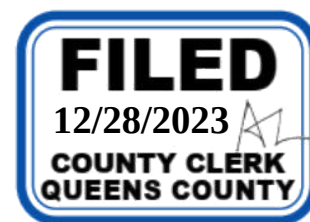


Telfort v 1600 Cent. LLC
2023 NY Slip Op 35117(U)
December 22, 2023
Supreme Court, Queens County
Docket Number: Index No. 711646/2019
Judge: Maurice E. Muir
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This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT – QUEENS COUNTY



Present: HONORABLE MAURICE E. MUIR
Justice

JOCELYNE TELFORT,

Plaintiff,

-against-

1600 CENTRAL LLC, 1600 CENTRAL REALTY
LLC, KARP BUILDING MANAGEMENT,
HEAVY DOODY MAINTENANCE and
BG 100 CO. LLC,

Defendants.

IAS Part - 42

Index No.: 711646/2019

Motion Date: 8/10/23

Motion Cal. No. 37

Motion Seq. No. 3

The following electronically filed (“EF”) documents read on this motion by Heavy Doody Maintenance (“Heavy Doody” or movant”) for an order a) pursuant to CPLR § 3212 granting DOODY summary judgment dismissing plaintiff’s complaint in its entirety as (1) there has been no showing that DOODY performed any maintenance regarding the snow and/or ice that allegedly caused plaintiff’s accident; (2) even if he had, the specific area of Plaintiff’s accident - alongside a parked car - was outside DOODY’s scope of work; and (3) DOODY had no duty of care towards Plaintiff under the ruling of *Espinal v. Melville Snow Contractors Inc.*, 98 NY3d 136 [2002] as DOODY did not launch an instrument of harm in performing his duties, there has been no showing that Plaintiff relied to her detriment on DOODY’s continued performance of snow removal work, and DOODY did not entirely displace the building owner’s duty to maintain the parking lot, as other maintenance duties in the parking lot were performed by the building owner’s own maintenance employee and responsibility for snow removal was assumed by the property manager, co-defendant, BG 100 CO. LLC.; and b) granting DOODY such other, further, and different relief as this Court deems just, equitable, and proper.

Papers

	<u>Numbered</u>
Notice of Motion-Affirmation-Exhibits-Service.....	EF 086 - 099
Affirmation in Opposition-Exhibits-Service.....	EF 104 - 107
Affirmation in Reply -Exhibits-Service.....	EF 108

Upon the foregoing papers, it is ordered that this motion is determined as follows:

This is an action to recover damages for personal injuries Joselyne Telfort ("Ms. Telfort" or "plaintiff") allegedly sustained. In particular, the plaintiff alleges that on March 15, 2017, while she was lawfully walking upon the parking lot adjacent to 1600 Central LLC's premises located at 1600 Central Avenue, Queens, New York, she was caused to fall on ice and snow which had accumulated thereat. As a result, on January 4, 2019, the plaintiff commenced the instant action; and on July 30, 2019, issue was joined. Thereafter, the parties stipulated to join BG 100 Co. ("BG") as a co-defendant; and August 8, 2023, the plaintiff discontinued the instant action against 1600 Central LLC.

Now, Heavy Doody seeks summary judgment, pursuant to CPLR § 3212. In support of the instant motion, the movant argues the following, *inter alia*: 1) there has been no evidence or testimony establishing that Heavy Doody performed any maintenance work with respect to any snow or ice accumulation at subject premises on March 15, 2017; 2) even if Heavy Doody had performed snowplow duties at the subject premises on the dates in question, the scope of Heavy Doody does not include snowplowing between parked car; 3) Heavy Doody's snowplow cannot fit between cars; 4) Heavy Doody do not plow alongside parked cars due to the risk of damaging the vehicles, etc. In opposition, Ms. Telfort testified that "I stood up in front of the car and I was trying to clean it. I realize that the snow was very thick, very dirty and I said let me go and start the car so that the snow can melt a little bit. And as I'm walking to the driver's side, I slip and fall because of the ice from the pooling, the parking lot slant and there was a lot of dipping, I slip and fall." Moreover, Ms. Telfort argues that "[t]he evidence shows DOODY was negligent in cleaning and inspecting the parking lot during and after its snow removal efforts, and further caused and created the hazardous conditions that caused TELFORT to fall on March 15, 2017. The ice condition Plaintiff slipped and fell upon was formed by the snow that fell on March 10, 2017, and the snow, sleet and rain (that subsequently froze into ice) that fell on March 14, 2017, that was not removed and salted by DOODY."

It is well settled law that "summary judgment is a drastic remedy made in lieu of a trial which resolves the case as a matter of law" (*Reyes v. Arco Wenworth Mgt. Corp.*, 83 AD3d 47,

54 [2d Dept 2011], citing *Andre v. Pomeroy*, 35 NY2d 361, 364 [1974]; see also *Vega v. Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]). A summary judgment movant must show *prima facie* entitlement to judgment as a matter of law by producing sufficient admissible evidence demonstrating the absence of any material factual issues (CPLR § 3212(b); *Alvarez v. Prospect Hosp.*, 68 NY2d 320, 324 [1984]). Failure to make such a showing requires denying the motion, regardless of the sufficiency of any opposition (*Vega*, 18 NY3d at 503). The opposing party overcomes the movant's showing only by introducing "evidentiary proof in admissible form sufficient to require a trial of material questions" (*Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]). Furthermore, considering a summary judgment motion requires viewing the evidence in the light most favorable to the motion opponent (*Vega*, 18 NY3d at 503). Nevertheless, "mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" to defeat a summary judgment motion (*Zuckerman*, 49 NY2d at 562). "The court's function on a motion for summary judgment is to determine whether material factual issues exist, not to resolve such issues" (*Ruiz v. Griffin*, 71 AD2d 1112, 1115 [2d Dept 2010] [internal quotations marks omitted]).

