

Perez v City of New York

2023 NY Slip Op 30641(U)

March 6, 2023

Supreme Court, New York County

Docket Number: Index No. 158736/2015

Judge: Nicholas W. Moyne

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: PART

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IRVING PEREZ, Plaintiff, - v - THE CITY OF NEW YORK, H.B.J.G. INC., WHITE CASTLE SYSTEM, INC., CONSOLIDATED EDISON, INC. Defendant.	<table border="0"> <tr> <td>INDEX NO.</td> <td><u>158736/2015</u></td> </tr> <tr> <td>MOTION DATE</td> <td><u>04/18/2022</u></td> </tr> <tr> <td>MOTION SEQ. NO.</td> <td><u>005</u></td> </tr> </table> <p style="text-align: center;">DECISION + ORDER ON MOTION</p>	INDEX NO.	<u>158736/2015</u>	MOTION DATE	<u>04/18/2022</u>	MOTION SEQ. NO.	<u>005</u>
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HON. NICHOLAS W. MOYNE:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 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, 233, 234, 235, 237, 245, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264

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

Upon the foregoing documents, it is

This action arises out of a personal injury claim commenced by plaintiff Irving Perez, in which he alleges that on May 28, 2015, he sustained injuries resulting from a trip-and-fall on a defective condition in the parking lot of a White Castle restaurant located at 351 East 103 Street, New York, New York. The subject property was owned by defendant H.B.J.G., Inc. (“HBJG”) and leased by defendant White Castle System Inc. (“White Castle”), for the operation of a fast-food restaurant.

HBJG moves for summary judgment arguing that as an out-of-possession landlord, it had no duty to maintain the subject parking lot and therefore cannot be held liable for the plaintiff’s accident. As an exhibit to its motion, HBJG attaches a copy of a lease agreement showing that control of the property, including the parking lot, had been transferred to White Castle. The lease permitted White Castle to develop the property for the understood purpose of operating a

restaurant, including inter alia, the removal and/or alteration of any structures existing on the property at the time of the lease, and the placing of "leasehold improvements" on the premises, which included the erection of a building of White Castle's design, the paving of any part of the property for parking and driveways, and the installation of fixtures. The purported lease also states that White Castle has the sole right to remove, repair, replace or modify any leasehold improvements, as well as the sole obligation to keep the subject premises free from any nuisance.

Additionally, HBJG's summary judgment motion also relies on the deposition testimony of two White Castle witnesses, Richard Small and Arthur Woessner. During his testimony, Mr. Small, who identified himself as a district supervisor of the subject premises and tasked with general oversight of the White Castle locations to which he is assigned, testified that it was his understanding that White Castle developed the subject premises and built a restaurant in 1995. Mr. Small further testified that if work was going to be performed in White Castle's parking lot, the responsibility for performing such work belonged to White Castle and specifically Mr. Woessner, who was the Service Supervisor for the subject location at the time of the accident. During his deposition, Mr. Woessner confirmed that repairs to the parking lot fell under his supervision and/or oversight at the time of the accident. Mr. Woessner further stated that the concrete patchwork on which the plaintiff fell was likely performed by an outside contractor that he would have been responsible for retaining. Both Mr. Small and Mr. Woessner testified that they had no idea who HBJG was or what role, if any, they would have had, in managing or maintaining the property.

Generally, a landowner owes a duty of care to maintain his or her property in a reasonably safe condition (*Gronski v City of Monroe*, 18 NY3d 374 [2011]). However, such duty "is premised on the landowner's exercise of control over the property, as the person in

possession and control of property is best able to identify and prevent any harm to others". (*Id.*). Accordingly, a landlord is generally not liable for negligence with respect to the condition of property after the transfer of possession and control to a tenant unless the landlord: (1) is contractually obligated to make repairs or maintain the premises, or (2) has a contractual right to reenter, inspect and make needed repairs and liability is based on a significant structural or design defect that is contrary to a specific statutory safety provision (*see Burdier v Renaissance Midtown W., LLC*, 200 AD3d 446 [1st Dept 2021]; *Vasquez v The Rector*, 40 AD3d 265, 266 [1st Dept 2007]; *McDonald v Riverbay*, 308 AD2d 345,346 [1st Dept 2003]).

In this case, HBJG, by submitting a copy of the lease and the deposition testimony, established prima facie that it was an out-of possession landlord with no duty under the lease to repair or maintain the parking lot. The lease clearly states that White Castle and only White Castle, had the sole right to remove, repair, replace, or modify any leasehold improvements, as well as the sole obligation to keep the subject premises free from any nuisance. This is consistent with the understanding expressed by the White Castle witnesses who oversaw maintaining the property, including the subject parking lot. While HBJG retained the right to inspect, reenter and make repairs, that, by itself, would not create a legal duty absent evidence that the allegedly defective condition in the parking lot involved a significant structural or design defect contrary to a specific statutory safety provision (*see Vasquez*, 40 AD3d at 266).

In that regard, HBJG argues that the plaintiff does not, and cannot, allege any violation of any specific statutory provision chargeable to a landlord that would apply to a defective condition in a parking lot. The court agrees. Here, the plaintiff has not alleged the violation of any statutory provision and, in opposition to the motion, have failed to present any evidence demonstrating that the condition of the parking lot where the plaintiff fell constituted a

significant structural or design defect (see *Yadegar v International Food Mkt.*, 37 AD3d 595, 597 [2d Dept 2007]; *Uhlrich v Canada Dry Bottling Co. of New York* 305 AD2d 107, 108 [1st Dept 2003]; *Quinones v 27 Third City King Rest., Inc.* 198 AD2d 23, 24 [1st Dept 1993]).

Accordingly, HBJG has established that it had no duty to repair the condition upon which the plaintiff allegedly injured himself. Absent such a duty, summary judgment in HBJG’s favor is warranted and all claims against HBJG must be dismissed.

For the reasons set forth herein, it is hereby

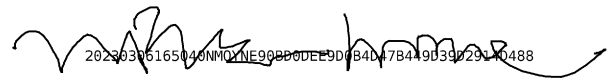
ORDERED that the motion of defendant H.B.J.G. Inc. for summary judgment dismissing all claims and cross-claims against it is GRANTED; and it is further

ORDERED that all claims and cross-claims against H.B.J.G. Inc. are DISMISSED against them and the balance of the action shall continue; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of defendant H.B.J.G. Inc.; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of defendant H.B.J.G. Inc. dismissing the claims and cross-claims made against them in this action, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.

This constitutes the decision and order of the court.



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3/6/2023
DATE

NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
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<input type="checkbox"/>	SUBMIT ORDER
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CHECK IF APPROPRIATE:

<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN
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<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE
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