

SUPREME COURT - STATE OF NEW YORK

PRESENT: HON. R. BRUCE COZZENS, JR.
Justice.

TRIAL/IAS PART 8
NASSAU COUNTY

SUSAN ZIEGLER,
Plaintiff(s),

-against-

MOTION #002
INDEX#10509/2007
MOTION DATE:
January 8, 2008

DCJ CATERING CORPORATION D/B/A JERICHO
TERRACE, JEAN LEONE, INDIVIDUALLY
AND AS PRINCIPAL OF DCJ CATERING
CORPORATION D/B/A JERICHO TERRACE,
AND CHRISTOPHER LEONE, INDIVIDUALLY AND
AS PRINCIPAL OF DCJ CATERING CORPORATION
D/B/A JERICHO TERRACE,
Defendant(s).

The following papers read on this motion:

| | |
|---------------------------|---|
| Notice of Motion..... | 1 |
| Answering Affidavits..... | 3 |

Upon the foregoing papers, it is ordered that the motion for summary judgment by defendants Jean Leone and Christopher Leone is determined as hereinafter set forth.

The plaintiff commenced this action alleging personal injuries as the result of a trip and fall at the defendants' premises. It is alleged that the defendants were negligent in allowing a raised platform to remain in a defective condition.

In support of the motion, the defendants Christopher Leone and Jean Leone have submitted affidavits whereby they state that any acts alleged by the plaintiff were committed within the scope of their employment. As a result, they seek summary judgment for themselves in their individual capacities.

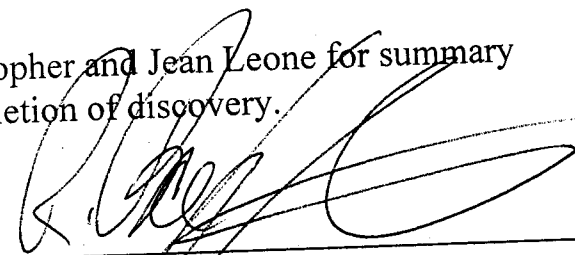
In opposition to the motion, the plaintiff maintains that as a result of the Leones' response to a notice to admit, questions of fact exist as to the role Christopher Leone and Jean Leone had individually and as employees of DCJ Catering. The defendants Christopher and Jean Leone both deny having knowledge or information sufficient to form a belief as to

ownership management, maintenance, control and operation of the premises.

In the instant matter, the Court finds that there are questions of fact regarding the scope of employment of Christopher and Jean Leone.

As such, the motion of the defendants Christopher and Jean Leone for summary judgment is denied with leave to renew upon completion of discovery.

Dated: APR 3 2008



J.S.C.

ENTERED

APR 04 2008
NASSAU COUNTY
COUNTY CLERK'S OFFICE