

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

D33446
C/ct

_____AD3d_____

Submitted - November 17, 2011

MARK C. DILLON, J.P.
RANDALL T. ENG
LEONARD B. AUSTIN
ROBERT J. MILLER, JJ.

2010-10976

DECISION & ORDER

Joseph L. Seawright, respondent, v Port Authority of
New York and New Jersey, et al., appellants.

(Index No. 679/10)

Raven & Kolbe, LLP, New York, N.Y. (George S. Kolbe of counsel), for appellant
Port Authority of New York and New Jersey.

Greenberg & Wolff, PLLC, Merrick, N.Y. (Adrienne S. Greenberg of counsel), for
respondent.

In an action to recover damages for personal injuries, the defendant Port Authority
of New York and New Jersey appeals, as limited by its brief, from so much of an order of the
Supreme Court, Queens County (Markey, J.), dated September 27, 2010, as denied that branch of
its motion which was for summary judgment dismissing the complaint insofar as asserted against
it, and the defendant La Guardia Airport also appeals from the same order.

ORDERED that the appeal by the defendant La Guardia Airport is dismissed as
abandoned (*see* 22 NYCRR 670.8[c], [e]), and on the additional ground that it is not aggrieved by
the order appealed from (*see* CPLR 5511); and it is further,

ORDERED that the order is reversed insofar as appealed from by the defendant Port
Authority of New York and New Jersey, on the law, and that branch of its motion which was for
summary judgment dismissing the complaint insofar as asserted against it is granted; and it is further,

ORDERED that one bill of costs is awarded to the defendant Port Authority of New
York and New Jersey payable by the plaintiff.

December 27, 2011

Page 1.

SEAWRIGHT v PORT AUTHORITY OF NEW YORK AND NEW JERSEY

The plaintiff, who was employed by nonparty US Airways as a ramp agent, allegedly slipped and fell on snow and ice during the course of his employment on a US Airways ramp. US Airways leased its premises from the defendant Port Authority of New York and New Jersey (hereinafter the defendant). The lease provided that US Airways had exclusive possession and control of the premises and was responsible for maintenance and repairs. The defendant retained the right to enter the premises and to make repairs at US Airways' expense in the event US Airways failed to fulfill its obligations.

Liability may be imposed on an out-of-possession landlord for injuries which occur on leased premises only where "an out-of-possession landlord has a duty imposed by statute or assumed by contract or a course of conduct" (*Alnashmi v Certified Analytical Group, Inc.*, 89 AD3d 10, 18). Here, where the complaint sounds in common-law negligence and does not allege the violation of a statute, the defendant established, prima facie, that it was an out-of-possession landlord which had no duty to remove snow and ice from the subject premises (*see Santos v 786 Flatbush Food Corp.*, 89 AD3d 828; *Thompson v Port Auth. of N.Y. & N.J.*, 305 AD2d 581; *D'Orlando v Port Auth. of NY & NJ*, 250 AD2d 805; *Stark v Port Auth. of N.Y. & N.J.*, 224 AD2d 681). In opposition, the plaintiff failed to raise a triable issue of fact. Moreover, that branch of the defendant's motion which was for summary judgment dismissing the complaint insofar as asserted against it was not premature, since the plaintiff failed to demonstrate that additional discovery might lead to relevant evidence, or that facts essential to justify opposition to the motion were exclusively within the knowledge and control of the defendant (*see Martinez v Kreychmar*, 84 AD3d 1037; *Davis v Rochdale Vil., Inc.*, 83 AD3d 991; *Deleg v Vinci*, 82 AD3d 1146; *Rainford v Sung S. Han*, 18 AD3d 638). "The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny the motion" (*Lopez v WS Distrib., Inc.*, 34 AD3d 759, 760).

DILLON, J.P., ENG, AUSTIN and MILLER, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court