

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

D31770
W/prt

_____AD3d_____

Argued - May 20, 2011

REINALDO E. RIVERA, J.P.
PETER B. SKELOS
L. PRISCILLA HALL
LEONARD B. AUSTIN, JJ.

2010-02963

DECISION & ORDER

Angela Spinelli, plaintiff, v Vornado Burnside Plaza, LLC, appellant, et al., defendant, Stop & Shop Supermarket, respondent.

(Index No. 11392/08)

Wilson Elser Moskowitz Edelman & Dicker LLP, New York, N.Y. (Gregory J. Dell of counsel), for appellant.

Creedon & Gill, P.C., Northport, N.Y. (Peter J. Creedon of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant Vornado Burnside Plaza, LLC, appeals, as limited by its brief, from so much of an order of the Supreme Court, Nassau County (Murphy, J.), entered February 22, 2010, as granted the motion of the defendant Stop & Shop Supermarket for summary judgment on the cross claims of that defendant against it for the provision of a defense, contractual indemnification, and common-law indemnification.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and the motion of the defendant Stop & Shop Supermarket for summary judgment on its cross claims against the defendant Vornado Burnside Plaza, LLC, for the provision of a defense, contractual indemnification, and common-law indemnification is denied, without prejudice to renew as to its cross claim for common-law indemnification.

The defendant Vornado Burnside Plaza, LLC (hereinafter the landlord), argues that it owes no duty to the defendant Stop & Shop Supermarket (hereinafter the tenant) to provide a defense and/or indemnification in connection with this personal injury action. The landlord is correct

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that it is not obligated to assume or provide for the defense of the tenant or provide contractual indemnification to the tenant since the lease between the parties did not expressly impose those obligations upon the landlord (*see generally Staats v Wegmans Food Mkts., Inc.*, 48 AD3d 1115; *Brands v Urban*, 182 AD2d 287). However, the determination of the landlord's obligation, if any, for common-law indemnification is premature at this stage (*see Pueng Fung v 20 W. 37th St. Owners, LLC*, 74 AD3d 635, 636). Accordingly, the Supreme Court should have denied the tenant's motion for summary judgment on its cross claims, without prejudice to renewal as to its cross claim for common-law indemnification.

RIVERA, J.P., SKELOS, HALL and AUSTIN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive style with a large initial "M".

Matthew G. Kiernan
Clerk of the Court