

Lampack v Andrews
2022 NY Slip Op 35215(U)
July 27, 2022
Supreme Court, Lewis County
Docket Number: Index No. EFCA2019-000302
Judge: James P. McClusky
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At a term of Supreme Court held in and
for the County of Lewis, in the Village of
Lowville, New York on the 7th day of July
2022

PRESENT: HONORABLE JAMES P. McCLUSKY
Supreme Court Justice

STATE OF NEW YORK
SUPREME COURT COUNTY OF LEWIS

STACY A. LAMPACK and ROBERT LAMPACK

Plaintiffs,

-VS-

RICHARD A. ANDREWS

Defendant.

MEMORANDUM
DECISION
AND
ORDER

RICHARD A. ANDREWS

Third-Party Plaintiff,

-VS-

LEWIS COUNTY,

Third-Party Defendant.

Index No. EFCA2019-000302

RJI No. S24-2020-0044

Defendant Richard A. Andrews (Andrews) filed a motion for summary judgment (NYSCEF Motion #1). Third-Party Defendant Lewis County filed a motion to dismiss the third-party complaint (NYSCEF motion #2) and Plaintiffs Stacy E. Lampack and Robert Lampack (Lampacks) filed a motion for summary judgment on the issue of liability against Andrews (NYSCEF motion #3).

The Court has considered all documents filed in the New York State Courts Electronic Filing System under Index number EFCA2019-000302.

The motion filed by Andrews is denied

The motion filed by Lewis County is denied in part and granted in part

The motion filed by the Lampacks is denied.

Plaintiff Stacy E, Lampack is an employee of the Lewis County Department of Motor Vehicles and is alleged to have slipped and fallen on ice near an entrance to a building owned by Andrews and leased to Lewis County for use by its' Department of Motor Vehicles. Andrews avers that he is not liable as he is an out of possession landlord and Lewis County claims that they are not liable as it is Andrews who is responsible for the condition causing the accident and resultant injury.

A party seeking summary judgment must set forth sufficient evidence to demonstrate the absence of any material issue of fact Alvarez v. Prospect Hospital, 68 NY2d 320. If the proponent fails to make this showing, the motion for summary judgment must be denied regardless of the adequacy of the opposing papers Winegrad v. New York Univ. Med. Ctr., 64 NY2d 851, 853. However, once this showing has been made, the burden then shifts to the opponent of the motion to come forward with evidence in admissible form to establish the existence of material issues of fact which require a trial Gonzalez v. 98 Mag Leasing Corporation, 95 NY2d 124, 129; Alvarez v. Prospect Hospital, 68 NY2d 320, 324. In reviewing a motion for summary judgment, the evidence must be considered in the light most favorable to the opponent Ruzycki v. Baker, 301 AD2d 48.

The location of the alleged slip and fall occurred at an employee entrance to the building. It was an area that has a history of ice build-up that the County employees regularly maintained. The lease in effect at the time was executed in 2015. The lease

required Andrews to be responsible for any major repairs (defined as costing over \$300.00) upon a written request of Lewis County. Though no written request was received to repair the entrance (beyond the ramp) it was orally agreed upon between Andrews and Lewis County that he would construct a roof canopy over the entrance.

Plaintiff has raised the issue that Andrews had taken an affirmative step to put a canopy over the employee entrance to the building. This raises an issue of fact as to implications regarding the waiver of the requirement for requests for repairs being documented in writing between Andrews and Lewis County. Under the contract Andrews specifically refrained from contractually accepting liability to make repairs unless certain requirements were met. The parties' past practices can modify that agreement. In addition, there would be a question of fact, if the requirement to have a written repair request was waived, as to the timeliness of the repairs.

The Lampacks' motion for summary judgment has the same issues which would prevent the granting of summary judgment in their favor.

Lewis County seeks dismissal as to the third-party complaint. The lease required Lewis County to remove the snow and is silent as to their requirement to remove ice. Clearly it is an issue of fact if a contract in Lewis County that calls for the removal of snow encompasses the issue of the removal of ice. There is also an issue of fact of whether improper removal of snow led to the ice buildup.

Lewis County also seeks to dismiss the second cause of action, the failure to procure insurance. Lewis County has provided proof so that part of the motion will be granted.

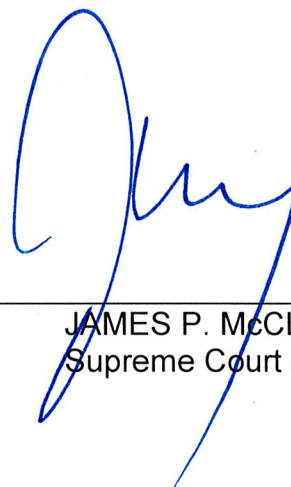
It is therefore

ORDERED that Defendant Richard A. Andrew's motion to dismiss the complaint is denied; and it is further

ORDERED that the motion by Lewis County to dismiss the third-party complaint is granted to the extent that the second cause of action is dismissed, and their motion is denied in all other respects; and it is further

ORDERED that the motion of the Plaintiffs Stacy A. Lampack and Richard Lampack is denied.

July 27, 2022
Watertown, New York
ENTER



JAMES P. McCLUSKY
Supreme Court Justice