# SUPREME COURT OF THE STATE OF NEW YORK
# NEW YORK COUNTY

**PRESENT:** HON. MARY V. ROSADO **PART** 33M

*Justice*

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TERESA DIBENEDETTO,

Plaintiff,

- v -

290 DYCKMAN PROPERTIES, LLC,MANHATTAN MINI STORAGE, LLC,ALL SYSTEMS MECHANICAL CORP.

Defendant.

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**INDEX NO.** 157228/2020

**MOTION DATE** 08/16/2022

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70

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

Upon the foregoing documents, Defendants 290 Dyckman Properties, LLC ("Dyckman") and Manhattan Mini Storage LLC ("Mini Storage") (collectively "Moving Defendants") motion for summary judgment pursuant to CPLR § 3212 dismissing Plaintiff Teresa Dibenedetto's ("Plaintiff") Complaint is denied. Moving Defendants' motion for summary judgment on their crossclaims against Defendant All Systems Mechanical Corp. ("All Systems") is similarly denied.

## I. Factual and Procedural Background

This action arises out of Plaintiff's slip and fall on a puddle (*see generally* NYSCEF Doc. 1). Plaintiff filed her Complaint on September 8, 2020 (*id.*). Plaintiff amended her complaint on April 5, 2021 to include Defendant All Systems in this action (NYSCEF Doc. 13). Plaintiff alleges Defendant Dyckman owned the building located at 290 Dyckman Street, New York, New York (the "Premises") (*id.* at ¶ 9). It is alleged that Mini Storage owned and/or operated a storage unit facility on the Premises (*id.* at ¶¶ 32-33). Plaintiff alleges that on June 16, 2020, she was a lawful customer on the Premises (*id.* at ¶ 49). On that date, Plaintiff alleges a wet and dangerous condition

on the Premises caused her to slip and fall (*id.*). Plaintiff alleges that as the owner and operator of the premises, the Moving Defendants had duty to repair, maintain, and clean the premises to ensure such dangerous conditions would not endanger the public safety (*id.* at ¶¶ 15-20 and 35-40). It is further alleged that All Systems maintained an air conditioning system on the Premises, was negligent in its maintenance of the air conditioning system, and was a cause of Plaintiff's fall (*id.* at ¶¶ 78-83)

The note of issue was filed on March 31, 2022 (NYSCEF Doc. 26). This motion for summary judgment was filed by Moving Defendants on July 29, 2022 (NYSCEF Doc. 30).

The Moving Defendants contend that All Systems was contracted to repair and maintain certain machinery and equipment on the Premises (NYSCEF Doc. 31 at ¶ 1). Specifically, Moving Defendants argue that, by contract, All Systems assumed liability for injury to people as a result of All Systems' failure to perform its obligations (*id.* at ¶ 2). Moving Defendants argue that Plaintiff fell directly under an air conditioning unit on the Premises (*id.* at ¶ 4). An accident report found that the water on which Plaintiff slipped came from the leaking air conditioner (*id.* at ¶ 5). Hours before the accident, All Systems had serviced the air condition (*id.* at ¶ 7).

Moving Defendants believe that they are entitled to summary judgment "as they did not breach any duty of care that proximately caused Plaintiff's injuries" (NYSCEF Doc. 32 at ¶ 9). Moving Defendants basically argue that since the water upon which Plaintiff slipped came from the air conditioner, and repairs of the air conditioner were the exclusive responsibility of All Systems, that the Moving Defendants did not breach a duty of care by allowing a puddle of water to form and remain on their premises. Moving Defendants also assert they are entitled to summary judgment on their cross claim for indemnification from All systems (*id.*).

Moving Defendants' motion is opposed by Plaintiff and All Systems. Plaintiff argues in opposition that the air conditioning unit at issue had a history of malfunctioning for at least three years, and as a result, the air conditioning unit was turned off for the majority of its existence (NYSCEF Doc. 46 at ¶ 4). Plaintiff also points to evidence that the air conditioning system was serviced on June 15, 2020, the morning before plaintiff fell, and within three hours of those repairs the unit was again leaking heavily (*id.* at ¶ 5). Plaintiff also argues that the Moving Defendants' only maintenance worker, Delroy Campbell ("Campbell"), was off from work on the date of the accident and as a result, the facility went without maintenance and none of the employees conducted extra inspections to make up for Cambell's absence (*id.* at ¶ 7). The Moving Defendants also admitted that they did not place caution signs, cordon off the area, or place buckets below to catch dripping water in case the leaks began again (*id.*).

