

**Santiago v 2970 Third Ave. LLC**

2024 NY Slip Op 34941(U)

November 12, 2024

Supreme Court, Bronx County

Docket Number: Index No. 29639/2020E

Judge: Elizabeth A. Taylor

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NEW YORK SUPREME COURT – COUNTY OF BRONX

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX : PART IA2

-----X

SOYA QUANKEP SANTIAGO,

Plaintiff,

-against-

2970 THIRD AVENUE LLC, THE JACKSON GROUP  
LLC, and EB CONTRACTOR AND DESIGN CORP.,

Defendants.

-----X

Index No. 29639/2020E


Hon. Elizabeth A. Taylor,  
Justice Supreme Court

The following papers numbered \_\_\_\_ to \_\_\_\_ were read on this motion (NYSCEF Seq. No. 4)

Sequence No. 4	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	75-89
Answering Affidavit and Exhibits, Memorandum of Law	92-99, 100
Reply Affidavit	101

Upon the foregoing papers, the motion is decided in accordance with the annexed decision and order.

Dated: NOV 12 2024

Hon.   
Elizabeth A. Taylor, J.S.C.

1. CHECK ONE.....  CASE DISPOSED IN ITS ENTIRETY  CASE STILL ACTIVE
2. MOTION IS.....  GRANTED  DENIED  GRANTED IN PART  OTHER
3. CHECK IF APPROPRIATE.....  SETTLE ORDER  SUBMIT ORDER

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX : PART IA2

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SOYA QUANKEP SANTIAGO,

Plaintiff,

DECISION and ORDER

Index No. 29639/2020E

-against-

2970 THIRD AVENUE LLC, THE JACKSON GROUP  
LLC, and EB CONTRACTOR AND DESIGN CORP.,

Defendants.

-----X

Elizabeth A. Taylor, J.

Defendant EB CONTRACTOR AND DESIGN CORP. (hereinafter, "EB") moves for summary judgment dismissing of plaintiff's direct claims against it and the cross- claims asserted against it.

Plaintiff SOYA QUANKEP SANTIAGO claims that on March 15, 2020, she was caused to trip and fall due to an alleged sidewalk defect on the public sidewalk adjacent to the property located at 2970 Third Avenue in Bronx County. Plaintiff testified that she tripped after her left foot "got stuck in the cement that was broken off" and fell into a hole. In this regard, plaintiff testified as follows:

"When I went to take a step, I had the slippers on. It was an area but it had like broken up pieces of cement and I fell ... When I fell, basically, I put my left foot to go walk and it was the hole right there on the floor and it was like another piece of concrete on or like cement on the floor and that's where I tripped with that extra little piece of stuff that was sticking out."

It is undisputed that EB Contractor did not own, occupy, control or make a special use of the premises at the time of plaintiff's alleged accident. On the date of plaintiff's alleged accident, 2970 Third Ave LLC owned the Premises. EB had performed construction work at the premises and had entered into a contract to repair the sidewalk as well, but this contract was ended by 2970 Third Ave LLC over one year prior to plaintiff's alleged accident. EB Contractor never performed

any work to the subject sidewalk.

EB argues that the only basis for liability against it is based on *Espinal*, in that an independent contractor can only be held liable “(1) where the contracting party, in failing to exercise reasonable care in the performance of his duties, ‘launche[s] 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 the other party’s duty to maintain the premises safely.” (*Espinal v. Melville Snow Contractors, Inc.*, 98 N.Y.2d 136, 140, 773 N.E.2d 485 [2002]). Nor is there any dispute that liability herein can only be predicated on an alleged launching of an instrument of harm.

Defendants 2970 Third Avenue LLC and The Jackson Group LLC (collectively referred to as “Owners”), as well as the plaintiff, oppose EB’s motion on the ground that there were several violations issued while EB Contractors was at the site for debris being dropped on the sidewalk, and thus, that issues of fact exist as to launching an instrument of harm. In this regard, they maintain that EB, in the performance of its contracted work, dropped concrete, brick debris and metal on the sidewalk. A 02/04/19 complaint by the NYC Department of Buildings (NYC DOB Complaint #2275434) alleged that “Workers are dropping concrete onto the sidewalk and there in no sidewalk shed.” A second Complaint on 02/04/19 (NYC DOB Complaint #2275435), similarly states “Workers dropping concrete on the sidewalk with no sidewalk shed.” A third Complaint, received by the NYC Department of Buildings one day later on 02/05/19 (NYC DOB Complaint #2275439), pertains to EB CONTRACTOR’s “Failure to safeguard all persons and properties.” EB was served with two (2) violations from the NYC Department of Buildings. The first, Violation No. 35375237R, served on 02/05/19 with a violation date of 02/04/19, sets forth that façade demolition was undertaken, and brick debris and metal fell into public space. A second violation,

Violation No. 35375239K, also served on 02/05/19 with a violation date of 02/04/19, sets forth: "Work contrary to approved construction documents. At time of inspection noted on an active site demolition work proceeding at roof level one exposure 3&4 w/o sidewalk shed in place or bracing to walls below CO."

"A defendant who moves for summary judgment in a slip-and-fall action has the initial burden of making a prima facie demonstration that it neither created the hazardous condition, nor had actual or constructive notice of its existence" (Smith v Costco Wholesale Corp., 50 AD3d 499, 500, 856 N.Y.S.2d 573 [1st Dept 2008]). "To meet its burden on the issue of lack of constructive notice, the defendant must offer some evidence as to when the accident site was last cleaned or inspected prior to the plaintiff's fall." (Mei Xiao Guo v. Quong Big Realty Corp., 81 A.D.3d 610, 611, 916 N.Y.S.2d 155 [2d Dept. 2011] [citations omitted]; Quintana v. TCR, Tennis Club of Riverdale, Inc., 118 A.D.3d 455, 987 N.Y.S.2d 68 [1st Dept. 2014] [defendant failed to establish a lack of constructive notice of the wet condition on steps where the moving papers contained no indication of when the area was last inspected prior to the accident]; Qevani v 1957 Bronxdale Corp., 232 AD2d 284, 649 NYS2d 11 [1st Dept. 1996] [issue of fact as to whether existence of condition on steps for 90 minutes constituted constructive notice].)

Movant established a prima facie case that it was not liable. In opposition, the Owner co-defendants and the plaintiff failed to raise an issue of fact that the movant created the sidewalk defect herein. There is no evidence that the debris which landed on the sidewalk caused or created any sidewalk defect. There is no evidence that the debris landed anywhere near the defect on which the plaintiff fell. There is no expert evidence or other testimony establishing that the defect leading to the plaintiff's accident was of a kind which may have been caused by debris hitting the sidewalk. The Owners and the plaintiff have adduced only rank speculation as opposed to admissible

evidence that the movant caused any sidewalk damage, let alone caused the damage to the sidewalk in the specific area where the plaintiff fell.


Based upon the foregoing, it is hereby

ORDERED that the defendant EB CONTRACTOR AND DESIGN CORP.'s motion is granted, and all claims and crossclaims against it are dismissed, and it is further

ORDERED that the Clerk is directed to enter judgment dismissing the complaint and all crossclaims against defendant EB CONTRACTOR AND DESIGN CORP. only and amend the caption accordingly.

Dated: NOV 12 2024

ENTER:

  
\_\_\_\_\_  
Hon. Elizabeth A. Taylor, J.S.C.