

Safier v City of New York
2022 NY Slip Op 33440(U)
October 11, 2022
Supreme Court, New York County
Docket Number: Index No. 158953/2015
Judge: Richard G. Latin
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. RICHARD LATIN PART 46V

Justice

SCOTT SAFIER, Plaintiff, - v - CITY OF NEW YORK, FIRST FOOD SERVICE LLC D/B/A NO.1 CHINESE RESTAURANT, YU SUSHI INC., SAGGIO RESTAURANT INC., PINE 181, INC., TRI-STATE BIODIESEL, LLC, UNITY FUELS, LLC D/B/A GREASE LIGHTNING, MID-BRONX HAULAGE CORP., CENTURY WASTE SERVICES, L.L.C., MOSBACHER PROPERTIES GROUP, LLC, KALKIN NARVILAS, Defendant. INDEX NO. 158953/2015 MOTION DATE 03/08/2022 MOTION SEQ. NO. 013

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 007) 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 234, 331, 358, 390, 459, 460, 461, 462, 463, 464, 465, 466, 467, 473, 474, 483, 484, 494, 496

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 008) 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 332, 391, 392, 404, 405, 408, 409, 410, 411, 412, 413, 414, 415, 469, 470, 498, 499

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 009) 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 283, 284, 333, 398, 399, 400, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 468, 475, 476, 485, 486, 487, 488, 489, 490, 491, 492, 493, 506

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 010) 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 335, 393, 394, 395, 396, 422, 423, 424, 425, 426, 427, 428, 503

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER

The following e-filed documents, listed by NYSCEF document number (Motion 011) 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 334, 406, 407, 452, 453, 454, 455, 456, 457, 458, 477, 478, 497, 502

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 012) 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 436, 437, 438, 439, 440, 441, 479, 480, 495

were read on this motion to/for

JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 013) 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 401, 402, 403, 416, 417, 418, 419, 420, 421, 481, 482, 504, 505

were read on this motion to/for

SUMMARY JUDGMENT(AFTER JOINDER

Upon the foregoing documents, it is ordered that the motions for summary judgment brought by Unity Fuels, LLC d/b/a Grease Lightning (“Grease Lightning”), Pine 181, Inc. (“*Pine 181*”) and Mosbacher Properties Group, LLC, First Food Service LLC d/b/a No.1 Chinese Restaurant (“No. 1 Chinese”), Yu Sushi, Inc. (“Yu Sushi”), Mid-Bronx Haulage Corp. (“Mid-Bronx”), Century Waste Services, L.L.C., and Saggio Restaurant Inc. (“Saggio”) and Kalkin Narvilas are determined as follows:

Plaintiff commenced the instant action alleging that he was injured when he slipped on oil/grease on the roadway in front of the premises at 825-829 181st Street, New York, New York while riding his bicycle on May 31, 2014. 825-829 181st Street is occupied by three restaurants, defendants No.1 Chinese Restaurant, Yu Sushi, and Saggio. The buildings where those restaurants are located are owned and managed by defendants Pine 181 and Mosbacher Properties Group, LLC (“Mosbacher”). Mid-Bronx and Century Waste Services L.L.C. were solid waste garbage pick-up companies that serviced the restaurant(s) and Grease Lightning picked up cooking oil. With these motions, the moving defendants all respectively seek to dismiss plaintiff’s complaint and all cross claims, and the building owners and managers also seek indemnification.

The proponent of a summary judgment motion has the burden of submitting evidence in admissible form demonstrating the absence of any triable issues of fact and establishing entitlement to judgment as a matter of law (*see Giuffrida v Citibank Corp.*, 100 NY2d 72 [2003]);

see also Alvarez v Prospect Hosp., 68 NY2d 320 [1986]). Only when a movant satisfies its prima facie burden will the burden shift to the opponent “to lay bare his or her proof and demonstrate the existence of triable issues of fact” (*Alvarez*, 68 NY2d at 324; *see also Zuckerman v City of New York*, 49 NY2d 557 [1980]).

