

**Krol v Icon Realty Mgt. LLC**

2025 NY Slip Op 30723(U)

February 27, 2025

Supreme Court, Kings County

Docket Number: Index No. 523971/2017

Judge: Richard J. Montelione

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This opinion is uncorrected and not selected for official publication.

At IAS Part 99 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, NY 11201, on the 27th day of February 2025.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: PART 99

-----X  
BOGUSLAW KROL,

Plaintiff,  
-against-

ICON REALTY MANAGEMENT LLC, 340 EAST 55 REALTY LLC, T & T REALTY MANAGEMENT LLC, 216 EAST 95 REALTY LLC, CANIDO BASONAS CONSTRUCTION CORP., DANNA BROTHERS INC., and CASE PLUMBING LLC,

Defendants.

-----X  
ICON REALTY MANAGEMENT LLC, 340 EAST 55 REALTY LLC, T&T REALTY MANAGEMENT LLC, 216 EAST 95 REALTY LLC,

Third-Party Plaintiffs,  
-against-

MELL UNITED LLC AND QCNY,

Third-Party Defendants.

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After oral argument, the following papers were read on this motion pursuant to CPLR 2219(a):

Papers	NYSCEF DOC. #
Defendant Canido Basonas Construction Corp.'s motion for summary judgment dismissing all claims and cross-claims against it (MS#7).....	188-200
Plaintiff's opposition (MS#7) Affirmation//Exhibit.....	257-282
Defendant Canido Basonas Construction Corp.'s Reply Affirmation (MS#7).....	314
Defendants/Third-Party Plaintiffs, Icon Realty Management LLC, 340 East 55 Realty LLC, T&T Realty Management LLC, and 216 East 95 Realty LLC's motion for summary judgment dismissing the complaint and all cross-claims, counterclaims, third-party claims, etc. (MS#8).....	203-211

**DECISION  
and  
ORDER**

Index No.: 523971/2017  
Mot. Seq. No.: 7-9

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Plaintiff's opposition (MS#8).....	231-256
Defendants/Third-Party Plaintiffs, Icon Realty Management LLC, 340 East 55 Realty LLC, T&T Realty Management LLC, and 216 East 95 Realty LLC's Reply (MS#8).....	312
Defendant, Danna Brothers Inc.'s motion for summary judgment dismissing the complaint and all cross-claims against defendant (MS#9).....	212-230
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Defendant, Danna Brothers Inc.'s reply (MS#9).....	313
Other.....	

MONTELIONE, RICHARD J., J.

This action was commenced by filing the summons and complaint on December 13, 2017, alleging personal injury on February 24, 2017, due to an unsafe condition on the premises, debris on an internal staircase, located at 43 West 27<sup>th</sup> Street, New York, NY. Issue was joined by filing of an answer with cross-claims by Icon Realty Management LLC ("Icon"), 340 East 55 Realty LLC ("340 East"), T&T Realty Management LLC ("T&T") and 216 East 95 Realty LLC ("216 East") on March 15, 2018. Issue was joined by defendant Canido Basonas Construction Corp. ("Canido") by filing of an answer with cross-claims on May 7, 2018. Issue was joined by defendant Danna Brothers, Inc. ("Danna") by filing of an answer with cross-claims on May 7, 2018. Defendant Case Plumbing, LLC defaulted by failing to answer or appear in this action. (NY St Ct Elec Filing [NYSCEF] Doc. No. 43). On November 9, 2021, defendants Icon, 340 East, T&T, and 216 East commenced a third-party action against Mell United LLC ("Mell") and QCNY. To date, defendants Mell and QCNY have failed to answer the third-party complaint or appear in this action. On January 8, 2025, Defendants/Third-Party Plaintiffs Icon, 340 East, T&T, and 216 East filed a motion for default judgment against Mell and QCNY (Mot. Seq. No. 10). That motion is scheduled for oral argument on April 23, 2025.

