

Land v Merrick Seamen Assoc., LLC

2020 NY Slip Op 34789(U)

July 17, 2020

Supreme Court, Nassau County

Docket Number: Index No. 608149/18

Judge: James P. McCormack

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT - STATE OF NEW YORK

PRESENT:

Honorable James P. McCormack

Justice

_____ x

**TRIAL/IAS, PART 18
NASSAU COUNTY**

ELYSE LAND,

Index No. 608149/18

Plaintiff(s),

-against-

**Motion Seq. No.: 002
Motion Submitted: 7/9/2020**

**MERRICK SEAMEN ASSOCIATES,
LLC, CVS ALBANY, LLC and GLOBAL
INDUSTRIAL SERVICES, INC. ,**

Defendant(s).

_____ x

The following papers read on this motion:

Notice of Motion/Supporting Exhibits.....X

Defendant, Merrick Seamen Associates, LLC (MSA), moves this court, pursuant to CPLR §3212, for an order granting them summary judgment and dismissing the complaint against them. There is no opposition.

This slip-and-fall-on-ice action was commenced by Plaintiff, Elyse Land (Land), by service of a summons and complaint dated June 19, 2018. Issue was joined by service of an answer with cross claims by SMA dated October 30, 2018. An amended complaint dated January 11, 2019 adding Defendant Global Industrial Services, Inc. (Global) was then served. SMA and CVS Albany, LLC (CVS) interposed an answer with a cross claim to the amended complaint dated March 12, 2019. Global served an answer dated May 23, 2019. The case certified ready for trial on November 14, 2019 and a note of issue was filed on February 6, 2020

On January 6, 2018, Land alleges that she slipped and fell on ice on the sidewalk abutting 2250 Seamen's Neck Road, Seaford, County of Nassau. MSA owns the property and leases it to CVS. Global is the snow removal company hired by CVS. MSA now moves for summary judgment, arguing it was an out-of-possession landlord and cannot therefor be found liable.

It is well settled that in a motion for summary judgment the moving party bears the burden of making a *prima facie* showing that he or she is entitled to summary judgment as a matter of law, submitting sufficient evidence to demonstrate the absence of a material issue of fact (*see Sillman v. Twentieth Century Fox Film Corp.*, 3 NY2d 395 [1957]; *Friends of Animals, Inc. v. Associates Fur Mfrs.*, 46 NY2d 1065 [1979]; *Zuckerman v. City of New York*, 49 NY2d 557 [1980]; *Alvarez V. Prospect Hospital*, 68 NY2d 320 [1986]).

The failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegard v. New York University Medical Center*, 64 NY2d 851 [1985]). Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*see Zuckerman v. City of New York*, 49 NY2d 5557 [1980], *supra*).

MSA argues it was an out-of-possession landlord who did not retain control over the premises, and was not required by contract, statute or course of conduct to maintain or repair the premises. (*Byrd v. Brooklyn 46 Realty, LLC*, 129 AD3d 882 [2d Dept. 2015]). According to the lease between MSA and CVS, CVS assumed the responsibility to maintain the premises “in good order and repair”. As such, it was CVS who hired Global to perform snow removal. MSA further argues it did not retain control over the premises.

Based upon the lease and the deposition testimony of the parties, the court finds that MSA has established entitlement to summary judgment as a matter of law. The burden shifts to Land to raise a material issue of fact requiring a trial of the matter. As the motion is unopposed, Land is unable to raise an issue of fact.

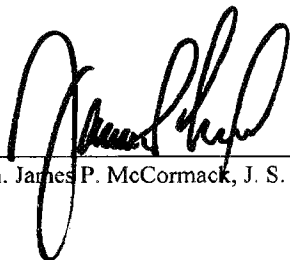
Accordingly, it is hereby

ORDERED, that MSA's motion for summary judgment is GRANTED. The complaint is dismissed against MSA. Any cross claims against MSA are dismissed, and MSA's cross claim is dismissed as moot.

This constitutes the Decision and Order of the Court.

Dated: July 17, 2020
Mineola, N.Y.

ENTERED
Jul 22 2020
NASSAU COUNTY
COUNTY CLERK'S OFFICE



Hon. James P. McCormack, J. S. C.