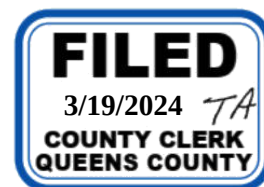


Monsanto v Bagh Inc.
2024 NY Slip Op 35333(U)
May 15, 2024
Supreme Court, Queens County
Docket Number: Index No. 708433/2019
Judge: Maurice E. Muir
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT – QUEENS COUNTY

Present: HONORABLE MAURICE E. MUIR
Justice



ISADOR MONSANTO,

AS Part - 42

Plaintiff,

Index No.: 708433/2019

-against-

Motion Date: 11/30/23

BAGH INC., GRAN WATAN INC., SHAH'S
HALAL FOOD PARTNERS, INC., GUL M CORP.,
METCO REALTY CORP. and MANHATTAN
PROPANE, INC.,

Motion Cal. No. 43

Motion Seq. No. 3

Defendants.

GRAN WATAN INC. and GUL M. CORP.,

Third-Party Plaintiffs,

-against-

MANHATTAN PROPANE INC.,

Third-Party Defendant.

The following electronically filed ("EF") documents read on this motion by Gran Watan, Inc. ("Gran") and Gul M. Corp. ("GUL") (collectively, the "defendants/third-party plaintiffs") for order: (a) pursuant to CPLR § 3212, granting summary judgment to defendants/third-party plaintiffs, Gran Watan, Inc. and Gul M. Corp., dismissing plaintiff's complaint and all cross-claims as asserted against them; or (b) pursuant to CPLR § 3212, granting summary judgment to defendants/third-party plaintiffs, Gran Watan, Inc. and Gul M. Corp., on their claims against defendant/third-party defendant Manhattan Propane, Inc.; and (c) granting such other and further relief as this Court deems just and proper. Moreover, Manhattan Propane, Inc. cross moves for

an order granting the moving defendant/third-party defendant, Manhattan Propane, Inc., summary judgment dismissing all claims, cross-claims and third-party claims as plaintiff has failed to provide any evidence in support of his prima facie case of negligence against Manhattan Propane, Inc., along with such other and further relief as this Court deems just and proper. Moreover, Isador Monsanto ("Mr. Monsanto" or "plaintiff") cross moves for an order pursuant to CPLR § 3212 granting summary judgment to plaintiff on the issue of liability against defendants Gran Watan, Inc. and Manhattan Propane, Inc. together with such other and further relief as to this Court seems just and proper

	Papers Numbered
Notice of Motion-Affirmation-Exhibits-Service.....	EF 121 - 137
Notice of Cross Motion-Affirmation-Exhibits-Service.....	EF 138 - 142
Affirmation in Partial Opposition to Cross Motion-Exhibits.....	EF 143 - 145
Affirmation in Partial Opposition-Exhibits.....	EF 147 - 148
Plaintiff's Notice of Cross Motion-Affirmation-Exhibits-Service...	EF 151 - 165
Affirmation in Opposition to Plaintiff's Cross Motion-Exhibits.....	EF 166 - 167
Plaintiff's Reply Affirmation in Reply-Exhibit.....	EF 169 - 170
Reply Affirmation in Reply.....	EF 171
Affirmation in Further Support.....	EF 173

Upon the foregoing papers it is ordered that the motion and cross-motions are combined herein for disposition, and determined as follows:

This is an action to recover damages for personal injuries Isador Monsanto ("Mr. Monsanto" or "plaintiff") allegedly sustained at 139-15 95th Avenue, Jamaica, New York ("subject premises"). Specifically, the plaintiff alleges that on January 24, 2019, he was walking on a public sidewalk in front of the subject premises, when he was caused to trip and fall over a propane tank. As a result, on May 14, 2019, the plaintiff commenced the instant action against Bagh Inc. ("Bagh"), Gran Watan Inc. ("Gran"), Shah's Halal Food Partners Inc. ("Shah"), Gul M Corp ("Gul") and Metco Realty ("Metco") (collectively, the defendants"). On the same day, the plaintiff filed a supplemental summons and amended complaint; and on or about August 8, 2019, issue was joined. On July 31, 2020, Gan and Gul commenced a third-party action against Manhattan Propane, Inc. ("Manhattan Propane"); and on October 9, 2020, the latter interposed an answer to the third-party complaint. Now, parties seek the above-described relief.

