

<b>Dunn v Ruppert Yorkville Towers Condominium</b>
2021 NY Slip Op 30624(U)
March 4, 2021
Supreme Court, New York County
Docket Number: 155410/2018
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. 155410/2018**

ERIKA DUNN,

**MOTION DATE 03/02/2021,  
03/02/2021**

Plaintiff,

**MOTION SEQ. NO. 002 003**

- v -

THE RUPPERT YORKVILLE TOWERS CONDOMINIUM,  
R.Y. MANAGEMENT CO. INC., YORKVILLE TOWERS  
ASSOCIATES, LLC

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 64, 73, 75, 76, 77

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 65, 66, 67, 68, 69, 70, 71, 72, 74

were read on this motion to/for JUDGMENT - SUMMARY.

Motion Sequence Numbers 002 and 003 are consolidated for disposition.

The motion (MS002) by defendant the Ruppert Yorkville Towers Condominium (“Ruppert”) for summary judgment dismissing the complaint and all cross-claims against it is granted in part. The motion (MS003) by defendants R.Y. Management Co. Inc. (“RY”) and Yorkville Towers Associates (“Yorkville”) for summary judgment dismissing the complaint is granted.

**Background**

This trip and fall action arises out of an alleged accident involving plaintiff on May 10, 2017. Plaintiff was at a U.S. Post Office and claims that her foot got caught in the space between

a carpet and the door frame on the floor. Defendant Yorkville is the owner of the premises and RY is the managing agent.

The branch of U.S. Post Office is in a commercial condominium unit pursuant to a lease with Yorkville. Yorkville is the sponsor for the 431 units in the condo.

## MS002

Defendant Ruppert moves for summary judgment dismissing the case on the ground that it has no duty to plaintiff because Yorkville owns the commercial condo where the post office—the location where the accident occurred—is located. Ruppert argues that it has residential units and a separate commercial unit, but that its commercial unit is occupied by a different business from the post office.

Plaintiff “takes no position on the motion” although her wherefore clause requests that the motion be denied.

Defendants Yorkville and RY also offer opposition with respect to the three cross claims asserted by Ruppert against these defendants.

The Court grants the branch of the motion to dismiss plaintiff’s claims against Ruppert as plaintiff did not offer opposition. However, the remaining branches of the motion are denied. Ruppert’s motion seeks “conditional summary judgment” against RY and Yorkville on indemnification grounds but only cites common law indemnification in its moving papers.

“Common-law indemnification is predicated on vicarious liability, which necessitates that a party who has itself actually participated to some degree in the wrongdoing cannot receive the benefits of the doctrine” (*Edge Mgt. Consulting, Inc. v Blank*, 25 AD3d 364, 367 [1st Dept 2006] [internal quotations and citations omitted]). “[I]n the case of common-law indemnification, the one seeking indemnity must prove not only that it was not guilty of any

negligence beyond the statutory liability but must also prove that the proposed indemnitor was guilty of some negligence that contributed to the causation of the accident” (*Correia*, 259 AD2d at 65).

Here, there has been no finding that RY or Yorkville is negligent so common law indemnification is inappropriate. The Court recognizes that the amended answer from Ruppert alleges cross-claims for contribution and contractual indemnity against RY and Yorkville but Ruppert did not make any arguments as to why the Court should grant summary judgment on those cross-claims.

The other branch of Ruppert’s motion seeks to dismiss cross-claims by Yorkville or RY; this branch is denied as irrelevant. As Yorkville and RY note in opposition, they did not assert any cross-claims against Ruppert.

However, because the Court is dismissing the complaint against all defendants (as described below), the cross-claims are moot.

### **MS003**

In this motion, Yorkville and RY claim that the case should be dismissed against them because they had no right to enter, inspect or make repairs to the premises. They assert that the accident was not based on a design or structural defect that contravenes a specific statute. These defendants also point out that plaintiff brought a separate claim against the U.S. Post Office that resulted in a settlement for \$95,000.

In opposition, plaintiff claims that these defendants’ motion should be denied because they still had responsibilities pursuant to the lease with the U.S. Post Office. She insists that the maintenance rider on the lease required the landlord to repair all structural elements, which included the floors. Plaintiff also attaches the affidavit of an expert, who asserts that “the

mounted metal frame is an integral part of the floor” and that “[w]ithout the presence of a proper mat the change in elevation creates a tripping hazard” (NYSCEF Doc. No. 72, ¶ 3). The expert concludes that defendant violated the building code (*id.* ¶ 5).

In reply, RY and Yorkville argue that the lease excludes the landlord’s responsibility to repair floor coverings and that the accident happened because of the floor mat. These defendants also argue that the Building Code provision relied upon by plaintiff’s expert is non-specific and cannot be cited for purposes of liability.

The Court grants the motion. The maintenance rider required the landlord (Yorkville) to maintain and repair the floor but “not including floor covering[s]” (NYSCEF Doc. No. 53 at 13). Plaintiff testified that the accident happened because there “was sort of uneven as you were exiting and there was a little carpet and it wasn’t flush with the frame that it was placed” (NYSCEF Doc. No. 59 at 16-17). Then she claimed that she tripped on the carpet and “Yes, between the --- well, actually, it wasn’t flush with—there was a space between the frame and the carpet” (*id.* at 17). Clearly, the accident was caused by the placement of the carpet, which is a floor covering, and Yorkville and RY were not responsible for maintaining floor coverings. Therefore, summary judgment is granted (*Joyner v Mingles Cafe, Inc.*, 115 AD3d 560, 561, 982 NYS2d 118 [1st Dept 2014] [finding that an out-of-possession landlord did not have a duty to plaintiff where there was no significant structural or design defects]).

And here, the plaintiff’s expert did not identify a Building Code upon which plaintiff could recover. The provision he cited, section 28-301.1, cannot support a negligence claim against Yorkville and RY (*J-Line Inc. v Leggett Ave. & So. Blvd. Realty Corp.*, 134 AD3d 584, 584-85, 23 NYS3d 167 [1st Dept 2015]).


Accordingly, it is hereby

ORDERED that the motion by defendant Ruppert Yorkville Towers Condominium for summary judgment is granted only to the extent that plaintiff's complaint is dismissed against it; and it is further

ORDERED that the motion by defendants R.Y. Management Co. Inc. and Yorkville Towers Assocaites, LLC for summary judgment dismissing plaintiff's complaint and the cross-claims against it is granted; and it is further

ORDERED that the clerk is directed to enter judgment accordingly along with costs and disbursements upon presentation of proper papers therefor.

3/4/2021  
DATE

  
ARLENE P. BLUTH, J.S.C.

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