Plaintiff cites to caselaw which holds that the owner and lessees of premises have non-delegable duties to keep public areas in reasonably safe conditions (*id.* at ¶ 10). Further, Plaintiff argues that Moving Defendants have not met their burden on this summary judgment motion as they fail to establish they lacked actual or constructive notice of the dangerous condition which caused Plaintiff's fall (*id.* at ¶ 11). In reply, Moving Defendants argue that they do "not need to demonstrate a lack of actual or constructive notice giving the binding contractual agreement between Moving Defendant[s] and All Systems" (NYSCEF Doc. 70 at ¶ 5). Moving Defendants conclude that "all admissible evidence demonstrates the Moving Defendants were under no obligation to inspect, maintain, repair or perform any work on the HVAC system…including the leaking unit that proximately caused Plaintiff's injuries." (*Id.* at ¶ 6).

## II. Discussion

"Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact." (*Vega v Restani Const. Corp.,* 18 NY3d 499, 503 [2012]). The moving party's "burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party." (*Jacobsen v New York City Health and Hosps. Corp.*, 22 NY3d 824, 833 [2014]). Once this showing is made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial. *See e.g., Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Pemberton v New York City Tr. Auth.,* 304 AD2d 340, 342 [1st Dept 2003]). Mere conclusions of law or fact are insufficient to defeat a motion for summary judgment (*see Banco Popular North Am. v Victory Taxi Mgt., Inc.,* 1 NY3d 381 [2004]).

It is well established that owners and lessees of premises have a nondelegable duty to maintain public areas of their premises in a reasonably safe condition, and can be held vicariously liable for the negligence of a contractor that may cause the premises to become unsafe (*Tobola v 123 Washington, LLC*, 195 AD3d 456, 457 [1st Dept 2021]; *Edwards v BP/CG Center I, Inc.*, 102 AD3d 413, 414 [1st Dept 2013]; *Logiudice v Silverstein Properties, Inc.*, 38 AD3d 286, 287 [1st Dept 2008]). Accordingly, contrary to Moving Defendants' assertion, they did have a duty to maintain the floors of the Premises in a reasonably safe condition for members of the public.

Further, on a motion for summary judgment in a premises liability action, a moving defendant must establish that it lacked actual and constructive notice of the allegedly hazardous condition (*Kennedy v 30W26 Land, L.P.*, 179 AD3d 556, 557 [1st Dept 2020]; *Williams v New*

*York City Housing Authority*, 99 AD3d 613. 613 [1st Dept 2012]; *Baptiste v 1626 Meat Corp.*, 45 AD3d 259 [1st Dept 2007]).

Moving Defendants' argument that summary judgment is appropriate because they did not breach a duty to Plaintiff is without merit. Although Moving Defendants' may have contracted for All systems to maintain the HVAC system, there is no evidence that they contracted with All Systems to maintain the floors of the Premises clear from any hazardous conditions. Moreover, even if they had contracted with All Systems to maintain the floors of the Premises (which they did not), Moving Defendants could still be held vicariously liable for the negligence of their contractor. As there is evidence that Moving Defendants had previously taken remedial measures to prevent the leaking from the air conditioning unit, but that such measures were not taken on the date of Plaintiff's accident, there is a triable issue of fact as to whether Moving Defendants breached a duty of care to Plaintiff in allowing a slippery puddle to form on their floor.

