Yonkers Police officer on duty.

On the date of the incident, Ward was working as the managing director, and present at the theater. The incident happened after 10 pm. SEB supplied the number of guards that evening, but he does not remember how many guards were working. The guards' responsibilities were

crowd control and to keep an eye on the box office. When the movie breaks they will help them to get the customers out, but are not assigned to one stationary place.

Ward was notified that something was happening in Theater 10 by walkie-talkie, while upstairs in his office. He then went into the projection booth and to auditorium 10, turned on the house lights, looked through the port glass to see what was going on and stopped the projector. He saw an officer with a flashlight and other people in the theater. There were approximately 100 plus people in the theater. He went downstairs and found patrons rushing out of the theater, and two people were arguing inside the theater. There was one officer from the police department and one security guard in the area of the theater that evening. Ward continues that the photographs shown to him during his deposition, show a security guard, an employee of the security contractor, and usher and employee of Quincy after the incident but he did not know their names. Ward was unaware of any complaints regarding the number of security guards provided by SEB on the night of the incident, or the work that was performed by the SEB security guards on the night of the incident.

Turning to the merits of the motions, it is well settled that landowners generally owe a duty of care to maintain their property in a reasonably safe condition, to minimize foreseeable dangers on their property, and are liable for injuries caused by a breach of this duty (*Maharaj v Kreidenweis*, 214 AD3d 717, 718 [2d Dept 2023]); (*Solomon v Nat'l Amusements, Inc.*, 128 AD3d 947, 948 [2d Dept 2015]). Specifically, a landowner has a duty to control the conduct of persons on its premises "when it has the opportunity to control such conduct, and is reasonably aware of the need to do so" (*York v Paddy's Loft Corp.*, 208 AD3d 617 [2d Dept 2022]). Thus, an owner of a public establishment has no duty to protect patrons against unforeseeable and unexpected assaults (*Zhang v ABC Corp.*, 194 AD3d 990, 992 [2nd Dept 2021]).

Based upon this record, moving defendants in Seqs 3 and 4 (SEB, and Quincy), demonstrated their prima facie entitlement to judgment as a matter of law that this incident was an unfortunate, sudden and spontaneous event for which there was no warning and could not have been reasonably anticipated and prevented. Literally the "trigger" event was the yelling of "gun" that caused the rush out of the theater. A significant consideration were plaintiffs' own deposition testimonies that conceded that the stampede occurred within seconds, not even minutes, after someone in the theater yelled "gun." Accordingly, defendants had no reason to anticipate the incident, nor any special duty to take preventive measures.

In opposition, plaintiffs offer the Affidavit of expert David S. Katz , a security and life safety consultant, who opines that defendants failure to monitor the interior of the auditoriums themselves was negligent and a failure of good practice which caused and contributed to the subject action. Katz testified:

> The incident might also have been averted by a robust security presence. One of the most important duties of a security detail assigned to a public assembly venue is crowd control and the number of security officers in a given venue should be sufficient to accomplish that staff. Crowd control, evacuation planning and plan implementation is customarily the responsibility of the security team and should have prevented the injury suffered here. The complete absence of both of these basic safety measures is a clear deviation from good security / emergency planning practices and was a plainly a proximate cause of the escalating conflict, the ensuing mele and stampede, as well as the resulting injuries and damages. (NYSCEF#208).

Plaintiffs' expert failed to raise a triable issue of fact as to whether defendants violated their common-law duty to maintain the premises in a reasonably safe condition. His affidavit is speculative and insufficient to raise a triable issue of fact, as it provides no basis to infer specific negligence against defendants, is unsupported by any evidentiary foundation, even despite other

past general criminal activity at the theater and thus, is insufficient to raise a triable issue of fact (*Sasso v Vill. of Bronxville*, 208 AD3d 910, 912 [2d Dept 2022]).

