

Focacci v One E. Riv. Place Realty Co., L.L.C.

2025 NY Slip Op 32782(U)

July 25, 2025

Supreme Court, New York County

Docket Number: Index No. 157599/2016

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M

Justice

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CLAUDIA FOCACCI,

Plaintiff,

- v -

ONE EAST RIVER PLACE REALTY COMPANY, L.L.C.,
SOLOW MANAGEMENT CORP., EAST RIVER POOL
CLUB, INC., AND IOWA SPORTS MANAGEMENT, INC.,

Defendant.

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ONE EAST RIVER PLACE REALTY COMPANY, L.L.C.,
SOLOW MANAGEMENT CORP., EAST RIVER POOL CLUB,
INC.

Plaintiff,

-against-

HAYNEEDLE, INC.,

Defendant.

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DECISION + ORDER ON MOTION

Third-Party
Index No. 596047/2017

The following e-filed documents, listed by NYSCEF document number (Motion 009) 204, 205, 206, 207, 208, 209, 210, 214, 224, 225, 226, 227, 228, 229, 230, 234

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, and after a final submission date of May 27, 2025, Third-Party Defendant Hayneedle, Inc.'s ("Hayneedle") motion for summary judgment dismissing the Third-Party Complaint and all crossclaims asserted against it is granted.

I. Background

Plaintiff Claudia Focacci lived at 525 E. 72nd Street (the "Building") (NYSCEF Doc. 156 at 118). The Building is owned by Defendant One East River Place Realty Company, L.L.C. ("One East River Place"). Defendant Solow Management Corp. ("Solow") manages the Building on

behalf of One East River Place. Defendant East River Pool Club, Inc. (“East River Pool Club”) is a health club consisting of the sundeck, a pool, and a gym in the Building (NYSCEF Doc. 160 at 18). Iowa Sports manages East River Pool Club, including the sundeck (NYSCEF Doc. 159 at 26; NYSCEF Doc. 160 at 18).

On May 26, 2014, Plaintiff was visiting the sundeck of the Building (NYSCEF Doc. 156 at 119). Solow was hosting a Memorial Day event on the 50th floor sundeck for tenants (NYSCEF Doc. 159 at 35-36). Plaintiff sat at a table with an open umbrella, felt a gust of wind, and was hit in the head with the umbrella pole that became dislodged from the table ((NYSCEF Doc. 157 at 215; 218; 225; NYSCEF Doc. 163 at 62-63). Plaintiff alleges a traumatic brain injury resulting from this incident. According to Plaintiff’s mother, an employee allegedly told her the umbrella was not screwed properly (NYSCEF Doc. 163 at 84). The manager of the East River Pool Club on the date of the accident, Ms. Dujarric, testified she would conduct a walkthrough of the sundeck several times a day and check that umbrellas were fastened properly (NYSCEF Doc. 162 at 26). Now, Hayneedle, the vendor which sold the umbrella, seeks summary judgment dismissing Defendants/Third-Party Plaintiffs’ One East River Place, East River Pool Club, and Solow’s (collectively “Third-Party Plaintiffs”) Third-Party Complaint and all crossclaims asserted against it. The motion is opposed only by Defendant Iowa Sports.

II. Discussion

As Third-Party Plaintiffs do not oppose Hayneedle’s motion for summary judgment dismissing the Third-Party Complaint, the Third-Party Complaint is dismissed as abandoned (*Saidin v Negron*, 136 AD3d 458, 459 [1st Dept 2016]). Moreover, the undisputed facts establish that Hayneedle was not the manufacturer or designer of the umbrella at issue and was simply the online retailer which fulfilled Solow’s umbrella purchase order. Hayneedle was not requested to

provide any advice or opinion as to the suitability of the umbrellas, nor was anyone from Hayneedle ever requested to inspect the sundeck to determine the suitability of the umbrellas. The umbrellas sold by Hayneedle also contained a warning to the purchaser about their use in windy conditions. Once Hayneedle sold the umbrellas, it had no further involvement in the use or maintenance of the umbrellas whatsoever.

Iowa Sports, the only party to oppose, argues that Hayneedle's motion should be denied because Hayneedle made a prior motion for summary judgment pre-note of issue. However, in the interest of narrowing the issues for trial, ensuring unnecessary parties are not present for trial, and because the prior motion was made while discovery remained ongoing, the Court finds there is no reason to disregard Hayneedle's motion based on procedural technicalities. Iowa Sports' sole substantive argument for keeping Hayneedle in this case is that the umbrella sold by Hayneedle was not suitable for the sundeck. But Iowa Sports' argument fails to consider that the umbrella contained a wind disclaimer, and once Hayneedle sold the umbrella, it could not control how Iowa Sports, or the Third-Party Plaintiffs, used the umbrella. That other parties decided to use an umbrella in a potentially dangerous way after it was sold to them and despite a wind disclaimer on the umbrella does not provide any basis for a finding of negligence on the part of Hayneedle, an online retailer who sold the umbrella. Based on the foregoing and given the lack of opposition from the Plaintiff and Third-Party Plaintiffs, Hayneedle's motion for summary judgment dismissing the Third-Party Complaint and all crossclaims asserted against it is granted.

Accordingly, it is hereby,

ORDERED that Third-Party Defendant Hayneedle, Inc.'s motion for summary judgment dismissing the Third-Party Complaint and all crossclaims asserted against it is granted; and it is further

ORDERED that within ten days of entry, counsel for Third-Party Defendant Hayneedle, Inc. shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

7/25/2025

DATE

Mary V. Rosado, J.S.C.
HON. MARY V. ROSADO, 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