

**Kapassakis v Sisters of Charity Health Care Sys.
Nursing Home, Inc.**

2025 NY Slip Op 30671(U)

February 28, 2025

Supreme Court, New York County

Docket Number: Index No. 154364/2021

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14

Justice

-----X

ERIN KAPASSAKIS, NICK KAPASSAKIS,

Plaintiffs,

- v -

SISTERS OF CHARITY HEALTH CARE SYSTEM
NURSING HOME, INC., SAINT VINCENTS CATHOLIC
MEDICAL CENTERS OF NEW YORK, CENTERS PLAN
FOR HEALTH LIVING LLC

Defendants.

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INDEX NO. 154364/2021

MOTION DATE 02/26/2025

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63

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

Defendant Saint Vincent’s Catholic Medical Centers of New York (“St Vincent’s”)’s motion for summary judgment dismissing the complaint against it is granted.

Background

This action concerns plaintiff Erin Kapassakis (hereinafter, “plaintiff”)’s allegation that she slipped and fell on applesauce on the ground floor near the elevator lobby of a facility owned by St Vincent’s.

St. Vincent’s contends that it entered into a lease with SV Land I, LLC (“SVLI”) and that the lease required SVLI to maintain and clean the premises. It emphasizes that SLVI, as the tenant, was required to pay all taxes, utilities and to maintain liability insurance. St. Vincent’s acknowledges that it has a right of reentry to make repairs but that this provision specifically stated that it did not impose any obligation on St. Vincent’s to perform any repairs.

In opposition, plaintiff contends that defendant St. Vincent's did not produce any evidence of when it last inspected or visited the premises. She insists that no records were produced concerning inspections, construction or repairs in the area where plaintiff fell. Plaintiff emphasizes that St. Vincent's had a right to reenter the premises and that, therefore, this defendant cannot meet its burden to show it had no duty to plaintiff.

In reply, St. Vincent's argues that SLVI had the obligation to clean and maintain the premises and that, as an out-of-possession landlord, it is not liable for a transient condition. It contends that it need not disprove notice as the notice issue only applies where it had a duty of care and, here, St. Vincent's contends it had no duty to plaintiff.

Discussion

“An out-of-possession landlord is generally not liable for negligence with respect to the condition of the demised premises unless it (1) is contractually obligated to make repairs or maintain the premises or (2) has a contractual right to reenter, inspect and make needed repairs and liability is based on a significant structural or design defect that is contrary to a specific statutory safety provision” (*Padilla v Holrod Assoc. LLC*, 215 AD3d 573, 573, 189 NYS3d 59 [1st Dept 2023] [internal quotations and citation omitted]).

Here, the lease required the tenant to “repair and maintain the premises” (NYSCEF Doc. No. 56, ¶ 7.1). Specifically, it provided, in part, that the “Tenant covenants, at Tenant's sole cost and expense, to take good care of the Premises and the utility connections, sidewalks, curbs and vaults, if any, adjoining the Premises, and to keep the same in good working order and repair and to make promptly all necessary repairs thereto, interior and exterior, structural and nonstructural” (*id.*).

To be sure, St. Vincent's maintained the right to reenter in section 14.1, but that provision permitted St. Vincent's the right to access the premises "if Landlord shall desire, but without implying any obligation on Landlord so to do, to make any repairs deemed by Landlord to comply with any Legal Requirements to the extent Tenant shall fail to perform such repairs in the time and manner required hereunder" (*id.* ¶ 14.1).

As stated above, an out-of-possession landlord is generally not liable except where it has the right to reenter *and* liability is based on a significant structural or design defect. Here, plaintiff testified that she slipped and fell on applesauce (NYSCEF Doc. No. 58 at 62) which, obviously, is not a significant structural defect. Moreover, nothing in this record suggests that St. Vincent's retained an obligation to clean the lobby area where plaintiff fell (*see Patterson v H.E.H., LLC*, 217 AD3d 879, 880, 191 NYS3d 479 [2d Dept 2023] [observing that the question of liability when an out-of-possession landlord retains some control turns on whether the injury producing condition fell within the provisions of the contract]). Nor is there any indication that St. Vincent's adopted a course of conduct that would impose a duty on it to clean applesauce in the subject area of the building (*Sweeney v Hoey*, 211 AD3d 1071, 1072, 181 NYS3d 599 [2d Dept 2022]).

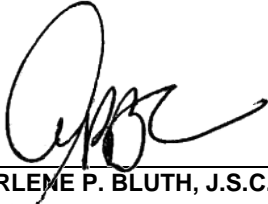
In other words, the lease at issue rendered St. Vincent's as an out-of-possession landlord and the purportedly defective condition (the applesauce) was not related to the type of repairs that St. Vincent's might be obligated to make. Because St. Vincent's had no responsibility to clean the floor, it did not have a duty of care to plaintiff.

Accordingly, it is hereby

ORDERED that Saint Vincent's Catholic Medical Centers of New York's motion for summary judgment is granted and all claims against only this defendant are severed and

dismissed, and the Clerk is directed to enter judgment accordingly along with costs and disbursements upon presentation of proper papers therefor.

2/28/2025
DATE


ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE