

<b>Sanchez v 181st St. Med., P.C.</b>
2023 NY Slip Op 30156(U)
January 17, 2023
Supreme Court, New York County
Docket Number: Index No. 159969/2019
Judge: David B. Cohen
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. DAVID B. COHEN **PART** **58**

*Justice*

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NUMA SANCHEZ,

Plaintiff,

- v -

181ST STREET MEDICAL, P.C., 181ST STREET URGENT  
CARE CENTER, 181ST STREET UCC L.P., HDR  
MANAGEMENT CORP.,

Defendant.

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**INDEX NO.** 159969/2019

**MOTION DATE** 11/14/2022

**MOTION SEQ. NO.** 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

were read on this motion to/for JUDGMENT - SUMMARY.

In this slip and fall personal injury action, defendants 181<sup>st</sup> Street Medical, P.C. (PC) and 181<sup>st</sup> Street Urgent Care Center (Center) (collectively, movants) move pursuant to CPLR 3212 for an order dismissing the complaint and all cross claims against them.

I. BACKGROUND

In October 2019, plaintiff commenced the instant action by filing his summons and complaint against movants, in which he asserts that on April 19, 2019, while on defendants' premises, he slipped and fell due to a dangerous condition.

In plaintiff's verified bill of particulars, dated February 25, 2020, he alleges that he was injured while in the hallway of Center's facility located at 521 West 181<sup>st</sup> Street in Manhattan, when he slipped on a newly mopped floor and sustained injuries (NYSCEF 81).

By decision and order dated January 26, 2022, plaintiff was granted leave to amend his complaint to add defendants 181<sup>st</sup> Street UCC L.P. (UCC) and HDR Management Corp. (NYSCEF 85).

UCC/HDR filed its answer on or about March 14, 2022, and asserted cross claims against movants for common-law indemnity and contribution (NYSCEF 89).

By its response to movants' notice to admit, UCC admits to the accuracy of an Administrative Services Agreement, effective September 1, 2012, entered into between UCC and PC, and in effect on the date of plaintiff's accident. The agreement, as pertinent here, provides that PC is a duly organized and validly existing professional service corporation, formed for and engaged in the conduct of a medical practice. HDR is the general partner of UCC, and agrees to provide non-clinical services related to the day-to day administration of the medical practice, including the repair and maintenance of the office (NYSCEF 90).

In support of the instant motion, movants submit the affirmation<sup>1</sup> of Cecelia Calderon, M.D., the president and medical director of PC. She affirms that PC does business as Center, and denies that PC owned or leased the premises at issue on the date of the accident. Pursuant to PC's agreement with UCC/HDR, all non-medical personnel working at the premises were hired and employed by UCC and were responsible for cleaning and maintaining the premises, and all non-medical aspects of the facility's operation were delegated to UCC/HDR (NYSCEF 92).

Movants also submit a lease for the premises, in effect at the time of plaintiff's accident, which reflects that HDR is the tenant, and a 20-year sublease for the premises, effective on August 1, 2012, which reflects that HDR subleased the premises to UCC (NYSCEF 91).

## II. ANALYSIS

Movants contend that they neither had nor breached a duty to plaintiff as they had no possessory interest in the premises, completely delegated the non-clinical aspects of the practice,

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<sup>1</sup> Although denominated as an "affirmation," it is notarized as an affidavit.

including cleaning, to UCC/HDR, and did not employ or control any cleaners at the premises. Absent a duty, they assert, they cannot be held liable in negligence to plaintiff. While depositions have not been conducted, movants argue that the motion is not premature as the evidence they submitted establishes, as a matter of law, that they are not liable (NYSCEF 78).

Plaintiff maintains that the motion is premature, as both depositions and discovery remain outstanding, and, in particular, surveillance camera footage of the accident exists and has not yet been exchanged (NYSCEF 95).

In reply, movants assert that plaintiff's opposition is both untimely and insufficient to raise a triable issue as plaintiff fails to address, much less controvert, movants' showing that it neither owed nor breached a duty to him. Moreover, even if surveillance footage exists, plaintiff does not establish that it is in movants' possession, nor does he show how it is relevant to whether movants owed him a duty (NYSCEF 99).

Liability for a dangerous condition on a premises depends upon ownership, occupancy, control, or special use of the property (*Toner v Trader Joe's East, Inc.*, 209 AD3d 690 [2d Dept 2022]; *Adriana G. v Kipp Washington Heights Middle School*, 165 AD3d 469 [1st Dept 2018]).

As movants establish that they did not own, occupy, control, or make special use of the premises, they may not be held liable for plaintiff's injuries (*See Colon v Corp. Bldg. Groups, Inc.*, 116 AD3d 414 [1st Dept 2014] [defendant should have been dismissed from action as it had no connection to premises and did not supervise or control work of contractor which allegedly caused unsafe condition]).

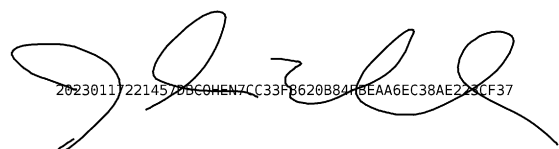
Plaintiff raises no triable issue in opposition as he does not address movants' arguments regarding their lack of liability. Moreover, in light of movants' showing that they had no relationship to the premises, plaintiff does not demonstrate that their depositions are necessary

for him to defend against the motion. Nor does plaintiff explain how the surveillance camera footage, even if in movants' possession, is relevant to their liability to him (*See Coker v Perez*, 2022 WL 17587211, 2022 NY Slip Op 07028 [1st Dept 2022] [as no discovery requested by plaintiff would assist her in opposing summary judgment motion, motion was not premature]; *Harman Agency, Inc. v Wilhelmina Licensing LLC*, AD3d , 2022 NY Slip Op 06998 [1st Dept 2022] [summary judgment motion not premature even though no discovery had been exchanged; plaintiff failed to demonstrate that discovery might lead to relevant evidence or that facts essential to oppose motion were within defendants' knowledge and control]).

Accordingly, it is hereby

ORDERED, that the motion of defendants 181<sup>st</sup> Street Medical, P.C. and 181<sup>st</sup> Street Urgent Care Center for summary judgment dismissing the complaint and any cross claims against them is granted, and the complaint and cross claims against them are hereby severed and dismissed, and the clerk is directed to enter judgment accordingly; and it is further

ORDERED, that the remaining parties appear for in-person oral argument/status conference on motion sequence 004 as previously scheduled on February 7, 2023 at 10:00 am.



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DAVID B. COHEN, J.S.C.

1/17/2023  
DATE

CHECK ONE:

CASE DISPOSED  
 GRANTED  DENIED

NON-FINAL DISPOSITION  
 GRANTED IN PART  OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT  REFERENCE