In support and opposition to the motions, the parties respectively submit, inter alia, the deposition testimony of the parties, the deposition testimony of non-parties, photographs taken by the non-parties on the date of the accident, and an expert affidavit.

Deposition Testimony of Non-Party Rosario Rodriguez

Rodriguez testified that she lives at 854 West 181st Street, New York, New York. She claimed that she witnessed the plaintiff’s accident, and another bicyclist’s accident, and that each occurred at 181st Street and Cabrini Boulevard while she was walking her dog that Saturday morning. She stated that plaintiff’s accident came ten minutes after the first one and that she ran across the street to him because he screamed very loudly. She alleged that she did not see any bleeding or abrasions but did observe a gush of black oil. Rodriguez took pictures for the plaintiff in case he was going to pursue legal action because she thought that was the humane thing to do for someone in his pain. At the time, Rodriguez nearly slipped but caught herself and momentarily questioned if she had vertigo. She also took photographs on the following Tuesday to demonstrate that sand was put down at the spot that was slick at the time of the accident. She recalled that other witnesses ran towards the plaintiff after the accident including Lucy Yates who also witnessed plaintiff’s accident.

Rodriguez remembered that she and Lucy Yates were wondering why the road was so slick that it would cause a bicycle accident. Rodriguez knew that Yates also fell around the same spot

that day. As a result, Rodriguez and Lucy Yates went to the restaurants on that side of the street to find out why this happened. She alleged that the manager of Saggio came out and said it wasn't them. In response, Rodriguez told Yates it was the Japanese Restaurant, Yu Sushi. She realized that the slickness was due to cooking oil that the ground was saturated with by the tree where Yu Sushi put out its garbage. This oil was on both the sidewalk and the roadway in front of Yu Sushi. She averred that she knew it was cooking oil by its smell and that was not in a circle shape but splattered.

Rodriquez asserted that she could touch the residue on the sidewalk and observe a black sheet of the oil in the street. She claimed you could tell that the oil was dragged from the sidewalk, through the street, until it was put in a garbage truck. She averred that cooking oil would not come down like that unless it was "dragged." She further stated that she has seen in the past, in front of the Japanese restaurant, big, gold cans of cooking oil put out on the sidewalk. Additionally, she claimed that the cans were completely open, never wrapped, and were without lids. She did not know for certain that these cans were cooking oil but came to this conclusion based on their proximity to the restaurant and unlikely possibility that other people would just put cans of oil outside.

Deposition Testimony of Non-Party Lucy Yates

Yates testified that she lives at 860 West 181st Street, New York, New York. She alleged that she did not witness plaintiff's accident or know him prior but met him immediately after his accident. She claimed that she also had her own accident when she slipped on the same oil that caused plaintiff's slip some 90 seconds before.

Yates stated that on the morning of the accident her car was parked at a meter between Saggio and "Sushi Yu" on 181st Street. She went out at 8:20AM that Saturday morning to move the car before the meter expired at 8:30AM. She had parked the night before upon returning from

a road trip to North Carolina with her family. When she parked at night, she did not recall seeing any grease or oil on the pavement or observe seeing any garbage bags. However, she alleged there often were garbage bags there, she just couldn't remember that night.

She recalled that she had just reached the handle to get to her car when she slipped very fast, fell very fast and got up very fast. She further recounted that she then heard the voice of Ms. Rodriguez across the street telling her to look down the hill, that plaintiff had just fell as well. When she arose from the fall, she observed that she slipped on what she believed to be oil. It was something shiny, that was not viscous, that was glistening and slick and the color of the pavement. She also believed it was cooking oil because she deduced from the presence of oil on the sidewalk in front of a block of restaurants and her memory of a cooking oil truck, that that's what it had to be. She did not believe the oil had a strong odor like car grease or anything involving vehicles, that it was more like oil in a frying pan.

