

Bernstein v 207 W. 79th St. LLC
2021 NY Slip Op 30166(U)
January 19, 2021
Supreme Court, New York County
Docket Number: 151553/2018
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 14

Justice

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INDEX NO. 151553/2018

GENYA BERNSTEIN,

MOTION DATE 01/15/2021

Plaintiff,

MOTION SEQ. NO. 002

- v -

207 WEST 79TH STREET LLC, RYDER CONSTRUCTION INC., STEVEN PINCHASICK, ECOSAFETY CONSULTANTS INC, PRECISION HOIST & SCAFFOLD CORP,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 61, 62, 63, 64, 65, 66, 71, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 100, 101, 102, 103, 104

were read on this motion to/for DISMISSAL.

The motion by defendant Precision Hoist & Scaffold Corp. ("Precision") for summary judgment dismissing this case is granted. The cross-motion by defendants 207 West 79th Street LLC and Ryder Construction Inc. ("Cross-Movants") for indemnification is denied.

Background

Plaintiff contends that she slipped and fell over snow and ice on the sidewalk in front of premises located at 207 West 79th Street in Manhattan on January 19, 2018. Precision claims that it rents scaffolding equipment to general contractors and owners but it was not the general contractor for the premises at issue here. It also emphasizes it had no duty to remove snow or ice.

In opposition, Cross-Movants assert that Precision's motion is premature because there have been no depositions yet and Precision has not provided any discovery. They also assert that

the accident need only arise out of Precision's work under the terms of the contract with Precision and they seek contractual indemnity from Precision.

In reply, Precision emphasizes that it had nothing to do with the accident and there is no need for further discovery.

In reply to its cross-motion, the Cross-Movants maintain that the motion should be held in abeyance until more information is gleaned about the exact nature of plaintiff's accident.

Discussion

To be entitled to the remedy of summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such a prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id.*). When deciding a summary judgment motion, the court views the alleged facts in the light most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492, 955 NYS2d 589 [1st Dept 2012]).

Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court's task in deciding a summary judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d'Amiante Du Quebec*,

Ltee, 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], *affd* 99 NY2d 647, 760 NYS2d 96 [2003]).

The Court grants the motion and denies the cross-motion. There is no dispute that Precision was hired to put up scaffolding and that it was neither the owner nor the general contractor at the premises. Moreover, the bill of particulars demonstrates that plaintiff slipped on the sidewalk due to ice or snow. There is no reason to keep a scaffolding contractor in a case involving the alleged failure to remove ice or snow from the sidewalk.

Cross-Movants point to no provision in any relevant contract that would have required Precision to remove snow or ice. Clearly, they are not entitled to contractual indemnification where the accident had nothing to do with Precision's scaffolding. There is also no need to hold the motion in abeyance and wait for more discovery. Simply put, Cross-Movants did not cite any basis as to how a scaffolding contractor could face liability (or provide contractual indemnification) to an owner and general contractor for a slip and fall on a sidewalk.

The Court observes that plaintiff filed an untimely opposition that adopted Cross-Movants arguments but did not include an affidavit from plaintiff explaining why Precision should remain in the case.

This is not a case where there is any confusion about the nature of the accident—plaintiff says she slipped and fell over snow and ice on the sidewalk. The responsibility to keep the sidewalk clear of dangerous conditions does not lie with a scaffolding contractor absent an express agreement to do so. No such agreement was shown here.

Accordingly, it is hereby

ORDERED that the motion by Precision Hoist & Scaffold Corp. for summary judgment dismissing all claims against it is granted and the Clerk is directed to enter judgment accordingly along with costs and disbursements upon presentation of proper papers therefor; and it is further

ORDERED that the cross-motion by defendants 207 West 79th Street LLC and Ryder Construction, Inc. is denied.

Already Scheduled Remote Conference: March 2, 2021 at 11:30 a.m.

1/19/2021
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	
	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
APPLICATION:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	
CHECK IF APPROPRIATE:	<input type="checkbox"/>		<input type="checkbox"/>	REFERENCE	
		<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	OTHER