

Shikowitz v HKND Realty Co., LLC
2020 NY Slip Op 34704(U)
March 10, 2020
Supreme Court, Nassau County
Docket Number: Index No. 602129/2017
Judge: Antonio I. Brandveen
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ORIGINAL

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: ANTONIO I. BRANDVEEN
J. S. C.

LAUREN SARDIS SHIKOWITZ,
Plaintiff,

TRIAL / IAS PART 22
NASSAU COUNTY

- against -

Index No. 602129/2017

HKND REALTY COMPANY, LLC and
SALON O, INC.,

Motion Sequence No. 002

Defendants.

The following papers having been read on this motion:

Table listing documents: Notice of Motion, Affidavits, & Exhibits (1, 2, 3), Answering Affidavits (4, 5), Replying Affidavits (6), Briefs: Plaintiff's / Petitioner's, Defendant's / Respondent's.

UPON DUE DELIBERATION AND CONSIDERATION BY THE COURT of
the foregoing papers, including efiled documents/exhibits numbered 48-58, 61 and 62,
this motion is decided as follows:

The defendant Hknd Realty Company, LLC moves for an order pursuant to CPLR 3212
granting summary judgment to Hknd Realty Company, LLC dismissing the complaint of the
plaintiff Lauren Sardis Shikowitz, and granting contractual indemnification and attorney's fees,
costs and disbursements in favor of Hknd Realty Company, LLC against the codefendant Salon
O, Inc. Hknd Realty Company, LLC asserts no triable issues of fact exist regarding liability
against Hknd Realty Company, LLC, and contractual indemnification favors Hknd Realty

Company, LLC in its dispute with Salon O, Inc.

The underlying personal injury action involves a trip and fall incident on May 17, 2016, on a walkway in front of the premises at 592 Jericho Turnpike, Syosett, New York. The defense alleged the subject property was owned by Hknd Realty Company, LLC, and leased to Salon O, Inc. Hknd Realty Company, LLC asserts a lease agreement required the tenant Salon O, Inc. to indemnify the landlord, Simon & Simon Syosset, LLC (Hknd Realty Company, LLC, the predecessor to Simon & Simon) for all damages as a result of anything or any alleged injury to any person. Hknd Realty Company, LLC adds the lease agreement required Salon O, Inc. to indemnify the landlord, and to procure liability insurance to protect Simon & Simon Syosset, LLC (Hknd Realty Company, LLC) and its principals against injury or death. Hknd Realty Company, LLC points out it cross claimed against Salon O, Inc. alleging, based on the lease, Simon & Simon Syosset, LLC (Hknd Realty Company, LLC) and its principals were entitled to contractual indemnification, and Salon O, Inc. was obligated under the lease to procure insurance coverage naming Hknd Properties as additional insureds.

The Court determined Hknd Realty Company, LLC established its *prima facie* entitlement to judgment as a matter of law dismissing the complaint of the plaintiff against Hknd Realty Company, LLC. Company, LLC provided evidence in admissible form to support its assertions. Hknd Realty Company, LLC asserted the plaintiff's deposition testimony revealed a complete lack of knowledge as to what caused the fall which alone, requires a dismissal of the complaint.

The Court determined Hknd Realty Company, LLC established its *prima facie* entitlement to judgment as a matter of law granting contractual indemnification and attorney's fees, costs and disbursements in favor of Hknd Realty Company, LLC against Salon O, Inc. (*see Drago v DeLuccio*, 79 AD3d 966 [2d Dept 2010]). Hknd Realty Company, LLC provided evidence in admissible form to support its assertions.

In opposition, the plaintiff raised triable issues of fact including but not limited to whether Hknd Realty Company, LLC either created or had constructive notice of the alleged dangerous condition concerning the subject premises, and whether the alleged condition was trivial in nature (*see Segrell v City of New York*, 44 AD3d 929 [2d Dept 2007]). This Court examined all of the facts presented regarding the alleged condition, including all of its dimensions, and here the evidence provided by the parties created a triable issue of fact regarding whether it was trivial in nature (*see Rogers v 575 Broadway Assoc., L.P.*, 92 AD3d 857 [2d Dept 2012]). The Court notes the plaintiff identified the location of the accident during the deposition by circling the area on photographs which created an issue of fact regarding causation for the accident.

“A contract will be interpreted in accordance with the intent of the parties as expressed in the language of the agreement.” “The right to contractual indemnification depends upon the specific language of the contract.” “The promise to indemnify should not be found unless it can be clearly implied from the language and purpose of the entire agreement and the surrounding facts and circumstances” [citation omitted]

Del Vecchio v Danielle Assoc., LLC, 108 AD3d 583, 585-86 [2d Dept 2013].

The plaintiff provided evidence in admissible form showing the plaintiff installed the subject sidewalk and curb after the property purchase with a monolithic pour of concrete, and performed inspections and repairs on a regular basis. Those circumstances raised issues of fact concerning the defendants’ conduct under the lease agreement about contractual indemnity (*see Pinto v Walt Whitman Mall, LLC*, 175 AD3d 541 [2d Dept 2019]).

In opposition, Salon O, Inc. raised a triable issue of fact including but not limited to whether the lease agreement required Salon O, Inc. to maintain sidewalk areas adjacent to the demised premises in good repair, order and condition included the precise location of the plaintiff’s fall (*see Bryde v CVS Pharm.*, 61 AD3d 907 [2d Dept 2009]). Salon O, Inc. also raised a triable issue of fact whether the lease agreement included any obligation to keep and maintain the curb adjacent to the sidewalk in good repair, order and condition. Salon O, Inc.

further raised a triable issue of fact whether the lease agreement required Salon O, Inc. to make any repairs to the structural parts of the demised premises, and whether that is exclusively the landlord's non-delegable duty to members of the general public. Moreover, Salon O, Inc. raised a triable issue of fact whether Hknd Realty Company, LLC created the condition that caused the plaintiff to fall (*see Pantaleo v Bellerose Senior Hous. Dev. Fund Co., Inc.*, 147 AD3d 777 [2d Dept 2017]).

ORDERED that the motion is DENIED in all respects.

So ordered.

Dated: **March 10, 2020**

ENTER:



J. S. C.

NOT FINAL DISPOSITION

HON. ANTONIO I. BRANDVEEN
J.S.C.

ENTERED
MAR 16 2020
NASSAU COUNTY
COUNTY CLERK'S OFFICE