She further averred that the oil went from somewhere on the last sidewalk square in front of one of the restaurants, out to the street, and then down the hill in the street for the length of the whole block. Looking at the run pattern of the oil by her car, she thought "it had obviously come from the sidewalk on the north side of the street" where the restaurants were. She also claimed that she spent some time later that day trying to figure out the origin of the oil as she had seen oil on the sidewalk outside a couple of these restaurants before. Yates was hesitant to say which restaurant had the oil spill but believed it was "Sushi Yu" and not Saggio. She also said that it is a high-volume spot, with high traffic, trash bags, delivery bikes, and oil. Additionally, she stated that there were usually people in front of Saggio, bikes in front of Chinese N. 1, and trash bags in front of Sushi Yu. Yates had also seen plastic containers there before.

Yates explained that she went into each of the three restaurants, No. 1 Chinese, Saggio, and Sushi Yu that day to investigate the oil spill. She elaborated that she essentially asked them if it was their oil that made her, and the bicyclist fall earlier and that no one owned up to it. Ultimately, she did not want to surmise and admitted that she did not have a firm understanding but believed that “Sushi Yu” was to blame as the oil spill was closest to it on the sidewalk and their staff was “considerably more defensive.”

When asked about how grease got “there,” Yates stated that on some Friday nights, she saw the truck. She added that she has also seen grease in the area in front of Sushi Yu on other Friday nights in that spot. She had also claimed to have heard neighbors speak of this as a “fairly regular phenomenon.” Yates also believed that people had complained before and that the fire department had come before to sawdust the subject area.

She further alleged that everyone would say it was the cooking oil truck that caused the spill. She testified that she had seen the truck and had seen the leaked oil previously, but that she had never observed the truck spill oil. She thought that the truck was green and was more of a mixing truck. She believed that restaurant employees would take the oil out to the truck or connect to some kind of hose, but she wasn’t exactly sure how it was accomplished. She has also seen lots of garbage taken out by restaurants and was not sure what memories she may have been conflating. She believed she was told that the cooking oil truck would come on Friday nights and did not know when the garbage was picked up. She added that there was always trash on the sidewalk all of the time.

Deposition Testimony of Non-Party Gregory Funk

Funk averred that on the date of the accident he was bicycle riding with the plaintiff and witnessed plaintiff’s bicycle slide. He observed that there was oil on the road surface of 181st Street

and saw the oil and grease both in the roadway and on the sidewalk. He recalled that it smelled like food and that it was slick on the west side of 181st Street in the parking lane and partially in the moving lane for traffic. Additionally, he observed that the oil was in front of Yu Sushi on the sidewalk and that there was a large amount pooled there that looked like it seeped into the roadway and was connected.

Deposition Testimony of Laura Park on Behalf of Defendant Mid-Bronx

Laura Park testified that she was the office manager for Mid-Bronx at the time of the accident. She used to do whatever the company needed including payroll, sales tax, data entry, and accounts payable. She averred that Mid-Bronx was in the business of performing garbage collection for commercial entities. Specifically, they would pick up solid waste and not liquid waste. She added that they would never pick up cooking grease. Park explained that each commercial entity that engaged Mid-Bronx would enter into a contract that would be kept in file for the unique customer in the company's hard copy filing system. She remembered that they had customers in Manhattan but did not remember who. She did not recall the names of Yu Sushi, Saggio Restaurant, or Pine 181 but No.1 Chinese sounded familiar to her.

As part of Park's job, she mentioned that she was responsible for the licensing procedure for Mid-Bronx to become licensed and keep their licenses. As part of that process the drivers for Mid-Bronx had to under certain training, which consisted of route training, truck maintenance, and maintenance of customer locations. By maintenance of customer locations, she was referring to putting containers back in their place and cleaning up if they made a spill. Garbage bags would be picked up curbside. Park added that the trucks were equipped with and had brooms, shovels, and sand to clean up spills.

Park stated that restaurants had to follow some procedures as well for garbage pickup. One of those procedures was that the customer could not place their garbage at the curb more than two hours prior to their closing time. This was a city requirement. Then Mid-Bronx would pick up their garbage before eight a.m. the next day.

Deposition Testimony of William Letona of Unity Fuels/Grease Lightning

From the outset, Letona explained that this was not his first deposition and that he previously gave one where he was found guilty of obstruction of justice in connection with his employment with Unity Fuels and their fraudulent dealings.

