

Colonna v 181 Ave. U Meats Inc.

2022 NY Slip Op 34516(U)

June 8, 2022

Supreme Court, Kings County

Docket Number: Index No. 515637/2017

Judge: Ingrid Joseph

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This opinion is uncorrected and not selected for official publication.

At an I.A.S. Term, Part 83 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 8th day of June 2022.

P R E S E N T : HON. INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
TERRY ANN COLONNA,

Plaintiff,

Index No.: 515637/2017

-against-

181 AVE U MEATS INC. d/b/a MEATS SUPREME,
BC REALTY OF NEW YORK, INC. and A1
COMMERCIAL HOOD & DUCT CLEANING, INC.,

Defendants.

-----X
181 AVE U MEATS INC. d/b/a MEATS SUPREME,

Third-Party Plaintiff,

-against-

181 AVE U MEATS INC. d/b/a MEATS SUPREME,
BC REALTY OF NEW YORK, INC. and A1
COMMERCIAL HOOD & DUCT CLEANING, INC.,

Third-Party Defendant.

-----X
The following e-filed papers considered herein:

	<u>E-Filed Papers Numbered</u>
Notice of Motion/Affirmation in Support/Memorandum/Exhibits...	320 - 342
Affirmation in Opposition/Exhibits/Memorandum.....	352 - 361, 362
Reply.....	364 - 365

In this matter, plaintiff, Terry Ann Colonna (“plaintiff”), moves for an order

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pursuant to CPLR § 3212, granting summary judgment (Motion Seq. 10) in favor of plaintiff on the issue of liability against defendant/third party plaintiff, 181 Ave. U Meats Inc. d/b/a Meats Supreme (“Meats Supreme”).

Plaintiff alleges that she sustained skin wounds and chemical burns on May 29, 2017 when she slipped and fell on a greasy, slippery substance on the sidewalk adjacent to Meats Supreme, located at the corner of Avenue U and West 6 Street, along with two affiliated stores under the 181 Avenue U, Brooklyn, New York address. The building is owned by defendant, BC Realty of New York, Inc. (“BC Realty”) and leased to Meats Supreme pursuant to a verbal, month-to-month lease agreement. The sole owner of BC Realty owns seventy-five percent interest in Meats Supreme and maintains BC Realty’s office in a space above the store.

Before the return date of the instant motion, plaintiff voluntarily discontinued her causes of action against defendant/third-party defendant, A1Commercial Hood & Duct Cleaning, Inc. (“A1”); Meats Supreme discontinued its cross claims against A1; and BC Realty discontinued its cross claim for indemnity, contribution, and defense costs against Meats Supreme. In light of the parties’ stipulations, the sole issue before this court is whether plaintiff is entitled to summary judgment on the issue of liability on her negligence claim against Meats Supreme.

Meats Supreme opposes the motion on the ground that there exists a material issue as to whether it can be held vicariously liable for the acts of A1 and further, based upon

its contention that plaintiff's comparative negligence must be resolved by a jury. Meats Supreme makes the point that a question of fact exists as to whether A1's work was inherently dangerous, which is the basis upon which A1's negligence can be imputed to Meats Supreme. Meats Supreme claims that plaintiff's own testimony demonstrates that she was comparatively negligent in that she was not paying attention to her surroundings and failed to see what caused her to slip and fall. Meats Supreme states that plaintiff admitted that she was not looking at the sidewalk as she walked toward the front door, even though her son admitted noticing a yellow-greenish, foamy substance on the sidewalk. Meats Supreme argues that a non-party witness, Gabriel Ariola, also stated that plaintiff could have and should have avoided the affected section of the sidewalk. Further, Meats Supreme contends that Mr. Catalano was not present at the store on the day in question and thus, it cannot be stated that Meats Supreme directed, controlled, or supervised A1's work.

Plaintiff maintains that she is not required to establish her freedom from negligence in order to establish prima facie entitlement to summary judgment on the issue of liability. Plaintiff contends that Meats Supreme has conceded that it retained A1 to perform statutorily required maintenance and cleaning of its cooking equipment, hood, exhaust ductwork, filter, and outer chase. Plaintiff argues that Mr. Catalano, even though he was not present the day she fell, he knew how A1 performed its cleaning work, because he testified that he continually engaged A1 to do the same work for ten years

prior to plaintiff's accident. Plaintiff further argues that Meats Supreme's Assistant Manager, David Vega, acknowledged that there were no barricades, tapes, or cones being utilized during the cleaning process and that neither he nor any of Meats Supreme's personnel went outside to make sure the area was safe. Plaintiff points out that Meats Supreme has conceded that it has a common-law duty to maintain the sidewalk in a safe manner for pedestrians and also, that it knew A1 used a toxic, slippery substances to perform the work. Plaintiff contends there is no issue of fact as to whether the presence of a corrosive chemical substance and potassium hydroxide on a public sidewalk is inherently dangerous, particularly in light of the Appellate Division, Second Department's decision in *Beck v Woodward Affiliates*, 226 AD2d 328, 330 [2d 1996], where the use of hydrofluoric acid to clean a building facade was found to be inherently dangerous.