Defendant Canido's Motion for Summary Judgment

Defendant Canido now moves for summary judgment and for an order dismissing all claims and cross-claims against it (Mot Seq. No. 7). The moving defendant provided testimonial and documentary evidence that the only work performed regarding the building was on the exterior of the building. The plaintiff has failed to raise a triable issue of fact regarding the work of this defendant being anywhere other than the exterior of the building, or otherwise connecting this defendant to the alleged debris on the staircase, and therefore defendant Canido's motion for summary judgment dismissing plaintiff's complaint is granted. As there is no opposition from any co-defendants, movant's motion to dismiss all claims and crossclaims against it is also granted.

Defendants/Third-Party Plaintiffs' Motion for Summary Judgment

Defendants/Third-Party Plaintiffs, Icon, 340 East, T&T and 216 East moves for summary judgment dismissing the complaint and all cross-claims, counterclaims, third-party claims, etc. against these entities (Mot. Seq. No. 8). These defendants allege they had no actual or

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constructive notice of the alleged debris on the staircase and allege the accident was staged. The moving defendants are owners or managers of the property located at 43 West 27<sup>th</sup> Street, New York, NY.

Plaintiff testified that he walked up the stairs from the ground floor to the second floor to use the restroom. There is no indication that any debris was on the stairs when plaintiff ascended the staircase. Only upon descending the staircase is it alleged by plaintiff that items were on the staircase described as construction debris. Defendants argue there is no evidence that defendants created the alleged condition or had adequate notice of it to correct it. Defendants argue that the stairs were constantly being monitored, but there are no inspection records. See *Mandrell v Roman*, 58 Misc 3d 1225(A), 97 NYS3d 55, 2018 NY Slip Op 50265(U), 2018 WL 1057341, at 2 [Sup Ct 2018] “To meet their initial burden on the issue of lack of constructive notice, the defendants must offer some evidence as to when the area in question was last cleaned or inspected relative to the time when the plaintiff fell” (*Birnbaum v New York Racing Association, Inc.*, 57 AD3d 598 [2d Dept 1986]; see *Przybywalny v New York City Tr. Auth.*, 69 AD3d 598 [2d Dept 2010]; *Arzola v Boston Props. Ltd. Partnership*, 63 AD3d 655 [2d Dept 2009]; *Braudy v Best Buy Co., Inc.*, 63 AD3d 1092 [2d Dept 2008]). However, the court finds that the time between ascending the stairway to use the bathroom and then returning by descending the same stairway, approximately 20 minutes to a half hour later (NYSCEF Doc. No. 219, Tr. 75:20-21), does not provide enough time for the moving defendants to be given constructive notice as to debris on the staircase as there is not a “sufficient length of time to discover and remedy it (see *Arzola*, 63 AD3d 655).”

The remaining issue is whether moving defendants have proven that they did not create or have actual notice of the alleged debris. Although the moving defendants argue that plaintiff fails to meet his prima facie showing of liability on the part of the moving defendants, it is the moving defendants who have the burden of proof on a motion for summary judgment, and not the plaintiff. See *Hall v King-Holder*, 32 Misc 3d 1206(A), 932 NYS2d 760, 2011 NY Slip Op 51191(U), 2011 WL 2581773, at 3 [Sup Ct 2011]:

A defendant owner or entity who is responsible for maintaining a premises who moves for summary judgment in a slip-and-fall or trip-and-fall case involving the property has the initial burden of making a prima facie showing that it neither created the hazardous condition nor had actual or constructive notice of its existence for a sufficient length of time to discover and remedy it (see *Arzola* 63 AD3d 655 [2d Dept 2009]; also see *Brak v Razag, Inc.*, 60 AD3d 715 [2d Dept 2009]). To provide constructive notice, a defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit the defendant to discover and remedy it (see *Gordon v American Museum of Natural History*, 67 NY2d 836 [1986]).