Letona testified that he began working for Unity Fuels around 2010-2011. Back then he was working in business development looking for restaurants to be serviced. He did that for about six months before he got more involved in the day-to-day operations and hiring on the administrative side. By 2013-2014 he was given the title of vice president of operations and in 2015, when at the time Unity Fuels filed for bankruptcy, he was the president. He further explained that the collection extension of Unity Fuels was Grease Lightning that went out and collected all the oil. They would also utilize six or seven independent contractors to go out and collect oil. Unity Fuels would not know where these independent contractors acquired the oil from because the independent contractors would be worried that Unity Fuels would take their business.

Letona stated that the drivers would have the same skill sets as the warehouse personnel in that they could pull hoses in addition to driving. The truck they would use was a pumper truck, which was like a septic tank truck that could hold anywhere between 1200 and 1800 gallons. He added that the drivers would get to the location, pull out the hose, run it to the oil receptacle in or outside the restaurant, while another employee would watch the hose by truck and sidewalk. He explained that they would suck up the oil however it was provided, whether it be a 55-gallon drum, 35-gallon

drum, or the restaurants' own receptacle. He added that many restaurants would just use their own five-gallon jug because they would often switch who picked up their oil. Letona explained that they would put an adapter on their hose to suck all of the oil out of a 5-gallon jug, it would crush the container, and then they would dump it in the garbage.

Letona explained that before the drivers left for the day that they would fill out a whole preventative maintenance checklist. This checklist would include checking if there were any leaks or holes in the hose. These records were either in the possession of the bankruptcy trustee or were taken by the FBI. All possible records, including service agreements, billing records, invoice records, checks, and copies of checks were all left at a location in Hicksville, which Letona does not know where they are now.

Once the checklists were submitted, the driver would be given their route. Letona clarified that these routes were changed daily. All the drivers would work during the week with Saturdays being optional and no pick-ups being done on Sundays. Letona did not recall the name of the restaurant, Yu Sushi. He also did not believe that Unity Fuels had any service agreements with restaurants or businesses on 181st Street between Cabrini and Pinehurst. He remembered that only No 1 Chinese popped up on his excel spreadsheet, but that there were hundreds of restaurants with that name. Again, he would also not know if any of the independent contractors that Unity Fuels dealt with would pickup from Yu Sushi or anyone else on 181st Street.

Deposition Testimony of Yidi Lin of Yu Sushi

Yidi Lin testified that he has been the owner of Yu Sushi located at 827 West 181st Street, New York, New York since 2011 or 2012. He explained that as owner he was also involved in the restaurants management and operations. Further, he confirmed that the restaurant did use vegetable oil in its food preparation. After the cooking oil was used, it would be placed back into an empty

container by the chef, which would eventually be picked up by an oil pick-up company once per week. The oil would not be placed in a garbage bag like the solid waste would. Lin explained that Yu Sushi had used several different oil pickup companies throughout the years, including Grease Lightning and Tri-State Biodiesel. At the time of the accident, Lin was using whoever was also picking up the oil for No.1 Chinese Restaurant. With respect to solid waste garbage, Kay, an employee of Yu Sushi, would put the restaurant's garbage bags out for pickup on the street Monday through Saturday. These bags would sometimes break and leave behind leaks that the dishwasher would clean between 11am and 12pm.

Deposition of Gang Quo Wang of No.1 Chinese

Wang testified that he was an owner of No.1 Chinese restaurant at the time of the accident. He also confirmed that they used cooking oil and that it would be placed in 5-gallon containers that would be kept in the back of the kitchen and stored in a black plastic bags until pick-up. He alleged that at the time of the subject accident that it was Unity Fuels/Grease Lightning was picking up their oil once per week from the kitchen and bringing the containers to their vehicle. He further stated that the entities did not have any agreement in writing.

