

Sukhachova v King's Gourmet Food Corp.

2025 NY Slip Op 31304(U)

April 8, 2025

Supreme Court, Kings County

Docket Number: Index No. 520744/2018

Judge: Ingrid Joseph

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 83 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 8th day of APRIL, 2025.

P R E S E N T: HON. INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
VERONIKA SUKHACHOVA,

Plaintiff,

-against-

Index No.: 520744/2018

DECISION AND ORDER

KING’S GOURMET FOOD CORP., CITY OF NEW YORK, and NEW YORK CITY DEPARTMENT OF TRANSPORTATION,

Mot. Seq. No. 6

Defendants.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Affirmation/Affidavit/Exhibits/Memorandum of Law/Statement of Material Facts.....	112 – 128
Affirmation in Opposition/Exhibit/Response to Statement of Material Facts.....	133 – 135
Reply Affirmation	140

Plaintiff Veronika Sukhachova (“Plaintiff”) commenced this action seeking damages for personal injuries allegedly sustained on July 18, 2017, when she tripped and fell over a defective sidewalk outside of the premises located at 1508 Kings Highway (the “Premises”), operated by Defendant King’s Gourmet Food Corp. (“King’s Gourmet”) and owned by non-party Metropolitan Transit Authority-New York City Transit Authority (the “MTA”).¹

King’s Gourmet moves for summary judgment dismissing Plaintiff’s complaint on the grounds that it cannot be held liable (1) since, as a tenant, it owed no duty to Plaintiff to repair the sidewalk and (2) it did not create the broken sidewalk (Mot. Seq. No. 6). In his affidavit, Suag

¹ Defendants City of New York and New York City Department of Transportation’s motion for summary judgment (Mot. Seq. No. 1) was granted (NY St Cts Elec Filing [NYSCEF] Doc No. 65).

Levent Dermirgil, the owner and president of King's Gourmet, asserts that he entered into a lease² with the MTA in 2005 and King's Gourmet has remained a tenant since that time. In addition, Mr. Dermirgil states that King's Gourmet never owned the sidewalk, undertook any repairs of the sidewalk, and never utilized the sidewalk to advertise or sell goods. Mr. Dermirgil further states that King's Gourmet is not responsible for maintaining or repairing the sidewalk. Accordingly, King's Gourmet contends that there is no dispute that it is merely a tenant that did not affirmatively create the alleged sidewalk defect or made special use of the sidewalk where the alleged defect existed.

In opposition, Plaintiff argues that the record demonstrates that King's Gourmet assumed the responsibility for the sidewalk, displacing the Premises' owner's responsibility. Plaintiff cites to the lease agreement between King's Gourmet and the MTA to assert that King's Gourmet is a licensee, not a tenant. Pursuant to the lease agreement, Plaintiff maintains that it was King's Gourmet's responsibility to keep the public sidewalk in a proper state of repair. Plaintiff further asserts that Mr. Dermirgil's affidavit is contradicted by his previous deposition testimony. At his deposition, Plaintiff avers that Mr. Dermirgil admitted to King's Gourmet's responsibility for daily maintenance of the sidewalk. Plaintiff also relies on the deposition testimony of King's Gourmet's manager Adnan Tascioglu. According to Plaintiff, Mr. Tascioglu testified that the sidewalk in front of the store belongs to King's Gourmet.³ Mr. Tascioglu further testified that employees would remove snow and ice from the sidewalk and clean and hose down the sidewalk. In addition, Plaintiff avers that Mr. Tascioglu testified that if there was a defect on the sidewalk, he would report it to his boss who would then find somebody to repair it. In essence, Plaintiff contends that through its course of conduct, established by Mr. Tascioglu's testimony, and the lease agreement, King's Gourmet's entirely displaced the Premises' owner's responsibility for the subject sidewalk.

In its reply, King's Gourmet asserts that Plaintiff failed to raise an issue of fact. According to King's Gourmet, Plaintiff misinterpreted Mr. Tascioglu's testimony and that King's Gourmet's responsibility for the sidewalk did not extend past cleaning and removing ice and snow. In addition, Mr. Demirgil also testified that the only maintenance performed by King's Gourmet was

² The parties refer to the written agreement between King's Gourmet and the MTA as a lease; however, the document is titled Retail License Agreement (NYSCEF Doc No. 134). To avoid confusion, the Court will continue to refer to the document as the lease or lease agreement.