Plaintiff testified that he walked up the stairs to the restroom on the second floor without

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incident (NYSCEF Doc. No. 233, Plaintiff Dep. Tr. At 58:11-59:24), there was no debris on the stairs when ascending the stairs (NYSCEF Doc. No. 219, Tr. 75:15-17), and when returning down the stairs either tripped over debris consisting of an outlet with pieces of cables, piece of a corner bead, and pieces of sheetrock (NYSCEF Doc. No. 233, Plaintiff Dep. Tr. 81:19-23), or sidestepped the debris, lost his balance and fell (NYSCEF #233, Tr. 58:11-25, 59:2-16). As the court has already determined, the time between plaintiff traversing the stairs from the ground floor to the second floor to use the bathroom, and from the second floor to the ground floor upon return, where he allegedly fell, does not provide adequate constructive notice to these defendants, as a matter of law. ("In order to constitute constructive notice, however, a defect must merely be visible and apparent for a sufficient length of time to permit defendant's employees to discover and remedy it [*see Gordon v American Museum of Natural History*, 67 NY2d 836]," *see Rolland v Waldbaum, Inc.*, 26 Misc 3d 1219(A), 907 NYS2d 103, 2010 NY Slip Op 50175(U), 2010 WL 424032, at 2 [Sup Ct 2010]).

The moving defendants offer the undisputed testimony of Grzegorz Wlostowski, defendant owner's representative, who indicates that at the phase of the job on the day plaintiff is alleged to have tripped and fell, all demolition had already been completed and there would not have been construction debris ("But at the stage that we were, it was the finishing stage, (NYSCEF Doc. No. 208, Tr. 81:3-4)" and what remained was "a minor finish paint job going on, for sure" (*id.* at Tr. 85:2-4), "(t)o my knowledge, finish painting is pretty much the last stage of the construction." (*id.* at Tr. 86:11-12). Plaintiff, in fact, was previously hired as a painter. (NYSCEF Doc. No. 233, Tr. 22:3-5). The court finds that the moving defendants have also met their prima facie burden of showing they did not create or have actual notice of the alleged debris on the stairway because the described construction debris would not have been generated because the construction phase of the project had already been completed. The moving defendants having met their burden, the burden now shifts to the plaintiff to show that an issue of fact exists to be determined by a jury. (*See Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

The following is reflected in the plaintiff's transcript (NYSCEF Doc. No. 233, Tr. 58:11-25, 59:2-16):

Q. Describe for me how your accident happened.

A. I was waiting for the check for a very long time because I started waiting in the morning. And I felt at one point that I needed to use a restroom. I asked the supervisor, Jack -- I ask him if I could go inside to use the restroom. He said yes. He opened the main gate or main door for me. I walked down the hallway to the restroom. I walked down the hallway to the restroom. The restroom was on the second floor and you can get there taking the stairs. So I took the stairs. I stayed for some time in the restroom. And then I started walking down the stairs to get down. As I was walking down the stairs, I stepped on something and I looked down and noticed there was some debris from the construction; pieces of cables, piece of a corner bead, Sheetrock -- and piece or pieces or chunks of Sheetrock. Sheetrock is the name of those pieces. There was also an outlet with pieces of cables in it.

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...

A. There were also pieces of cables lying around. And there were also pieces of cables coming out from the outlet. And it looked like somebody cut them. They were new.

The following is reflected in the plaintiff's transcript (NYSCEF Doc. No. 269, Tr. 59:25, 60:2-16):

Q. Tell me what happened. How did the accident happen?

A. The debris was laying on two stairs, on one and then another one next to it. I was trying to walk around it. And when I took a step to avoid stepping on that debris, I lost the balance.

Q. What, if anything, happened after you lost your balance?

A. My body hit the wall. I fell on the concrete floor. I hit my head, my chest, my stomach and knees hit the floor. My hands, my arms, elbows, and hands also hit the floor. And my both legs and feet. My entire body struck the floor. I was unconscious. I lost consciousness.

The following is reflected in the plaintiff's transcript (NYSCEF Doc.#270 at Tr. 145:4-6):

Q. Do you remember falling?

A. I don't know. I don't know. No, I don't remember.

(*id.* at Tr. 147:25, 148:2-8):

Q. You spoke to the police officer in English?

A. When?

Q. On the date of the accident?

A. I think on that day he asked me from which stair I fell, and then I answered that question, from the tenth or the eleventh.

The following is reflected in the plaintiff's transcript (NYSCEF Doc. No. 234:12-17):

Q. Has any doctor given you any treatment or testing to test your memory or for memory issues?

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A. I don't have memory problems. I don't have any issues with the memory. I didn't report that to any doctor.

The following is reflected in the plaintiff's transcript (NYSCEF Doc. No. 235, Tr. 20:22-25, 21:2-11):

Q. Sir, I believe you testified at your first deposition that as you were walking down the stairs, there was something on the stairs, correct?

A. Yes, when I was walking down the stairs, something was there.

Q. What was there?

A. When I was walking down the stairs, two steps a little to the left, there were pieces of sheetrock, corner beads, and outlets with pieces of wiring sticking out. That's all I remember.

The following is reflected in the plaintiff's transcript (*id.* at, Tr. 26: 17-21):

Q. Did you see the debris before you fell or after you fell?

A. When I was walking down the stairs, I stepped on something, I looked at it, and then I fell. It caused my fall.

The testimony of the plaintiff is inconsistent and would require speculation to determine the cause of the accident. The plaintiff testifies that he stepped on something as he descended the stairway causing him to fall (NYSCEF Doc. No. 233, Tr. 58:11-25, 59:2-16), but he also testified that he "took a step to avoid stepping on that debris," and lost his balance (*id.* at Tr. 58:11-25, 59:2-16), that he did not remember falling (*id.* at Tr. 145:4-6), that he did not have memory problems (NYSCEF Doc. No. 234:12-17), but when asked if he experienced any memory problems on the day of the accident, after the accident, responded, "I don't remember. The only thing that I remember is a nurse came up to me and she had a darker skin tone and she was wiping my face..." (*id.* at Tr. 172:22-25, 173:2).

The two versions of the happening on the plaintiff's fall-that he stepped on debris and that he side stepped debris and lost his balance is fatal to plaintiff's action because it would require speculation as to the cause of the accident. *See Dubois v Jenrich*, 2025 NY Slip Op 00427, 2025 WL 322933 [2d Dept Jan. 29, 2025].

Defendant Danna's Motion for Summary Judgment

Defendant Danna Brothers Inc. moves to dismiss plaintiff's complaint and all cross-claims against it asserting that it never performed any work for co-defendants or the general contractor QCNY in any residential portion of the building where plaintiff alleges the accident

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occurred, but was hired as a contractor directly by non-party Cardoncello Divino Restaurant. There is no issue of fact that the only work performed by the movant was within the commercial restaurant space of the building. (NYSCEF #222, Tr. 129-130). The moving defendant's motion is granted.

Based on the foregoing, it is


ORDERED that defendant Canido Basonas Construction Corp.'s motion for summary judgment dismissing the complaint and all claims and crossclaims against it is GRANTED and the complaint and all claims and crossclaims are DISMISSED (MS#7); and it is further

ORDERED Defendants/Third-Party Plaintiffs, Icon Realty Management LLC, 340 East 55 Realty LLC, T&T Realty Management LLC, and 216 East 95 Realty LLC's motion for summary judgment dismissing the complaint and all crossclaims, counterclaims, third-party claims is GRANTED and the complaint and all crossclaims, counterclaims, third-party claims are DISMISSED (MS#8); and it is further

ORDERED defendant Danna Brothers Inc.'s motion for summary judgment dismissing the complaint and all crossclaims against it is GRANTED and all claims and cross-claims against it are DISMISSED (MS#9); and it is further

ORDERED that any other request for relief is DENIED.

This constitutes the decision and order of the court.

  
Hon. Richard J. Montelione

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