Deposition of Kalkin Narvilas of Saggio Restaurant

Narvilas testified that has owned Saggio Restaurant, located at 829 181st Street, New York, New York since 2010. Narvilas explained that the restaurant was equipped with a 100-pound grease trap in the kitchen that was serviced every three months. When it was serviced, a truck would be parked out front of the restaurant on 181st Street and connect a hose from the truck to the grease trap and suck out the grease. The servicer would usually come in the morning but not on the weekends because Saggio was open for brunch. Cooking oil would also be placed in 5-gallon containers and kept until collected by a gas oil company once a month. He believed that in 2014,

just prior to the accident, that the oil and grease removal company used was Grease Lightning. With respect to regular garbage, Narvilas added that it would be placed on the sidewalk, 7 days a week, next to the curb in front of their restaurant and a private company would pick it up. That private company was Century Waste Services, LLC, who alleged that they only picked up solid waste. However, while their drivers could tell if a bag contained liquid, they admittedly could not ensure that there were no canisters containing liquid within the bags. To that end, Century Waste drivers were trained to clean up messes left behind by bag rips. Narvilas further stated that they hosed the sidewalk regularly and had never seen grease or oil on the sidewalk or heard of any complaint prior to the accident.

Expert Affidavit of Kristopher Seluga, P.E. on Behalf of Yu Sushi

Seluga testified that he has a master's degree in mechanical engineering and is a licensed professional engineer in New York, belonging to numerous professional associations and societies. He averred that he has experience in biomechanics, computer simulations, motor vehicle accident reconstruction and has authored numerous peer reviewed articles on the topics of engineering and safety. In preparation of his affidavit, he reviewed the 50H testimony of the plaintiff, the depositions of the parties and non-parties, the pleadings, the photographs exchanged during discovery, and aerial and street images of the subject location. He also visited the site and took measurements, performed testing, and took photographs and video.

It is Seluga's opinion, within a reasonable degree of engineering certainty, that the cause of plaintiff's accident could not have been cooking oil, or any other liquid, traveling from the sidewalk in front of Yu Sushi. Based on his understanding of the gradient of the street he determined that the photographs provided demonstrated that the substance in the street was deposited in the middle of the westbound lane and then flowed downhill in a northwesterly

direction towards Cabrini Boulevard and the northern curb of 181st Street. Moreover, he determined from the spill's origination point that it must have taken place west of the Yu Sushi storefront.

Seluga also confirmed the downhill grade by performing a liquid flow test utilizing both water and a corn syrup/water mixture. His results indicated that the slope of the sidewalk in front of Yu Sushi runs downhill at approximately four degrees and towards the curb from the middle of the sidewalk at less than one degree. He explained his finding as:

...confirm[ing] that any liquid that started as a spill on the sidewalk and made it from the sidewalk to the curb on its own, would have only entered the area of the street nearest the curb prior to traveling downhill toward Cabrini Boulevard and remaining within a few inches of the northern curb. And, when liquid was spilled into the actual westbound parking lane, it too traveled back toward the northern curb in a downhill manner to the north and west. None of the testing involving liquid spilled on the sidewalk and/or parking lane caused the liquid to travel into the street beyond the parking lane, or into the travel lane.

He further explained that for liquid to travel from the northern curb into the street towards the travel lane that it would have to flow uphill and against gravity. He added that this was not possible for the liquid to do on its own after being placed on the curb in front of Yu Sushi. Thus, he concluded that the liquid seen in the westbound travel lane could have only been in that location based upon being placed within the travel lane and that it could not have emanated from refuse in front of Yu Sushi.

In order to make a prima facie case of negligence, it is incumbent that the plaintiff demonstrate, among other things, that the defendants owed plaintiff a duty of care and breached that duty (*see Akins v Glen Falls City School Dist.*, 53 NY2d 325 [1981]). It is well settled that liability for a dangerous condition on a property is contingent upon ownership, occupancy, control, or special use of the property (*see Balsam v Delma Engineering Corp.*, 139 AD2d 292 [1st Dept

1988]). In New York, a property owner has a nondelegable duty to maintain its sidewalk that cannot be contracted away (Administrative Code of City of NY § 7-210). Such an entity cannot demonstrate that it did not have notice of a dangerous condition without first demonstrating when it last cleaned or inspected the sidewalk (*see Yuk Ping Cheng Chan v Young T. Lee & Son Realty Corp.*, 110 AD3d 637 [1st Dept 2013]).