Here, the court finds that Heavy Doody established its *prima facie* entitlement to judgment as a matter of law by demonstrating that it neither plowed around the car nor had a contractual duty to maintain the same. Moreover, the plaintiff failed to raise a triable issue of fact: In fact, Mr. Doody testified that he did not recall if or when his company performed snow removal services in the parking lot before March 15, 2017; and he does not have any record or logs demonstrating that he performed services in the days leading up to March 15, 2017. Furthermore, the court finds that Heavy Doody correctly argues that "[a] contractual obligation, standing alone, generally will not give rise to tort liability in favor of a third party (i.e., Ms. Telfort) (see *Koslosky v. Ross-Malmut*, 149 AD3d 925 [2d Dept 2017] citing *Landon v. Kroll Lab. Specialist, Inc.*, 22 NY3d 1, 6 [2013]; *Church v. Callanan Indus.*, 99 NY2d 104, 111 [2002]; *Espinal v. Melville Snow Contractors*, 98 NY2d 136 [2002]; *Turner v. Birchwood on the Green Owners Corp.*, 171 AD3d 1119 [2d Dept 2019]). However, the court notes that in *Espinal v. Melville Snow Contractors*, 98 NY2d at 140, the Court of Appeals recognized that exceptions to this rule apply: (1) where the contracting party, in failing to exercise reasonable care in the performance of his or her duties, launches a force or instrument of harm; (2) where the plaintiff detrimentally relies on the continued performance of the contracting party's duties; and (3) where the contracting party has entirely displaced another party's duty, in *Espinal*, to

maintain the premises safely. Furthermore, “[a]s part of its prima facie showing, a contracting defendant is only required to negate the applicability of those Espinal exceptions that were expressly pleaded by the plaintiff or expressly set forth in the plaintiff’s bill of particulars” (*Glover v. John Tyler Enters., Inc.*, 123 AD3d 882 [2d Dept 2014]; see *Sperling v. Wyckoff Hgts. Hosp.*, 129 AD3d 826 [2d Dept 2015]; *Foster v. Herbert Slepoy Corp.*, 76 AD3d 210, 214 [2d Dept 2010]). Here, the court finds that the *Espinal* exceptions are not applicable herein. Rather, Heavy Doody established the following: 1) its work did not launch an instrument of harm; 2) there is no evidence that the plaintiff was aware of Heavy Doody’s existence, and she did rely to her detriment on Heavy Doody’s continued performance of snow removal; and 3) it did not entirely displace the building owner’s duty to maintain the parking lot, as other maintenance duties in the parking lot were performed by the building owner’s own maintenance employee and ultimate responsibility for snow removal was assumed by the property manager, Co-Defendant, BG 100 CO. LLC. As such, the *Espinal* exceptions are not applicable. Therefore, Heavy Doody did not owe the plaintiff a duty of care. (*Koslosky v. Ross-Malmut*, 149 AD3d 925 [2d Dept 2017]; *Leibovici v. Imperial Parking Mgt. Corp.*, 139 AD3d 909 [2d Dept 2016]; *Knox v. Sodexo Am., LLC*, 93 AD3d 642 [2d Dept 2012]; *Lubell v. Stonegate at Ardsley Home Assn., Inc.*, 79 AD3d 1102 [2d Dept 2010]; *Turner v. Birchwood on the Green Owners Corp.*, 171 AD3d 1119 [2d Dept 2019]).

Accordingly, it is hereby

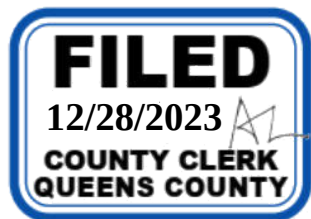
ORDERED that Heavy Doody Maintenance’s motion for summary judgment, pursuant to CPLR § 3212, granted; and it is further,

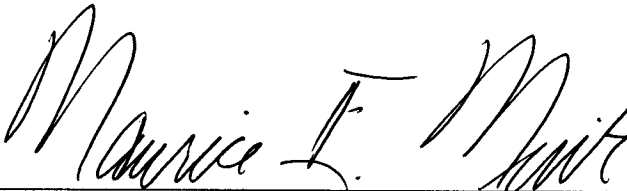
ORDERED that the complaint against Heavy Doody Maintenance is dismissed with prejudice; and it is further,

ORDERED that Heavy Doody Maintenance shall serve a copy of this decision and order with notice of entry upon the parties on or before January 30, 2024.

The foregoing constitutes the decision and order of the court.

Dated: December 22, 2023
Long Island City, NY




MAURICE E. MUIR, J.S.C.