

Turner v Senior Living Options, Inc.

2024 NY Slip Op 34946(U)

August 12, 2024

Supreme Court, Bronx County

Docket Number: Index No. 26388/2020E

Judge: Paul L. Alpert

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 26

-----X

Violet Turner

Index No. 26388/2020E

-against-

Hon. Paul L. Alpert

Senior Living Options, Inc. et al

Justice Supreme Court

-----X

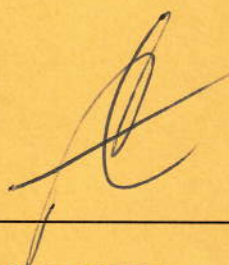
The following papers numbered 1 to _____ were read on this motion (Seq. No. 4)
for _____ noticed on _____.

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	No(s).
Answering Affidavit and Exhibits	No(s).
Replying Affidavit and Exhibits	No(s).

Motion is Respectfully Referred to Justice: _____
Dated: _____

The third third-party defendant's motion is decided in accordance with the annexed decision and order of the court.

Dated: 8/12/24

Hon. _____

HON. PAUL ALPERT 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 SCHEDULE APPEARANCE
- FIDUCIARY APPOINTMENT REFEREE APPOINTMENT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 26

-----X
Violet Turner,

Plaintiff,

-against-

Senior Living Options, Inc., Morris Avenue Cornerstone
Associates, L.P. and The Wavecrest Management Team
Ltd., Rameez Management, Inc., Knickerbocker Retail,
LLC and Samina Saeed Mahmoud,

Defendants.

-----X
Senior Living Options, Inc., Morris Avenue Cornerstone
Associates, L.P. and The Wavecrest Management Team
Ltd.,

Third-Party Plaintiffs,

-against-

Rameez Management, Inc. and Samina Saeed Mahmoud,

Third-Party Defendants.

-----X
Senior Living Options, Inc., Morris Avenue Cornerstone
Associates, L.P. and the Wavecrest Management Team
Ltd.,

Second Third-Party Plaintiffs,

-against-

Standard Discount Inc.

Second Third-Party Defendants.

-----X
Senior Living Options, Inc., Morris Avenue Cornerstone
Associates, L.P. The Wavecrest Management Team Ltd.,
And Knickerbocker Retail, LLC,

Third Third-Party Plaintiffs,

-against-

Consolidated Edison of NY and Heavy Construction

Index No.: 26388/2020E

DECISION/ORDER

Corp., 153 AD2d 520). Summary judgment will only be granted if there are no material, triable issues of fact (see *Sillman supra*). Failure of the movant to sustain its burden requires denial of the motion, regardless of the sufficiency of the opposition (*Winegrad v. New York Univ. Med Center*, 64 NY2d 851).

Violet Turner alleges that her accident occurred on January 11, 2018 at approximately 4:50 p.m. Knickerbocker Retail LLC is the entity that owned the building located at 675 Morris Avenue, Bronx, New York. The tenants at the location are Rameez Management Inc and Samina Saeed Mahmood. Both Rameez Management Inc and Samina Saeed Mahmood are co-owners of a 99 Cent discount store located at 675 Morris Avenue, Bronx, New York.

Heavy Construction argues that the third third-party complaint must be dismissed because it did not perform any work on the sidewalk where Ms. Turner's accident occurred. Absent a duty of care to the person injured, a party cannot be held liable in negligence (*Palsgraf v. Long Island R.R. Co.*, 248 NY 339, 342). "One who has not performed or is not responsible for any construction work at an accident site owes no duty to a plaintiff injured at the site" (*Kenney v. City of New York*, 30 AD3d 261, citing, *Manson v. Consolidated Edison Co. of New York*, 220 AD2d 374). In support of the motion, Heavy Construction annexed an affidavit by Stanislaw "Stenis" LoMonaco. Mr. LoMonaco is the owner and president of Heavy Construction. Pursuant to his affidavit, Heavy Construction did not perform any sidewalk repair, replacement, or work of any kind on the sidewalk in front of the 99 Cent Store located at 675 Morris Avenue, Bronx, New York. Heavy Construction was contracted by the City of New York to do sidewalk replacement work on the sidewalk directly opposite from the premises located at 675 Morris Avenue, Bronx, New York at a housing complex. Heavy Construction further annexed a permit demonstrating that the work to be completed was on East 153 Street, Morris Avenue which was

issued in 2016, two years prior to Ms. Turner's accident. Furthermore, the letter annexed to the motion demonstrates that the work on the sidewalk was deemed completed on August 11, 2016.

Heavy Construction met its burden for summary judgment by submitting evidence demonstrating that it did not perform any work on the sidewalk where the plaintiff's accident occurred and that it did not create any defective condition on the sidewalk abutting the premises at 675 Morris Avenue, Bronx, New York.

Heavy Construction next argues that all claims for contractual indemnification, common law indemnification and contribution must be dismissed. To recover on a theory of indemnity, a party must have a contractual relationship with the entity from which indemnification is sought (*SSDW Co. v. Feldman-Misthopolous Associates*, 151 AD2d 293, citing, *McDermott v. City of New York*, 50 NY2d 211). As there is no evidence of a contract between the movant and Senior Living Options, Inc., Morris Avenue Cornerstone Associates, L.P., The Wavecrest Management Team Ltd., and Knickerbocker Retail, LLC, the contractual indemnification claims are dismissed.

Moreover, "common law indemnification is available to a party that has been held vicariously liable from the party who was at fault in causing plaintiff's injuries" (*Structure Tone, Inc. v. Universal Servs. Group, Ltd.*, 87 AD3d 909). Contribution is available when two or more tortfeasors share in responsibility for an injury in violation of duties they respectively owe to the injured person (*Trump Village Section 3, Inc. v. New York State Housing Finance Agency*, 307 AD2d 891). There is no evidence in the record that Heavy Construction caused or created the defective condition that caused the plaintiff's accident. The third third-party defendant has established its prima facie entitlement to summary judgment on the cross-claims for common

law indemnification and contribution. Accordingly, Heavy Construction's motion for summary judgment pursuant to CPLR § 3212 is granted in its entirety.

Based on the foregoing, it is hereby:

ORDERED AND ADJUDGED, that Heavy Construction Co., Inc.'s motion for summary judgment dismissing all claims and cross claims against it is granted, and it is further,

ORDERED AND ADJUDGED, that the third third-party defendant shall serve a copy of this decision and order on all parties within twenty (20) days of notice of entry.

This constitutes the decision and order of the court.

Dated: August 12, 2024



Hon. Paul L. Alpert, J.S.C.