Generally, a third-party that does not possess or own the subject property but enters into a contract to perform certain work or services at that property cannot be liable for injuries that occur there, unless certain exceptions apply (*see Espinal v Melville Snow Contractors, Inc.*, 98 NY2d 136 [2002]). The Court of Appeals in *Espinal* recognized three exceptions where a contract can create a duty to third parties:

“(1) where the contracting party, in failing to exercise reasonable care in the performance of his duties, launches a force or instrument of harm, (2) where the plaintiff detrimentally relies on the continued performance of the contracting party’s duties and (3) where the contracting party has entirely displaced the other party’s duty to maintain the premises safely”

(*id.* at 140 [quotation marks and citations omitted]). Those moving for summary judgment must do more than merely point out gaps in plaintiff’s proof (*see McCullough v One Bryant Park*, 132 AD3d 491, 492 [1st Dept 2015]). With their motions, all the defendants essentially seek to demonstrate that they did not create the risk of harm or increase that risk (*see Timmins v Tishman Constr. Corp.*, 9 AD3d 62 [1st Dept 2004]). Here, it is undisputed that it was cooking oil that caused plaintiff’s accident. What is in dispute is whether the oil spill emanated from the sidewalk or street and who caused it to get there.

While the expert report of Kristopher Seluga, P.E. determined that the origination point of the spill had to have come from the street, his analysis fails to take into account the deposition testimony of the non-party witnesses or their photographs. His analysis and conclusion were also predicated on solely defeating the assumption that trash bags by the curb leaking could not have caused the spill as opposed to examining the other possible ways the oil/grease pick-up/drop-off could have transpired

based on the parties' respective testimonies. Additionally, there are numerous issues concerning the expert's liquid flow testing methodology and whether it accurately reflected what took place on the date of the accident. Thus, questions of fact remain as to where the oil/grease spill originated from.

To the extent that the oil/grease spill may have originated from the sidewalk due to one of the tenant restaurant's garbage and oil disposal practices, Pine 181 and Mosbacher had a nondelegable duty to maintain the sidewalk. However, inasmuch as each lease Pine 181 had with its tenants negotiated for its indemnification, etc., Pine 181 is entitled to conditional indemnification for its negligence, which is solely statutory negligence based on these facts, in the event that one of the tenant defendants is found negligent for creating a condition on the sidewalk that led to plaintiff's accident in the street and Pine 181 has exhausted its own insurance, if any (*see Leidner v Kevin & Stephen Corp.*, 26 Misc3d 1220[A][Sup Ct, New York County 2009, James, J.] citing *Diaz v Lexington Exclusive Corp.*, 59 AD3d 341 [1st Dept 2009]).


Further, while some testimony tends to make certain parties more or less likely liable, no party eliminated all triable issues of fact with respect to the circumstantial evidence of their possible involvement in creating the dangerous condition. "It is not the court's function on a motion for summary judgment to assess credibility . . . Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge" (*Asabor v Archdiocese of New York*, 102 AD3d 524 [1st Dept 2013] quoting *Ferrante v American Lung Assn.*, 90 NY2d 623 [1997] and *Anderson v Liberty Lobby, Inc.*, 477 US 242 [1986]). Here, numerous questions of fact remain as to who disposed of the used cooking oil, whether it was adequately contained, who picked it up, where did they pick it up, when did they pick it up, how did they pick it up, and how did it get into the roadway. As such, no party has demonstrated its freedom from fault in order to be entitled to dismissal of plaintiff's complaint and any and all cross claims.

Accordingly, all of the motions for summary judgment are denied, except that Pine 181 is entitled to conditional indemnification as explained above.

Plaintiff to serve a copy of this order with notice of entry on all parties within 30 days of the upload date of this order onto NYSCEF.

This matter is further set down for a settlement conference to be held via Microsoft Teams on December 5, 2022 at 2PM.

This constitutes the decision and order of the Court.

<u>10/11/2022</u> DATE					 Richard G. Latin, J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE