

To commence the 30-day 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 DUTCHESS**

-----X  
CHARLENE GIBB,

Plaintiff,

-against-

SEEMA PROPERTIES, INC., CITY CHEMIST  
CORP., and MOBILE LIFE SUPPORT SERVICES,  
INC.,

Defendants.  
-----X

**ACKER, J.S.C.**

**DECISION AND ORDER**

**Index No.: 2020-51073**

**Motions Seq. 1**

Defendant Mobile Life Support Services, Inc. ("Mobile Life") moves for an order granting it summary judgment pursuant to CPLR §3212. Plaintiff, Charlene Gibb, opposes the motion.

The Court read and considered NYCEF documents numbered 35-61.

**Finding of Fact<sup>1</sup>**

On January 30, 2019, Plaintiff Gibb slipped and fell while at the premises of Co-Defendant City Chemist Corporation, a pharmacy. She alleges the floor near the cash register was muddy and wet. Her head hit the floor when she fell and an ambulance was called. Soon thereafter, a Mobile Life crew was dispatched to the accident scene.

Upon arrival of the Mobile Life crew, Plaintiff was found face down on the ground. Ms. Gibb does not recall how she became face up. Ms. Gibb testified that she dropped by the Mobile Life employees when they attempted to place her onto a stretcher. Plaintiff testified she was at the height of the stretcher when she was dropped. She further claimed

<sup>1</sup> Defendant Mobile Life submits a Statement of Material Facts in compliance with Uniform Court Rule §202.8-g(a) and Plaintiff submits a counterstatement in response thereto. The following facts have either been admitted or were not specifically controverted.

that she was dropped by the crew onto the top right side of her body.

### Discussion

The proponent for summary judgment “must make a *prima facie* showing of entitlement to judgment as a matter of law, offering sufficient evidence to demonstrate the absence of any triable issues of fact.” *Guangzhou Sanhua Plastic Co., Ltd. v. Fine Line Prods. Corp.*, 165 AD3d 899, 900-901 [2d Dept. 2018] citing *Rosenblatt v. St. George Health & Racquetball Assoc., LLC*, 119 AD3d 45, 50 [2d Dept. 2014]; see also *Alvarez v. Prospect Hosp.*, 68 NY2d 320, 324 [1986]. Failure to make the initial showing “requires denial of the motion, regardless of the sufficiency of the opposition papers.” *Junger v. John V. Dinan Assoc., Inc.*, 164 AD3d 1428, 1429 [2d Dept. 2018] citing *Weingrad v. New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]; see also *St. Luke’s-Roosevelt Hosp. v. American Tr. Ins. Co.*, 274 AD2d 511 [2d Dept. 2000]; *Greenburg v. Manlon Realty, Inc.*, 43 AD2d 968 [2d Dept. 1974].

Once the moving party has made a *prima facie* case showing, the opposition “need only rebut the *prima facie* showing made by the moving party so as to demonstrate the existence of a triable issue of fact.” *Poon v. Nisanov*, 162 AD3d 804, 806 [2d Dept. 2018], citing *Alvarez, supra*.

On a motion for summary judgment the function of the court “is not to resolve issues of fact or determine matters of credibility, but merely to determine whether such issues exist.” *Woodbury Realty, LLC v. 10 Bethpage Rd, LLC*, 178 AD3d 757, 759-760 [2d Dept. 2019].

According to Mobile Life, it should be granted summary judgment because Plaintiff cannot establish that she was dropped while being treated by its employees. Additionally, Mobile Life contends that the care and treatment it provided to the Plaintiff was appropriate and consistent with the standard of care. Finally, Mobile Life argues that Plaintiff cannot establish that any act or omission on the part of Mobile Life caused her injury. Mobile Life supports its motion with the pleadings, deposition transcripts of Plaintiff and Mobile Life employees and Plaintiff’s medical records. Mobile Life also submits an expert medical affirmation where the doctor avers that a fall from the stretcher, which was no more than twelve (12) inches, could not have cause the injuries claimed by Plaintiff. These submissions are sufficient to meet Mobile Life’s *prima facia* burden for summary judgment. *Audette v. Toussaint-Milord*, 201 AD3d 779 [2d Dept.2022].

Plaintiff opposes the motion stating that there is an issue of fact as to whether she was dropped by Mobile Life employees. She further alleges the Defendant's expert opinion is conclusory and not supported by medical evidence.

Plaintiff correctly maintains that there is a triable issue of fact as to whether Mobile Life employees dropped her while moving her from the floor to the stretcher. Plaintiff's deposition sufficiently sets forth her belief that Mobile Life employees dropped the "top part" of her body "back to the ground" while moving her to the stretcher. As the differing versions of the facts present a question of credibility, summary judgment must be denied on this issue. *Woodbury Realty, supra*.

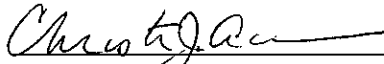
However, summary judgment must be granted to Mobile Life because Plaintiff fails to controvert the defense medical expert's conclusion as to causation. Dr. Joshua Schwarzbaum, an emergency medicine expert, opines that Plaintiff's injuries could not have been caused by Mobile Life, even if its employees dropped the Plaintiff upon her transfer from the floor to the stretcher. While it is true that the medical records attached to the moving papers are not certified, the expert's opinion is based upon, *inter alia*, his review of Plaintiff's Bill of Particulars and Examination Before Trial as to her alleged injuries as well as the uncontested fact that the Plaintiff could not have been dropped by Mobile Life employees from a distance of more than 12 inches. As a result, review of the medical records by the defense expert is not necessary. Plaintiff's do not submit a medical expert opposing the opinions of the Defendant's expert. Thus, they have failed to set forth a material issue a fact as to the issue of proximate cause. Defendant's motion for summary judgment is granted.

Now therefore it is

ORDERED that the summary judgment motion of Mobile Life Support Services, Inc. is granted and the complaint against it is dismissed.

The foregoing constitutes the Decision and Order of the Court.

Dated: Poughkeepsie, New York  
November 28, 2022

  
CHRISTI J. ACKER, J.S.C.

To: All Counsel Via ECF