At an IAS Term, Part 66 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 1ST day of JULY, 2025

P R E S E N T:
HON. RICHARD VELASQUEZ
Justice.

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EBONIQUA MILLAN,

Plaintiff,

-against-

467-75 ST. MARKS AVE ASSOC. LLC AND ALMA REALTY CORP.,

Defendants,

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467-75 ST. MARKS AVE ASSOC. LLC AND ALMA REALTY CORP.,

Defendant/Third Party Plaintiffs,

-against-

INTERFAITH MEDICAL CENTER,

Third Party Defendants,

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Index No.: 523789/2020
Decision and Order
Mot. Seq. No. 1

The following *papers NYSCEF* Doc #'s 20 to 53 read on this motion:

Papers	*NYSCEF DOC NO.'s*
Notice of Motion/Order to Show Cause	
Affidavits (Affirmations) Annexed	20-33
Opposing Affidavits (Affirmations)	35-50
Reply Affidavits	52-53

After having come before the Court and the court having heard Oral Argument on September 18, 2024 and after review of the foregoing papers the court finds as follows:

Third Party defendant, INTERFAITH MEDICAL CENTER, moves Pursuant to

CPLR 3212 Summary judgment dismissing the third-party plaintiff's complaint as to INTERFAITH MEDICAL CENTER with prejudice, pursuant to CPLR §3212, contending there are no triable issues of fact. Defendants/Third Party Plaintiff's 467-75 ST. MARKS AVE ASSOC. LLC AND ALMA REALTY CORP. oppose the same contending there are issues of fact.

ANALYSIS

It is well established that a moving party for summary judgment must make a prima facie showing of entitlement as a matter of law, offering sufficient evidence to demonstrate the absence of any material issue of fact. *Winegrad v. New York Univ. Med. Center*, 64 NY2d 851, 853 (1985). Once there is a prima facie showing, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form to establish material issues of fact, which require a trial of the action. *Zuckerman v. City of New York*, 49 NY2d 557 (1980); *Alvarez v. Prospect Hosp.*, 68 NY2d 320 (1986). However, where the moving party fails to make a prima facie showing, the motion must be denied regardless of the sufficiency of the opposing party's papers.

A motion for summary judgment will be granted "if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing the judgment in favor of any party". CPLR 3212 (b). The "motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact." *Id.*

A motion for summary judgment is a drastic measure and to be used sparingly (*Wanger v. Zeh,* 45 Misc2d 93 [Sup Ct, Albany County], aff'd 26 AD2d 729 [3rd Dept 1965]). Summary judgment is proper when there are no issues of triable fact (*Alvarez v.*

Prospect Hospital, 68 NY2d 320, 324 [1986]). Issue finding rather than issue determination is its function (*Sillman v. Twentieth Century Fox Film Corp.,* 3 NY2d 395 [1957]). The evidence will be construed in the light most favorable to the one moved against (*Weiss v. Garfield,* 21 AD2d 156 [3d Dept 1964]). The proponent of a motion for summary judgment carries the initial burden of production of evidence as well as the burden of persuasion. The moving party must tender sufficient evidence to show the absence of any material issue of fact and the right to judgment as a matter of law. (*Zuckerman v. City of New York,* 49 NY2nd 557 [1990]). Once this burden is met, the burden shifts to the opposing party to submit proof in admissible form sufficient to create a question of fact requiring a trial (*Kosson v.Algaze,* 84 NY2d 1019 [1995]).

"Ordinarily, a defendant moving for summary judgment in a slip-and-fall case has the burden of establishing that it did not create the hazardous condition that allegedly caused the fall, and did not have actual or constructive notice of that condition for a sufficient length of time to discover and remedy it. (*Ash v City of New York*, 109 AD3d 854, 855 [2013] [citations omitted]; *see Kudrina v 82-04 Lefferts Tenants Corp.*, 110 AD3d 963, 964 [2013]).

INTERFAITH MEDICAL CENTER contend they did not owe Plaintiff any duty of care because based on their lease agreement, and in general, a landlord–and not a tenant–is responsible for "common area[s], such as an interior hallway" *See NYSCEF DOC NO.21 ¶ 71*. The Court notes, the alleged accident occurred within INTERFAITH MEDICAL CENTER leased space; i.e.. the hallway right outside of Plaintiff's office; also INTERFAITH MEDICAL CENTER had its own housekeeping service at the Subject Property. *See NYSCEF DOC No. 44 at 40-41:22-14*. These housekeepers were

responsible for dealing with any water issues. *See NYSCEF DOC No. 44 at 40-41:22-4.* There was also testimony pertaining to dog-training wee-wee pads being used as some sort of water retention device on the floor. Moreover, there is testimony that Karen Campbell, of Interfaith, told Plaintiff and other Interfaith employees that they could not work in the subject area until it was fixed. There is also further testimony that Campbell instructed Plaintiff it was okay to go back into the area. *See NYSCEF DOC No. 42 44:12-14; 47:24-25.*

Here, pursuant to the contractual documents and deposition testimony, INTERFAITH MEDICAL CENTER had both a contractual and common law duty to maintain its office space and repair any issues within it–including water that was permitted to be on the floor. INTERFAITH MEDICAL CENTER fails to establish did not have actual or constructive notice of that condition for a sufficient length of time to discover and remedy it. (*Ash v City of New York*, 109 AD3d 854, 855 [2013] [citations omitted]; *see Kudrina v 82-04 Lefferts Tenants Corp.*, 110 AD3d 963, 964 [2013]).Thus, there are numerous issues of fact including but not limited to as to whether INTERFAITH MEDICAL CENTER created or caused the condition, had notice of the condition, was negligent in allowing Plaintiff to go back to work despite the condition not being remedied.

Accordingly, third party defendant motion for summary judgment is hereby denied as issues of fact exist, for the above stated reasons.

This constitutes the Decision/Order of the court.

Dated: Brooklyn, New York
July 1, 2025

ENTER FORTHWITH:

HON. RICHARD VELASQUEZ
Hon. Richard Velasquez, JSC

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