

Gorman v Myron Leo LLC

2025 NY Slip Op 31257(U)

March 31, 2025

Supreme Court, New York County

Docket Number: Index No. 158948/2019

Judge: Leslie A. Stroth

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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. LESLIE A. STROTH PART 12M

Justice

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ROBIN GORMAN,

Plaintiff,

- v -

MYRON LEO LLC, E2 185 BLEECKER LLC D/B/A CHLOE,
BLEECKER HORATIO ASSOCIATES D/B/A MYRON LEO
LLC, MATTHEW ADAM PROPERTIES INC.,

Defendant.

-----X

E2 185 BLEECKER LLC D/B/A CHLOE

Plaintiff,

-against-

BLEECKER & HORATIO ASSOCIATES, MATTHEW ADAM
PROPERTIES, INC.

Defendant.

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INDEX NO. 158948/2019
MOTION DATE N/A
MOTION SEQ. NO. 005

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595168/2021

The following e-filed documents, listed by NYSCEF document number (Motion 005) 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 182, 183, 184, 185, 186, 188 were read on this motion to/for JUDGMENT - SUMMARY.

Plaintiff commenced this action for injuries allegedly sustained on April 19, 2018 when she tripped and fell on a sidewalk adjacent to 185 Bleecker Street, New York near MacDougal Street. Defendants Bleecker Horatio Associates d/b/a Myron Leo LLC owned the subject property, and defendant Matthew Adam Properties, Inc. was the manager. Defendant E2 185 Bleecker LLC, doing business as Chloe (Chloe), operated a café at the subject premises and the adjacent sidewalk, with Nancy R. Mayer, Susan M. Reeves, Peter J. Mayer and Larry H.

Ginsberg and Chloe having entered into a Standard Form of Store Lease on November 18, 2014 for the property at 185 Bleecker Street, New York 10012 for a period of 15 years.

Defendant Chloe moves here for summary judgment dismissing plaintiff's complaint and all crossclaims by the remaining defendants. Oral argument was held on January 23, 2025. On such date, counsel for defendant Chloe informed the Court that a reply was efiled on January 22, 2025. Counsel maintains that the filing of the reply was in compliance with the Stipulation dated August 15, 2024, which provided that "defendant's, E2 185 BLEECKER LLC d/b/a CHLOE, answering papers and/or reply papers will be served pursuant to New York Civil Practice Law and Rules §2214(b)" (Nyscef doc 188). Pursuant to CPLR 2214(b):

A notice of motion and supporting affidavits shall be served at least eight days before the time at which the motion is noticed to be heard. Answering affidavits shall be served at least two days before such time. Answering affidavits and any notice of cross-motion, with supporting papers, if any, shall be served at least seven days before such time if a notice of motion served at least sixteen days before such time so demands; whereupon any reply or responding affidavits shall be served at least one day before such time.

However, said stipulation provided that "IT IS HEREBY STIPULATED, by and between the undersigned attorneys for the parties, that defendant's, E2 185 BLEECKERLLC d/b/a CHLOE, motion for summary judgment, Motion Seq. No. 5, presently returnable on July 16, 2024, is hereby adjourned to September 18, 2024, on consent". The date of September 18, 2024 was the date by which all papers were to be provided to the submissions part and was prior to this Court scheduling of oral argument on January 23, 2025. Thus, the Court is denying the reply as untimely.

It is well-established that the "function of summary judgment is issue finding, not issue determination" (*Assaf v Ropog Cab Corp.*, 153 A.D.2d 520 (1st Dept 1989) (quoting *Sillman v Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395 [1957])). As such, the proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue

of fact and the right to entitlement to judgment as a matter of law (*Alvarez v Prospect Hospital*, 68 N.Y.2d 320 (1986); *Winegrad v New York University Medical Center*, 64 N.Y.2d 851 (1985)).

Once a party has submitted competent proof demonstrating that there is no substance to its opponent's claims and no disputed issues of fact, the opponent, in turn, is required to "lay bare [its] proof and come forward with some admissible proof that would require a trial of the material questions of fact on which [its] claims rest" (*Ferber v Sterndent Corp.*, 51 N.Y.2d 782 (1980)). The party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted (*See Dauman Displays, Inc. v Masturzo*, 168 A.D.2d 204 (1st Dept 1990)).

The Court is denying defendant Chloe's motion for summary judgment. Section 7-210 of the Administrative Code of the City of New York unambiguously imposes a nondelegable duty on certain real property owners to maintain city sidewalks abutting their land in a reasonably safe condition...Section 7-210 applies to every owner of real property abutting any sidewalk" (*Xiang Fu He v. Troon Mgmt., Inc.*, 34 N.Y.3d 167 (2019)). "The owner of a premises may be held liable for an accident caused by a dangerous condition on the property if the plaintiff can demonstrate that the owner created the condition or had actual or constructive notice" (*Pintor v. 122 Water Realty, LLC*, 90 A.D.3d 449 (1st Dept 2011)).

"Although the Administrative Code of the City of New York § 7-210 imposes a nondelegable duty on the owner of the abutting premises to maintain and repair the sidewalk, a tenant may be held liable to the owner for damages resulting from a violation of . . . [a] lease, which imposed on the tenant the obligation to repair or replace the sidewalk in front of [the property]" (*Wahl v. JCNYS, LLC*, 133 A.D.3d 552 (1st Dept 2015)). The Court finds that several

provisions in the parties' lease and rider demonstrate a similar obligation on the part of Chloe.

As such, issues of fact exist as to which of the defendants were responsible for maintaining the sidewalk on the date of the incident, and therefore, may be liable here.

The Court has considered the following excerpts from the lease (Exh G):

*Tenant shall, at Tenant's expense, keep demised premises clean and in order, to the satisfaction to Owner, and if the demised premises are situated on the street floor, Tenant shall, at Tenant's own expense, make all repairs and replacements to the sidewalks and curbs adjacent thereto, and keep said sidewalks and curbs free from snow, ice, dirt and rubbish and maintain said sidewalks in a reasonably safe condition in compliance with requirements of law (Article 30, Lease).

*In the event of any conflict or inconsistency between the printed provisions of the form Lease to which this Rider is attached and the provisions contained in this Rider, the provisions of this Rider shall govern (Article 40, Rider).

*Landlord shall be liable for all structural maintenance and repair of the sidewalk, unless due to Tenant's negligence (Article 50, Rider).

“It is well settled that the duty to keep public sidewalks in reasonably safe condition and to repair any defects falls upon the municipality. An exception to this general rule exists, however, where an owner of land which abuts a public sidewalk created the defect or uses the sidewalk for a special purpose. A special use has been characterized as involving the installation of some object in the sidewalk or street or some variance in the construction thereof” (*Weiskopf v City of New York*, 5 A.D.3d 202).

According to Catey Mark, president of Chloe, “at various points in time” there was outside dining, that the restaurant would set up tables outside, and that planters were used as a barricade, so people did not fall over the people sitting at tables (Exh K, p 57-58). The Court is unaware as to whether the tables or planters, that were allegedly used as barricades, created the subject defect on the sidewalk. Furthermore, defendant Chloe failed to provide any evidence, reports, or records to demonstrate that it was indeed free of negligence and that it did not create the defect. Thus, defendant Chloe's motion for summary judgment is denied.

Accordingly, it is hereby

ORDERED, that defendant E2 185 Bleecker LLC's motion for summary judgment is denied in its entirety.

The foregoing constitutes the decision and order of the Court.

Robin Gorman

3/31/2025
DATE

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE

NON. LESIE SAROHI
J.S.C.