To establish a prima facie case of negligence, plaintiff must show that the defendant owed plaintiff a duty, a breach of that duty, and that such breach was a proximate cause of injury to the plaintiff (*Alvino v Lin*, 300 AD2d 421 [2002]; see *Gordon v Muchnick*, 180 AD2d 715 [1992]). "Generally, liability for injuries sustained as a result of dangerous and defective conditions on public sidewalks is placed on the municipality and not the abutting landowner" (see *Hausser v Giunta*, 88 NY2d 449, 452-453 [1996]; *Bruno v City of New York*, 36 AD3d 640 [2007]). "However, an abutting landowner or tenant will be liable to a pedestrian injured by a defect in a sidewalk where the landowner or the tenant negligently constructed or repaired the

sidewalk, otherwise caused the defective condition, caused the defect to occur by some special use of the sidewalk, or breached a specific ordinance or statute which obligates the owner to maintain the sidewalk” (*Biondi v County of Nassau*, 49 AD3d 580, 580 - 581 [2d Dept 2008] citing *Hausser v Giunta*, 88 NY2d 449, 452-453 [1996] and *Cannizzaro v Simco Mgt. Co.*, 26 AD3d 401, 401-402 [2006]).

In this case, the court finds that plaintiff has demonstrated prima facie entitlement to summary judgment as a matter of law on her common-law negligence claim against Meats Supreme. Meats Supreme concedes that it has leased the subject premises for more than 35 years and has engaged, A1 every three months, for the past ten years, to de-grease and clean its ventilation and cooking equipment. On the day in question, Meats Supreme hired A1 to remove grease build up on its exhaust fan, ventilation stack, duct work, the hood, and hood filters. It is undisputed that A1 utilized a chemical solution and power washer that was hooked to a bib in Meats Supreme’s kitchen to perform the de-greasing work outside of the Meats Supreme store. In fact, a photograph of the West 6th Street side of Meats Supreme reveals that the power washer tools, a container of chemical degreaser, and three metal filters, two of which appeared to be uncleaned, were outside the Meats Supreme building contemporaneous with plaintiff’s accident.

The chemical degreaser mixed with loosened grease was allowed to run onto the sidewalk adjacent to the Meats Supreme building. David Vega, an employee of A1, confirmed that neither Meats Supreme nor A1 erected a barricade, set up caution tape, or

placed cones around the affected portion of sidewalk to deter pedestrians, such as plaintiff, from traversing the part of the sidewalk where loosened grease, chemicals and water was allowed to exist. Plaintiff slipped and fell on the section of sidewalk that had the above mixture, which resulted in burns on her back. There is no showing that A1, or Meats Supreme, exercised reasonable care under these circumstances.

Additionally, there is no material question of fact as to whether the chemical mixture was inherently dangerous, which triggers Meats Supreme's liability for the acts of A1. The nature of the work itself, the degreasing of commercial kitchen and ventilation equipment with a chemical solution, involves a risk of harm when the run-off mixture of chemical and grease is allowed to run onto a public sidewalk. Not only is the substance slippery but it has a corrosive effect. It was foreseeable that a pedestrian who comes into contact with the public sidewalk on which the substance was allowed to stand may slip, fall, and incur burns on his or her skin. This is especially so during the time of year plaintiff's accident occurred, in May, when pedestrians are generally dressed in lighter clothing.

Finally, plaintiff is not required to demonstrate the absence of her own comparative fault in order to obtain an award of summary judgment on the issue of liability at this juncture (*Rodriguez v City of New York*, 31 NY3d 312, 324-325 [2018]). Therefore, the court finds that plaintiff is entitled to summary judgment as a matter of law on the issue of liability, since Meats Supreme has failed demonstrate the existence of a

material issue of fact.

Based upon the foregoing, it is hereby


ORDERED, that plaintiff's motion (Motion Seq. 10) is granted to the extent that plaintiff is awarded summary judgment in her favor and against defendant, 181 Ave U Meats Inc. d/b/a Meats Supreme, and it is further

ORDERED, that the issue of plaintiff's comparative fault, if any, shall be determined at trial, and it is further

ORDERED, that plaintiff shall serve a copy of this order with notice of entry upon all parties herein.

This constitutes the decision and order of the court.

ENTER,



HON. INGRID JOSEPH, J.S.C.
Hon. Ingrid Joseph
Supreme Court Justice

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