In support of the instant motion, the defendants/third-party plaintiffs argue that “plaintiff’s complaint should be dismissed because the propane tanks were open, obvious and not inherently dangerous. The propane tanks were large and readily observable. In fact, plaintiff testified that he saw the propane tanks on the sidewalk prior to his accident. He had no difficulty seeing them. While stepping over the tanks, he fell. He did not get caught on the tanks. As such, plaintiff’s complaint, and all cross-claims, must be dismissed.” Furthermore, Gul M. Corp. argues that it owed no duty to the plaintiff as it neither owned, leased nor possessed the subject premises; and GUL had no connection with the propane delivery. In opposition, the plaintiff argues the “. . . motion for summary judgment should be granted as defendants created a dangerous condition trapping the plaintiff by leaving propane gas tanks completely blocking a public sidewalk, forcing plaintiff to attempt to step over said propane gas tanks. Defendants’ motions must be denied as defendants have failed to establish a *prima facie* entitlement to summary judgment and because the “open and obvious” defense has been rejected as a ground for summary judgment where, as here, the defendants have created a dangerous condition.

It is well settled law that “[a] landowner has a duty to exercise reasonable care in maintaining [its] property in a safe condition under all of the circumstances, including the likelihood of injury to others, the seriousness of the potential injuries, the burden of avoiding the risk, and the foreseeability of a potential plaintiff’s presence on the property” (*Lebron v. City of New York*, 208 AD3d 656 [2d Dept 2022]; *Groom v. Village of Sea Cliff*, 50 AD3d 1094 [2d Dept 2008] [internal quotation marks omitted]; see *Mossberg v. Crow’s Nest Mar. of Oceanside*, 129 AD3d 683 [2d Dept 2015]; see also *Basso v. Miller*, 40 NY2d 233 [1976]). However, “there is no duty to protect or warn against an open and obvious condition that, as a matter of law, is not inherently dangerous” (*Rosenman v. Siwiec*, 196 AD3d 523, 524 [2d Dept 2021] [internal quotation marks omitted]; see *Cerrato v. Jacobs*, 173 AD3d 1134, 1135 [2d Dept 2019]; *Schiavone v. Bayside Fuel Oil Depot Corp.*, 94 AD3d 970, 971 [2d Dept 2012]; *Rivas-Chirino v. Wildlife Conservation Socy.*, 654 AD3d 556, 557 [2d Dept 2009]), or “where the condition on the property is inherent or incidental to the nature of the property, and could be reasonably anticipated by those using it” (*Cerrato v. Jacobs*, 173 AD3d at 1135; see *Torres v. State of New York*, 18 AD3d 739 [2d Dept 2005]).

Here, the defendants/third-party plaintiffs and third-party defendant established, *prima facie*, that the propane tanks were open and obvious and not inherently dangerous. As such, they

were readily observable and, in fact, known to the plaintiff. (*DiScalo v. Mannix Family Mkt @ Forest and Richmond Ave, LLC*, 206 AD3d 693 [2d Dept 2022]; *William v. E & R Jamaica Food Corp.*, 202 AD3d 1028 [2d Dept 2022]). In opposition, the plaintiff failed to raise a triable issue of fact.

Accordingly, it is hereby

ORDERED that Gran Watan, Inc. and Gul M. Corp. motion for summary judgment, pursuant to CPLR § 3212, is granted, in its entirety; and it is further,

ORDERED that the complaint and all crossclaims against Gran Watan, Inc. and Gul M. Corp. are dismissed with prejudice; and it is further,

ORDERED that Manhattan Propane, Inc.'s cross motion for summary judgment, pursuant to CPLR § 3212, is granted, in its entirety; and it is further,

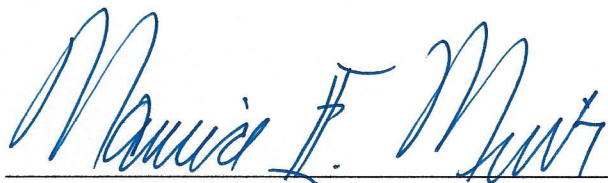
ORDERED that the complaint and all crossclaims against Manhattan Propane, Inc. are dismissed with prejudice; and it is further,

ORDERED that plaintiff's cross motion for summary judgment, pursuant to CPLR § 3212, is denied, in its entirety; and it is further,

ORDERED that defendants/third-party plaintiffs shall serve a copy of this decision and order with notice of entry upon all parties, via certified mail and NYSCEF, on or before April 15, 2024.

The foregoing constitutes the decision and order of the court.

Dated: March 15, 2024
Long Island City, NY


MAURICE E. MUIR, J.S.C.

