

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D12166
C/cb

_____AD3d_____

Argued - September 5, 2006

THOMAS A. ADAMS, J.P.
GLORIA GOLDSTEIN
WILLIAM F. MASTRO
ROBERT A. LIFSON, JJ.

2005-10618

DECISION & ORDER

Tiberio Vilorio, plaintiff, v Suffolk Y Jewish Community Center, Inc., et al., respondents, Eastern Horizon Landscaping, Inc., appellant.

(Index No. 20422/03)

Hobbes & Tonetti (Sweetbaum & Sweetbaum, Lake Success, N.Y. [Marshall D. Sweetbaum] of counsel), for appellant.

Wenick & Finger, P.C., New York, N.Y. (Frank J. Wenick and David P. Abatemarco of counsel), for respondents.

In an action to recover damages for personal injuries, the defendant Eastern Horizon Landscaping, Inc., appeals from so much of an order of the Supreme Court, Suffolk County (Werner, J.), dated August 30, 2005, as denied that branch of its motion which was for summary judgment dismissing the cross claim for common-law indemnification against it.

ORDERED that the order is affirmed insofar as appealed from, with costs.

Contrary to the contention of the defendant Eastern Horizon Landscaping, Inc. (hereinafter Eastern), the Supreme Court properly denied that branch of its motion which was for summary judgment dismissing the cross claim for common-law indemnification against it. Substantial factual issues exist regarding whether Eastern improperly performed its contractual snow plowing duties by piling snow up against a walkway which was adjacent to the parking lot it was plowing, thereby creating an obstacle to pedestrian traffic and facilitating the formation of ice at that location (*see generally Knee v Trump Vil. Constr. Corp.*, 15 AD3d 545; *Reznicki v Strathallan Hotel*, 12

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AD3d 156; *Karalic v City of New York*, 307 AD2d 254). “[S]ince there are questions of fact as to whether the accident resulted from [Eastern’s] alleged failure to fulfill its obligations pursuant to the terms of the snow removal contract” (*Richter v Hunter’s Run Homeowners Assn.*, 14 AD3d 601, 602; see *Mitchell v Fiorini Landscape*, 284 AD2d 313, 314), the cross claim for common-law indemnification cannot be resolved as a matter of law (see e.g. *Peycke v Newport Media Acquisition II*, 17 AD3d 338; *Franklin v Omni Sagamore Hotel*, 5 AD3d 348; *Baratta v Home Depot USA*, 303 AD2d 434; *Nizam v Friol*, 294 AD2d 901; *Cochrane v Warwick Assocs.*, 282 AD2d 567; *Phillips v Young Men’s Christian Assn.*, 215 AD2d 825).

ADAMS, J.P., GOLDSTEIN, MASTRO and LIFSON, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court