

**Manigault v NG 1095 E 45th LLC**

2022 NY Slip Op 30617(U)

February 28, 2022

Supreme Court, Kings County

Docket Number: Index No. 504255/2019

Judge: Wayne P. Saitta

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 29 of the Supreme Court of the State of New York, held in and for the County of Kings, at 360 Adams Street, Brooklyn, New York, on the 28th day of February, 2022.

P R E S E N T:

Hon. Wayne P. Saitta, Justice.

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CASHMERE MANIGAULT,

Plaintiff,

Index No. 504255/2019

-against-

NG 1095 E 45<sup>th</sup> LLC,

DECISION AND ORDER  
MS #1

Defendant.

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The following papers numbered on this motion:

NYSCEF Doc Numbers

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____	12-14
Answering Affidavit (Affirmation) _____	21-22
Reply Affidavit (Affirmation) _____	23
Supplemental Affidavit (Affirmation)	
Pleadings – Exhibits _____	16-20
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Plaintiff’s Verified Complaint alleges that he suffered injuries on April 1, 2018, after tripping on a pothole at an employee parking lot located at 1095 E. 45<sup>th</sup> Street, Brooklyn, New York (the “Premises”).

Defendant NG 1095 E 45<sup>th</sup> LLC, the owner of the property moves for an Order, pursuant to CPRL § 3212, granting summary judgment and dismissing Plaintiff’s Complaint.

At the time of the accident, Plaintiff was employed as a field technician for non-party Cablevision Systems New York City Corporation (“CABLEVISION”) which occupied the Premises, including the parking lot where Plaintiff fell, pursuant to a Lease with Defendant as Landlord.

While the parking lot where Plaintiff fell was not originally part of the premises demised in the lease, the Fourth Amendment to the Lease dated June 4, 2008 added the parking lot where Plaintiff fell to the lease.

Paragraph 6 of the Fourth Amendment to the Lease provided “Effective as of the date hereof, Landlord grants Tenant exclusive possession of the entire parking lot fronting on East 45th Street, shown on Exhibit E”

The map annexed as Exhibit E to the Fourth Amendment to the Lease demonstrates that the parking lot conveyed to the exclusive possession of CABLEVISION in the Fourth Amendment is the parking lot in front of the loading bays where Plaintiff fell.

Thus, the parking lot where Plaintiff fell was part of the demised premises on the date of the accident.

Under the Lease, the tenant had the obligation to make all repairs. Paragraph 63 of the Lease, in pertinent part, provides: “In furtherance of paragraph ‘3’ of this lease, Tenant shall make all necessary repairs to the demised premises.”

By reason of the above, Defendant has demonstrated that it is an out of possession landlord.

“As a general rule, ‘an out-of-possession landlord who relinquishes control of the premises and is not contractually obligated to repair unsafe conditions is not liable to employees of a lessee for personal injuries caused by an unsafe condition existing on the

premises” (*Wayman v. Roy Stanley*, 122 AD3d 1119, 1120 [3<sup>rd</sup> Dept 2014], quoting *Inger v. PCK Dev. Co., LLC*, 97 AD3d 895, 896 [3<sup>rd</sup> Dept 2012]). The court noted there are exceptions to the general rule such as that “a landlord has a ‘nondelegable duty to provide the public with a reasonably safe premises and a safe means of ingress and egress” (*id.*, quoting *Reynolds v. Sead Dev. Group*, 257 AD2d 940, 940 [3<sup>rd</sup> Dept 1999]).

However, the duty to repair the employee parking lot was delegable because that lot was not open to the general public .

Plaintiff’s reliance on *Montalvo v. Kissena Beverage, Inc.*, 53 Misc.3d 1203(A) (Sup. Ct. Queens Cnty. 2016), and *Basso v. Miller*, 40 NY2d 233 (1976) is misplaced.

In *Montalvo*, the court found there was a question of fact whether the sidewalk and parking lot surrounding the demised premises were a part of the demised premises pursuant to the lease. In the present case, the Fourth Amendment to the Lease clearly includes the parking lot where Plaintiff fell as part of the demised premises and the lease requires the lessee to make all necessary repairs.

In *Basso*, the Court dealt with whether there should be different duties of care imposed on a landowner based on the status of the Plaintiff as either a trespasser, licensee, or invitee which is not an issue in this case.

Further, Plaintiff’s contention that Defendant was not an out-of-possession landlord because Defendant made repairs to the parking lot a few times is without merit. Liability may attach where the out-of-possession landlord has retained a right to reenter the premises for inspection or repairs and the injury arises from a structural defect or specific statutory violation (*see Wayman v. Roy Stanley*, 122 AD3d 1119, 1120 [3<sup>rd</sup> Dept 2014]; *Boice v. PCK Dev. Co., LLC*, 121 AD3d 1246, 1247 [2014]; *Brown v. BT-Newyo, LLC*, 93 AD3d 1138, 1138-1139 [2012], *lv denied* 19 NY3d 815 [2012]). However, here

there is no evidence that the condition which caused Plaintiff's injury was a structural defect or specific statutory violation.

WHEREFORE, it is ORDERED that Defendant NG 1095 E 45<sup>th</sup> LLC's motion for summary judgment dismissing the complaint is GRANTED.

This constitutes the decision and order of the Court.

ENTER,



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J.S.C.