

**Sadlowski v East End Bldg. Servs. Inc**

2023 NY Slip Op 34463(U)

December 18, 2023

Supreme Court, Kings County

Docket Number: Index No. 509831/2019

Judge: Francois A. Rivera

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 52 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 18<sup>th</sup> day of December 2023

HONORABLE FRANCOIS A. RIVERA

-----X  
LISA SADLOWSKI, AS ADMINISTRATRIX OF THE ESTATE OF FRANCIS SADLOWSKI, DECEASED,

Plaintiff

**DECISION & ORDER**  
Index No. 509831/2019.

-against-

EAST END BUILDING SERVICES INC and EAST END MATERIALS, INC.,

Defendants.

-----X  
Recitation in accordance with CPLR 2219 of the papers considered on the notice of motion filed by defendants East End Building Services Inc (hereinafter EEBS) and East End Materials Inc., (hereinafter EEMI) (collectively the movants), on June 8, 2023, under motion sequence number four, for an order: (1) pursuant to CPLR section 1021 lifting the stay caused by the death of Francis Sadlowski (hereinafter the decedent)<sup>1</sup>, and (2) pursuant to CPLR 3212 granting summary judgment in favor of the movants on the issue of liability and dismissing all claims brought by the plaintiff's decedent. The motion is opposed.

- Notice of motion
- Affirmation in support
  - Exhibits A-Q
- Statement of material facts
- Memorandum of law in support
- Affirmation in opposition
- Counterstatement of material facts
- Affirmation in reply

<sup>1</sup> By order issued on January 9, 2023, the Court granted the order to show cause filed on November 22, 2022, by the decedent's prior counsel which sought an order pursuant to CPLR 1021 substituting Lisa Sadlowski, the appointed administratrix of the decedent's estate, as the plaintiff in the instant action, amending the caption to reflect the change, and lifting the stay caused by the decedent's death.

## BACKGROUND

On May 3, 2019, plaintiff's decedent commenced the instant action for damages for personal injury by filing a summons and verified complaint (hereinafter the commencement papers) with the King's County Clerk's office (KCCO). On September 13, 2019, the movants interposed and filed a joint verified answer with the KCCO. On January 31, 2021, Francis Sadlowski passed away.

By order issued on January 9, 2023, the Court already granted the branch of the movants' motion seeking an order lifting the automatic stay of the action caused by the decedent's death.

The verified complaint alleges the following salient facts among others. On March 14, 2017, the movants owned, managed, and maintained certain real property identified as 8424 Ditmas Avenue, County of Kings, City and State of New York (hereinafter the subject premises). On March 14, 2017, the movants operated and maintained a parking lot at the subject premises. On or prior to March 14, 2017, the movants provided snow removal services at the subject premises pursuant to a contract they had with National Grid USA Service Company, Inc. (hereinafter National Grid).

On March 14, 2017, the decedent was lawfully walking in the parking lot at the subject premises and was caused to slip and fall (hereinafter the subject accident) due to the negligence of the movants in their management and maintenance of the subject premises. The decedent sustained serious physical injuries caused by the subject accident.

## LAW AND APPLICATION

The movants contend that they owed no duty of care to the decedent, that they did not launch an instrument of harm, and that they are therefore not liable in tort. In support of the motion the movants have submitted, among other things, the snow removal contract between movant EEBS and National Grid, and the deposition transcripts of Francis Sadlowski, Patrick Dempsey, James Fungeld, and Ricardo Garcia. Patrick Dempsey was the president of EESB and the vice president of EEMI. On July 16, 2020, the date of James Fungeld's deposition, Fungeld was the president of EESB and EEMI. Ricardo Garcia was employed by National Grid and was the supervisor over certain properties located in Greenpoint, MetroTech, Queens service, and Jamaica. He also was the property manager for a property in Canarsie in which the subject premises was located.

The movants evidentiary submission established that EEBS had a written contract with National Grid (hereinafter the subject contract) for snow removal at the subject premises on an as-needed basis. National Grid also had its own employees who performed snow removal services as well. It was not clear from the evidentiary submission whether National Grid's employees performed snow removal on the date of the subject accident. The subject contract was admitted into evidence. The terms of the subject contract did not expressly confer a duty of care to third parties. Francis Sadloswski testified that National Grid performed its own snow and ice removal services and had its own equipment on-site at the time of the accident. He also testified that was not aware of any snow removal contract between, the movants and National Grid.

Ricardo Garcia's testimony made a prima facie showing that EESB did not perform snow removal services at the subject premises on March 14 and March 15, 2017. He testified regarding invoices submitted by ESSB for payment. Those invoices revealed that there were no invoices and no *Snow and Ice Management Time Sheets* for services performed by ESSB on those dates. Mr. Garcia also testified that EESB did not forget to submit invoices because that was how they were paid.

Generally, a contractual obligation, standing alone, will not give rise to tort liability in favor of a third party (*Tomala v. Islandia Expressway Realty, LLC*, 216 A.D.3d 696, 698 [2<sup>nd</sup> Dept 2023]; *Espinal v. Melville Snow Contrs., Inc.*, 98 N.Y.2d 136, 138 [2002]; *Forbes v. Equity One Northeast Portfolio, Inc.*, 212 A.D.3d 780, 781 [2<sup>nd</sup> Dept 2023]). However, a party that enters into a contract to render services may be said to have assumed a duty of care, and thus, be potentially liable in tort to third persons, where (1) the contracting party, in failing to exercise reasonable care in the performance of its duties, launches a force or instrument of harm, (2) the plaintiff detrimentally relies on the continued performance of the contracting party's duties, or (3) the contracting party has entirely displaced the other party's duty to maintain the premises safely (*Martinelli v. Dublin Deck, Inc.*, 198 A.D.3d 635, 637 [2<sup>nd</sup> Dept 2021]).

The movants' evidentiary submission demonstrated that there was no privity of contract between the movants and the plaintiff's decedent. Under the contract terms, the decedent was not a third-party beneficiary of ESSB's contract with National Grid. Also, the terms of the contract between ESSB and National Grid did not completely displace National Grid's duty to maintain the subject premises safely. Also, National Grid had its

own people who also performed snow removal services at the subject premises. ESSB established that it did not perform snow removal services at the subject premises at the time of the subject accident because such service was not requested by National Grid's facilities management and there are no invoices for such work. It therefore was not present and could not have launched an instrument of harm. In sum, the movants established that they bore no liability to the decedent. In opposition, the plaintiff did not raise a triable issue of fact (*Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851 at 853 [1985]).


### CONCLUSION

The branch of the motion by defendants East End Building Services Inc. and East End Materials Inc., for an order pursuant to CPLR section 1021 lifting the stay caused by the death of Francis Sadlowski has already been granted by the above referenced Court order issued on January 9, 2023.

The branch of the motion by defendants East End Building Services Inc. and East End Materials Inc., for an order pursuant to CPLR 3212 granting summary judgment in their favor on the issue of liability and dismissing all claims brought by the plaintiff is granted.

The foregoing constitutes the decision and order of this Court.

ENTER:



x

J.S.C.

**HON. FRANCOIS A. RIVERA**  
J.S.C.