

Tambini v City of New York

2010 NY Slip Op 33209(U)

October 8, 2010

Sup Ct, NY County

Docket Number: 112344/02

Judge: Cynthia S. Kern

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: CYNTHIA S. KERN
J.S.C.

PART 52

Index Number : 112344/2002

TAMBINI, CHRISTOPHER

vs

BOARD OF ELECTIONS

Sequence Number : 009

SUMMARY JUDGMENT

INDEX NO. 112344/02

MOTION DATE _____

MOTION SEQ. NO. 09

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion *is decided in accordance with the attached decision.*

FILED

NOV 12 2010

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 10/8/10

CYNTHIA S. KERN J.S.C.
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 52

-----X
CHRISTOPHER TAMBINI and LISA TAMBINI,

Plaintiffs,

Index No. 112344/02

-against-

THE CITY OF NEW YORK,

Defendant.

-----X
THE CITY OF NEW YORK.,

Third-party Plaintiff,

Index No. 590762/05

-against-

NEW YORK CONVENTION CENTER
DEVELOPMENT CORPORATION and
LIBERTY MOVING & STORAGE CO., INC.,

Third-party Defendants.

-----X
THE CITY OF NEW YORK.,

Second Third-party Plaintiff,

Index No. 590013/07

-against-

NEW YORK CONVENTION CENTER
OPERATING CORP.,

Second Third-party Defendant.

-----X

HON. CYNTHIA KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Answering Affidavits and Cross Motion.....	<u>2</u>

FILED
NOV 12 2010
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Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Plaintiff commenced this action against the City of New York (the “City”) seeking damages for personal injuries he allegedly sustained when he was moving an election voting booth up a cement ramp located on the second floor of a building as part of his employment with Liberty Moving & Storage. The City, which leased the premises where the injury occurred, sued the landlord of those premises, second Third-Party Defendant New York Convention Center Operating Corp. (“Operating Corp.”) on the ground that the landlord had a duty to repair any defect or dangerous condition on the ramp. Operating Corp. now moves for summary judgment dismissing the second third-party complaint brought by the City on the ground that it did not have any responsibility to maintain or repair the ramp where the injury occurred pursuant to the lease. The City cross-moves for summary judgment seeking indemnification from Operating Corp. For the reasons set forth more fully below, Operating Corp.’s motion is granted and the City’s cross-motion is denied.

The relevant facts are as follows. On April 5, 2001, plaintiff was working at premises located at 460 12th Avenue in Manhattan, in a building known as the Yale Building (the “Building”), when he was allegedly injured. He was working on the second floor of the building and was moving an election voting booth up a cement ramp. He alleges that he was injured when the voting booth struck a portion of the ramp with cracks and/or other defects, causing it to stop suddenly and injure him. Pursuant to a lease dated February 15, 2001 (the “License Agreement”), the Board of Elections (the “BOE” or the “Licensee”) was to lease the third, fourth and fifth floors of the Building (the “Permanent Space”) from Operating Corp. (the “Licensor”)

to store election equipment. The License provided that Operating Corp. had a duty to make all interior and structural repairs to the Permanent Space and also provided that Operating Corp. should indemnify the City for any liability “arising by reason of (I) injury to person or property occurring in or about the Building, occasioned in whole or in part by Licensor’s acts or omissions or the acts or omissions of Licensor’s employees agents [sic] or contractors, or (ii) Licensor’s failure to comply with any Requirements applicable to the Work [as defined in the License].” However, the leased floors were not ready when the BOE needed them and so it also leased space on the second floor (the “Temporary Space”) pursuant to Exhibit D to the License Agreement. Exhibit D specifically provided that “The Temporary Space shall be delivered to the Licensee [the BOE] in its “as is” condition...” Exhibit D did not contain any provision requiring Operating Corp. to make all interior and structural repairs. In fact, it specifically provided to the contrary, stating that, “Licensee agrees that the Licensor shall not have any obligation to perform any work or otherwise prepare the Temporary Space for Licensee’s use.” John O’Grady, chief voting machine technician for the BOE was involved in leasing the space and testified that the BOE took the Temporary Space “as is.”

Operating Corp. is entitled to summary judgment dismissing the complaint brought by its tenant, the City, because it had no obligation under the Lease to make any repairs to the Temporary Space where the ramp was located. The lease for the Temporary Space specifically provided that the space was to be leased “as is” and explicitly stated that Operating Corp. had no obligation to perform any work or prepare the Temporary Space for the BOE. The License Agreement requiring Operating Corp. to make repairs only applies to the Permanent Space located on the 3rd, 4th and 5th floors and does not apply to the 2nd floor Temporary Space where

the ramp was located. The City's argument that the License provisions requiring Operating Corp. to make structural repairs applies to the Temporary Space is without merit. Exhibit D is the applicable agreement which governs the Temporary Space and it clearly states that the Temporary Space is being leased in "as is" condition and that Operating Corp. has no obligation to do any work in the Temporary Space.

Conversely, the City's cross-motion for summary judgment on its indemnification claim is denied. The License provided that Operating Corp. should indemnify the City for any liability "arising by reason of (I) injury to person or property occurring in or about the Building, occasioned in whole or in part by Licensor's acts or omissions or the acts or omissions of Licensor's employees agents [sic] or contractors..." However, the injury to plaintiff was not occasioned in whole or in part by any act or omission on the part of Operating Corp. since it had no obligation to make any repairs or perform any work in the Temporary Space.

Accordingly, Operating Corp.'s motion for summary judgment dismissing the second third-party complaint brought against it by the City is granted. The City's cross-motion for summary judgment is denied. This constitutes the decision, order and judgment of the court.

Dated: 10/8/10

Enter: PK
J.S.C.

CYNTHIA S. KERN
J.S.C.

FILED

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