Additionally, in relation to SEB- it also established, prima facie, that it did not owe plaintiffs a duty of care. A party who enters into a contract to render services may have assumed a duty of care and thus be potentially liable in tort to third persons in the following circumstances: (1) where the contracting party, in failing to exercise reasonable care in the performance of his duties, launche[s] a force or instrument of harm; (2) where the plaintiff detrimentally relies on the continued performance of the contracting party's duties; and (3) where the contracting party has entirely displaced the other party's duty to maintain the premises safely (Espinal, supra, 98 NY2d at 140) (collectively, "the Espinal Exceptions"). Before an injured party may recover as a third-party beneficiary for failure to perform a duty imposed by contract, it must clearly appear from the provisions of the contract that the parties thereto intended to confer a direct benefit on the alleged third-party beneficiary to protect him or her from physical injury (*Ramirez v Genovese,* 117 AD3d 930, 931 [2d Dept 2014]).

The court has made a finding that the stampede that lead to this incident was caused by other patrons and not from SEB actions or inactions. In opposition, plaintiffs offer no competent evidence that SEB launched a force or instrumentality and that plaintiffs were intended third-party beneficiaries of the contract.

In conclusion, based on this court's findings, moving defendants' motions Seqs 3 and 4 are granted and this matter is dismissed as against these defendants.

The same holds true for Motion Seq 2- motion by Ridge Hill defendants, in that this incident was an uncontrollable, spontaneous action to which no party under these circumstances could be liable. Further, the Ridge Hill defendants maintain that the Lease, and its amendments

between FCA and Quincy provide that Quincy undertook the responsibility to operate a movie theatre in the subject premises (NYSCEF#92). The Ridge Hill defendants represent that they had no employees present at the theater during its operation. They note that there is no reasonable inference that they operated, managed and/or monitored the movie theater or that it paid for crowd control based upon the testimonies and contracts. In the absence of a duty, there is no breach, and thus no liability. Ridge Hill defendants conclude that they were owners and/or out-of-possession landlords with no control over the operation of the subject premises.

It is well settled a "landowner who has transferred possession and control [i.e., an out-of-possession landlord] is generally not liable for injuries caused by dangerous conditions on the property. Even where it is established that the landowner is an out-of-possession landlord, liability may be imposed, inter alia, where the landowner has retained control over the premises and has assumed a responsibility to perform the relevant maintenance or repair by contract or a course of conduct" (*Maharaj v Kreidenweis,* 214 AD3d 717, 718 [2d Dept 2023]).

The court agrees with these defendants that they have made out their prima facie entitlement that they were not responsible for and not involved in hiring, firing or supervising the tenant's security personnel or other employees or contractors who worked at the premises. In opposition, plaintiffs failed to raise a triable issue of fact.

While rather academic, upon this court's reading of the Shopping Center Lease and Amendments (NYSCEF#92), FC would be entitled to contractual indemnity from Quincy. Contrary to plaintiff's contentions, Article 17 of the Shopping lease merely combines the wording "Indemnity and Insurance", and are completely separate provisions allocating indemnity and insurance. Moreover, FC does not seek indemnification for its own negligence.

All matters not specifically addressed are denied. This constitutes the decision and order of the court. Therefore, it is hereby

ORDERED, that the Ridge Hill Defendants' motion for summary judgment (Seq 2) dismissing plaintiffs' amended complaint and all cross claims against them is Granted; and it is further

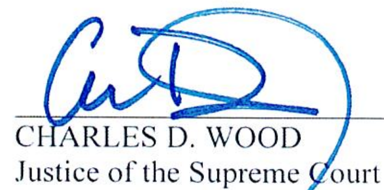
ORDERED, that SEB's motion for summary judgment (Seq 3) dismissing plaintiffs' amended complaint and all cross claims against it is Granted; and it is further

ORDERED, that Quincy's motion for summary judgment (Seq 4) dismissing plaintiffs' amended complaint and all cross claims against it is Granted; and it is further

ORDERED, that within twenty days after this decision and order is uploaded to NYSCEF, counsel for defendants shall serve a copy of this decision and order, with notice of entry, upon all parties and file proof of service on NYSCEF within five days of service.

This case is disposed. The Clerk shall mark his records accordingly.

Dated: White Plains, New York
August 23, 2023



CHARLES D. WOOD
Justice of the Supreme Court

To: All Parties by NYSCEF