

Larcier v Popeyes Lousiana Kitchen, Inc.
2021 NY Slip Op 33685(U)
May 13, 2021
Supreme Court, Kings County
Docket Number: Index No. 520753/2018
Judge: Francois A. Rivera
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

PRESENT: HONORABLE FRANCOIS A. RIVERA
PART 52

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No. 520753/2018

-----X

JEFFREY LARCIER,

Plaintiff,

Motion Date: 5/13/2021

- against-

Motion Seq. Nos. 4 & 5

Motion Cal. Nos. 27 & 28

POPEYES LOUSIANA KITCHEN, INC., 1465 MYRTLE
AVE., L.L.C., ZEZO FOOD SERVICES, LLC. and
NASARY DEVELOPMENT CORP.,

Defendants.

-----X

The following E-Filed Papers numbered 65-78, 91-93, 97-99, 100-109, 110-118, and 119-120 were submitted and considered on Motion Sequence #4 and Motion Sequence #5.

Notice of Motions – Affidavits – Exhibits..... EF: 65-78; 91-93; 97-99
Answering Affidavits – Exhibits EF: 100-109; 119-120
Replying Affidavits – Exhibits EF: 110-118; 119-120

Upon the foregoing papers, it is ordered that these motions are decided as follows with respect the defendant’s cross-claims for contractual and common law indemnity:

This is an action to recover for personal injuries allegedly suffered by the plaintiff following an incident that occurred on March 24, 2018 at the premises known as 1465 Myrtle Avenue in County of Kings, City and State of New York.

Defendants POPEYES LOUSIANA KITCHEN, INC., ZEZO FOOD SERVICES, LLC, 1465 MYRTLE AVE., L.L.C. and NASARY DEVELOPMENT CORP. now move pursuant to CPLR §3212 seeking summary judgment and a dismissal of plaintiff's Complaint as well as a

dismissal of the defendants cross-claims. Defendants 1465 MYRTLE AVE and NASARY DEVELOPMENT CORP. seek summary judgment on its contractual and common law indemnity claims against ZEZO FOOD SERVICES, LLC.

Here, it was established that ZEZO FOOD SERVICES, LLC agreed to maintain the adjoining sidewalks at 1465 Myrtle Avenue, in Kings County, City and State of New York as part of its occupancy pursuant to a lease agreement with 1465 MYRTLE AVE., L.L.C. As stated in the Rider to the lease at paragraph 43.1, it required ZEZO FOOD SERVICES, LLC to indemnify 1465 MYRTLE AVE., L.L.C. and “hold them harmless from all liability for injury to person or property resulting from the Tenant’s occupancy of the premises” and, to the extent not prohibited by law... “releases the landlord, its agents, representatives, servants and employees from any and all claims resulting from any accident, damage, injury or death , which may occur on the premises”. Based on the allegations of plaintiff slipping and falling on ice, and the undisputed facts in this case that ZEZO FOOD SERVICES, LLC agreed to remove snow and ice from the adjoining sidewalks at the aforementioned location, the indemnity provision in the rider was triggered requiring ZEZO FOOD SERVICES, LLC to contractually indemnify 1465 MYRTLE AVE., L.L.C. There was no issue triable issue of fact relating to ZEZO FOOD SERVICES, LLC obligations under the lease on contractual indemnity. Based on the foregoing, POPEYES LOUISIANA KITCHEN, INC. and ZEZO FOOD SERVICES, LLC claims to dismiss 1465 MYRTLE AVE., L.L.C. and NASARY DEVELOPMENT CORP.’s claims for contractual indemnity are denied.

Here, there is no proof as to NASARY DEVELOPMENT CORP.’s subsidiary or agency status, therefore its claims for contractual indemnity are denied as premature.

With regard to the common-law indemnity claims by defendants 1465 MYRTLE AVE., L.L.C and NASARY DEVELOPMENT CORP., they failed to show that they were free of negligence for the happening of the accident. As such the common-law indemnity claims against ZEZO FOOD SERVICES, LLC are denied as premature. Similarly, POPEYES LOUSIANNA KITCHEN, INC. and ZEZO FOOD SERVICES, LLC claims to dismiss 1465 MYRTLE AVE., L.L.C and NASARY DEVELOPMENT CORP. claims for common-law indemnity are denied as premature.

Accordingly, for the reasons stated above, it is hereby,

ORDERED, that defendant 1465 MYRTLE AVE., L.L.C.'s motion for summary judgment for contractual indemnity against ZEZO FOOD SERVICES, LLC is granted; and it is further

ORDERED, that defendant NASARY DEVELOPMENT CORP.'s motion for summary judgment for contractual indemnity against ZEZO FOOD SERVICES, LLC is denied as premature; and it is further;

ORDERED, that defendants 1465 MYRTLE AVE., L.L.C. and NASARY DEVELOPMENT CORP.'s motion for summary judgment against defendant ZEZO FOOD SERVICES, LLC for its cross-claim on common law indemnity are denied as premature; and it is further;

ORDERED, that defendants POPEYES LOUSIANNA KITCHEN, INC. and ZEZO FOOD SERVICES, LLC motion for summary judgment dismissing the defendants 1465 MYRTLE AVE., L.L.C. and NASARY DEVELOPMENT CORP.'s cross-claims for contractual indemnity are denied; and it is further;

ORDERED, that defendant POPEYES LOUSIANNA KITCHEN, INC. and ZEZO FOOD SERVICES, LLC motion for summary judgment dismissing the defendants 1465 MYRTLE AVE., L.L.C. and NASARY DEVELOPMENT CORP.'s cross-claims for common law indemnity are denied as premature.

Dated: May 13, 2021
Brooklyn, N.Y.



HONORABLE FRANCOIS A. RIVERA