³ Plaintiff cites to page 22 of Tascioglu's deposition transcript, in which Tascioglu testified that the "[f]ront of the store belongs to us" (Tascioglu tr at 22, line 10). When asked to clarify what he meant by "entire front," Tascioglu responded, "It's from the store to road" (Tascioglu tr at 22, lines 12-16).

cleaning. Since Mr. Demirgil testified that the City would advise King's Gourmet if the City made a repair, King's Gourmet contends that it did not have exclusive responsibility to maintain and repair the sidewalk. With respect to the lease, King's Gourmet asserts that it is devoid of any mention of "sidewalk" and that the "concession area" referred to therein does not include the sidewalk. Further, since the lease required King's Gourmet to comply with the rules and regulations promulgated by the owner, the MTA retained sufficient control over the premises and sidewalk.

On a motion for summary judgment, the burden rests with the movant to demonstrate, through admissible evidence, that there are no triable issues of fact and that it is entitled to judgment as a matter of law (*see GTF Mktg., Inc. v Colonial Aluminum Sales, Inc.*, 66 NY2d 965, 967 [1985]; *Englington Med., P.C. v Motor Vehicle Acc. Indem. Corp.*, 81 AD3d 223, 230 [2d Dept 2011]; CPLR 3212 [b]). A tenant "establishe[s] its prima facie entitlement to judgment as a matter of law by demonstrating that it did not create the alleged defect, make special use of the sidewalk, violate any applicable statute, or have a contractual duty to maintain the sidewalk where the accident occurred" (*Leitch-Henry v Doe Fund, Inc.*, 179 AD3d 655, 656 [2d Dept 2020]). Once the movant has met its initial burden, summary judgment will only be granted if the opposition fails to establish the existence of questions of fact (*see Jacobsen v New York City Health & Hosps. Corp.*, 22 NY3d 824, 833 [2014] [internal citation omitted]). "[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" to defeat a motion for summary judgment (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

Generally, in a personal injury action alleging a dangerous or defective property condition, liability for such condition is predicated upon "evidence of ownership, occupancy, control, or special use of the property upon which the defect is situated" (*Ruggiero v City Sch. Dist. of New Rochelle*, 109 AD3d 894, 895 [2d Dept 2013]). Administrative Code § 7-210 "imposes a nondelegable duty on a property owner to maintain and repair the sidewalk abutting its property" (*Zorin v City of NY*, 137 AD3d 1116, 1117 [2d Dept 2016]). "[A] provision of a lease which obligates a tenant to repair a sidewalk does not impose on the tenant a duty to a third party, such as the plaintiff" (*Martin v Rizzatti*, 142 AD3d 591, 593 [2d Dept 2016]). "However, where a lease agreement is so comprehensive and exclusive as to sidewalk maintenance as to entirely displace the landowner's duty to maintain the sidewalk, the tenant may be liable to a third party" (*Paperman*

v 2281 86th St. Corp., 142 AD3d 540, 541 [2d Dept 2016] [internal quotation marks and citations omitted]).

Here, it is undisputed that King's Gourmet did not own the Premises, create the alleged defective condition or make special use of the sidewalk. Thus, King's Gourmet's liability hinges on whether the lease imposed a contractual duty on it to maintain the sidewalk. The lease states that King's Gourmet must "keep the Concession Area and *the space immediately surrounding it* in a clean, safe, neat, dry, and attractive condition, *in a proper state of repair*, and well-lighted" (NYSCEF Doc No. 134, Art. 11.2 [emphasis added]).⁴ King's Gourmet has failed to establish that it was not responsible at all for the sidewalk. Since it is unclear whether the "space immediately surrounding" the Concession Area encompasses the sidewalk, the Court finds that there is an issue of fact as to whether the King's Gourmet assumed all responsibility and control over the sidewalk.

Accordingly, it is hereby

ORDERED, that Defendant A King's Gourmet Food Corp.'s motion (Mot. Seq. No. 6) for summary judgment dismissing Plaintiff's complaint is denied.

All other issues not addressed herein are without merit or moot.

This constitutes the decision and order of the Court.


HON. INGRID JOSEPH, J.S.C.

Hon. Ingrid Joseph
Supreme Court Justice

⁴ The "Concession Area" is described as the shaded area on Exhibit A to the lease. The shaded area does not any portion of the sidewalk (*see* NYSCEF Doc No. 134).