Moving Defendants similarly fail to meet their burden in establishing they lacked actual or constructive notice. Moving Defendants' assistant manager, Francisco Alvarez ("Alvarez") testified that Moving Defendants knew that the air conditioning unit at issue was kept off the majority of the time, even in the summertime, because it would repeatedly shake when turned on and shake the pipes near it (NYSCEF Doc. 51 at p. 107-108). Alvarez even nicknamed the unit "shakey" (*id.* at p. 117, lines 13-25). Alvarez also said that he was aware that the day before the incident, the air condition unit at issue was leaking and required five water absorbing tubes placed in a drip pan underneath the air conditioning unit to ensure no puddles formed (*id.* at p. 109). In fact, Alvarez testified that he knew the air conditioning unit was dripping "a lot of water" the night before (*id.* at p.118 lines 18-25). Indeed, Moving Defendants had to call All Systems to repair the unit multiple times between June 15, 2020 and June 16, 2020 just prior to Plaintiff's accident. As

such, it is a triable issue of fact whether Moving Defendants should have known about the risk of the air conditioning unit leaking and forming a hazardous puddle.

Moreover, despite this prolonged history of leaking, it is undisputed that Moving Defendants did not adhere to their regular maintenance routine on the date of the accident. Campbell, who was purportedly the sole maintenance worker employed by Moving Defendants, did not show up for his shift that day (*id.* at p.135-136). Alvarez testified that if Campbell did not show up, the Moving Defendants went "without maintenance for the day," and that on the date of Plaintiff's accident, they did not perform any extra walk throughs to make up for Campbell not being present (*id.*). Alvarez further testified that Campbell was the only individual who would mop or sweep the floors (*id.* at p. 141 lines 1-20).

There is further dispute as to when the area containing the allegedly hazardous condition was last inspected. The incident report states that the location was last inspected right after All Systems left the Premises on the morning of June 16, 2020 (NYSCEF Doc. 45). Alvarez testified however that the incident report was not correct and at least one inspection occurred between the repair and the accident (NYSCEF Doc. 54 at p. 91, lines 9-20). Thus, there are issues of fact regarding when the last inspection occurred, whether Moving Defendants should have conducted more frequent inspections concerning the air conditioning unit's recent history of leaking, and whether additional inspections should have been made given Campbell's absence. As such, Moving Defendants' motion for summary judgment dismissing Plaintiff's Complaint is denied.

Moving Defendants' motion for summary judgment on its crossclaims for contribution and indemnification against Defendant All System is similarly denied. There is a genuine issue of material fact as to which contract governed Moving Defendants and All Systems' relationship at the time of the incident. Moving Defendants rely on an indemnification clause in a contract from

2017 (NYSCEF Doc. 42). However, the principal of All Systems, Mr. Maloney, testified that the only contract that existed between the parties on the date of the incident was an HVAC emergency service-preventative maintenance agreement, which does not contain the indemnification clause Moving Defendants rely upon (*see* NYSCEF Docs. 43 and 52 at pages 23-24). Moreover, as there are triable issues of fact regarding Moving Defendants' own negligence, this Court is unable to grant summary judgment on Moving Defendants' common-law contribution and indemnification cross-claims (*Salomon v United States Tennis Assn.*, 181 AD3d 446 [1st Dept 2020]; *Lopez v New York Life Ins. Co.*, 90 AD3d 446, 447-448 [1st Dept 2011]; *DiFilippo v Parkchester North* Condominium, 65 AD3d 899 [1st Dept 2009]; *Tamhane v Citibank, N.A.*, 61 AD3d 571, 573 [1st Dept 2009]; *Olsen v James Miller Marine Service, Inc.*, 16 AD3d 169, 172 [1st Dept 2005]).

Accordingly, it is hereby,

ORDERED that the Moving Defendants' motion for summary judgment is denied in its entirety; and it is further

ORDERED that within ten (10) days of entry, counsel for Plaintiff serve a copy of this Decision and Order, with notice of entry, on all parties and the Clerk of the Court; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

2/9/2023
DATE

Mary V Rosado
HON. MARY V. ROSADO, J.S.C.

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| CHECK ONE: | | CASE DISPOSED | | x | NON-FINAL DISPOSITION | | |
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| APPLICATION: | | SETTLE ORDER | | | SUBMIT ORDER | | |
| CHECK IF APPROPRIATE: | | INCLUDES TRANSFER/REASSIGN | | | FIDUCIARY APPOINTMENT | | REFERENCE |