

Alicea v City of New York

2024 NY Slip Op 31732(U)

May 16, 2024

Supreme Court, New York County

Docket Number: Index No. 150185/2016

Judge: Jeanine R. Johnson

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. JEANINE R. JOHNSON PART 52-M

Justice

-----X

OLGA ALICEA,

Plaintiff,

- v -

CITY OF NEW YORK, STERLING UNION SQ., LLC., BEST
BUY CO., INC., CONSOLIDATED EDISON COMPANY OF
NEW YORK,

Defendant.

-----X

STERLING UNION SQ., LLC.

Third-Party Plaintiff,

-against-

SATO CONSTRUCTION CO. INC. d/b/a FLAG
WATERPROOFING & RESTORATION COMPANY,

Third-Party Defendant.

-----X

SATO CONSTRUCTION CO. INC. d/b/a FLAG
WATERPROOFING & RESTORATION COMPANY,

Second Third-Party Plaintiff,

-against-

MAYA CONTRACTING, INC.,

Second Third-Party Defendant.

-----X

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595814/2016

Third-Party
Index No. 595814/2016

The following e-filed documents, listed by NYSCEF document number (Motion 006) 174, 175, 176, 177, 178, 179, 180, 182

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

Per decision on motions #3 and #5 dated 08/26/2019 and 02/23/2024, respectively, Best Buy Co. Inc., and The City of New York are no longer parties to the instant action.

Upon the foregoing documents, it is the decision of this Court that Defendant, Consolidated Edison Company of New York's, (hereinafter "Con-Edison"), motion for summary judgment filed on January 11, 2024, without opposition from Defendant–Sterling Union Sq., LLC., Defendant–Sato Construction Co. Inc. d/b/a Flag Waterproofing & Restoration Company, or Defendant–Maya Contracting, Inc. is granted.

To succeed on a motion for summary judgment, the moving party must make a prima facie showing of entitlement to summary judgment as a matter of law by demonstrating the absence of any material issues of fact. *See generally Friends of Thayer Lake LLC v. Brown*, 27 N.Y.3d 1039 (2016). *Jacobsen v. New York City Health & Hosps. Corp.*, 22 N.Y.3d 824 (2014); CPLR §3212(b). "If the moving party makes out a prima facie showing, the burden then shifts to the non-moving party to establish the existence of material issues of fact which preclude judgment as a matter of law." *Jacobsen*, 22 N.Y.3d at 833. If there are no material, triable issues of fact, summary judgment must be granted. *See Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395 (1957).

This Court finds that Defendant–Con-Edison met its burden by showing that there is no material fact in dispute. Defendant–Con-Edison did not (i) cause or create the alleged defective condition or (ii) owe a duty to Plaintiff pursuant to NYC Admin. Code §7-210. Thus, Defendant–Con-Edison's motion for summary judgment is granted without opposition.

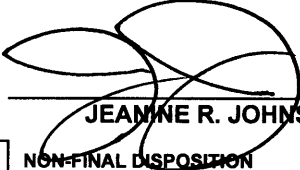
Accordingly, it is hereby

ORDERED that Defendant–Con-Edison's motion for summary judgment is granted; it is further

ORDERED that all claims and cross claims against Defendant–Con-Edison are dismissed, it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website).

This constitutes the Decision and Order of the Court.

<u>5/16/2024</u>				
DATE			JEANNE R. JOHNSON, J.S.C.	
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE