

**Rodriguez v 10E52 Owner LLC**

2025 NY Slip Op 33228(U)

August 22, 2025

Supreme Court, New York County

Docket Number: Index No. 158475/2017

Judge: Nicholas W. Moyne

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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. NICHOLAS W. MOYNE PART 41M**

*Justice*

-----X

MIRIAM RODRIGUEZ,

Plaintiff,

- v -

10E52 OWNER LLC, SL GREEN REALTY CORP.,  
MANHATTAN SHADE & GLASS LTD, MANHATTAN  
SHADE & GLASS CO. INC.,

Defendant.

-----X

MANHATTAN SHADE & GLASS LTD

Plaintiff,

-against-

Defendant.

-----X

INDEX NO. 158475/2017

MOTION DATE 03/01/2023,  
03/13/2023

MOTION SEQ. NO. 003 004

**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 595422/2018

The following e-filed documents, listed by NYSCEF document number (Motion 003) 64, 79, 80, 81, 82, 83, 84, 85, 86, 87, 105, 109, 110, 111, 112, 113, 114, 115, 116, 125, 126, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 177

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 106, 117, 118, 119, 120, 121, 122, 123, 124, 127, 169, 170, 171, 172, 173, 174, 175, 176

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, after argument on the record, it is

The plaintiff, Miriam Rodriguez (“plaintiff” or “Rodriguez”), in this action alleges that on October 9, 2014, a window shade in the conference room of her employer, third-party defendant American Asset Corp (“AAC”), became dislodged from the ceiling and struck her in the hand. AAC was the lessee of a portion of the 30<sup>th</sup> floor of the property located at 10 East 53<sup>rd</sup> Street, New York, New York (the “premises”). Defendants S.L. Green Realty Corp (“SL Green”) and 10E53 Owner LLC (“10E53”) are the owners of the building. Defendants Manhattan Shade & Glass Ltd and Manhattan Shade & Glass Co.

Inc. (collectively “MS&G”), which are now defunct, were a manufacturer, fabricator, and installer of custom window treatments, glass, and upholstery products. SL Green and 10E53 move for summary judgment dismissing the complaint against them (motion sequence 003). MS&G moves for summary judgment dismissing the claims against them (motion sequence 004). The plaintiff opposes the motions.

### **Summary Judgment**

“The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case. Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). Summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of any material issues of fact or where the issue is arguable (*Glick & Dolleck, Inc. v Tri-Pac Export Corp.*, 22 NY2d 439, 441 [1968]). “If it shall appear that any party other than the moving party is entitled to a summary judgment, the court may grant such judgment without the necessity of a cross-motion” (CPLR § 3212[b]). “In considering a summary judgment motion, evidence should be analyzed in the light most favorable to the party opposing the motion” (*Martin v Briggs*, 235 AD2d 192, 196 [1st Dept 1997]). “In opposing a motion for summary judgment, once a prima facie showing has been made, it is incumbent upon a defendant to come forward with matters of an evidentiary nature to demonstrate the presence of triable issues. General averments do not suffice. The defendant is required to assemble, lay bare, and reveal his proofs in order to show that his defenses are real and capable of being established upon a trial” (*Steingart Assoc., Inc. v Sandler*, 28 AD2d 801, 802-03 [3d Dept 1967]). “Where competent evidence is presented by a defendant in support of a motion for summary judgment, the burden shifts to plaintiff to produce proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*IDX Capital, LLC v Phoenix Partners Group*, 83 AD3d 569, 570 [1st Dept 2011], *affd sub nom. IDX Capital, LLC v Phoenix Partners Group LLC*, 19 NY3d 850 [2012]).

### **The Manhattan Shade & Glass defendants are not entitled to summary judgment**

Defendants MS&G have not made a prima facie showing of entitlement to summary judgment in their favor. “[A] contractual obligation, standing alone, will generally not give rise to tort liability in favor of a third party” (*Espinal v Melville Snow Contractors, Inc.*, 98 NY2d 136, 138 [2002]). There are “three situations in which a party who enters into a contract to render services may be said to have assumed a duty of care--and thus be potentially liable in tort--to third persons: (1) where the contracting party, in failing to exercise reasonable care in the performance of his duties, ‘launche[s] a force or instrument of harm’; (2) where the plaintiff detrimentally relies on the continued performance of the contracting party’s duties and (3) where the contracting party has entirely displaced the other party’s duty to maintain the premises safely” (*Espinal v Melville Snow Contractors, Inc.*, 98 NY2d 136, 140 [2002] [internal citations omitted]). Of the three categories, the only one at issue in the instant matter is whether MS&G launched a force or instrument of harm. “In order to make out a prima facie case

of negligence in cases involving defective or dangerous conditions present on property, a plaintiff must ‘demonstrate either that the defendant created the alleged hazardous condition or that the defendant had actual or constructive notice of the defective condition and failed to correct it’ (*Mitchell v City of New York*, 29 AD3d 372, 374 [1st Dept 2006]). “Where a defendant moves for summary judgment, it has the burden in the first instance to establish, as a matter of law, that either it did not create the dangerous condition which caused the accident or that it did not have actual or constructive notice of the condition” (*Id.*).

Plaintiff contends that MS&G negligently installed, serviced, repaired, and/or maintained the subject blinds. MS&G has established that it did not install the blinds in question. However, MS&G has not established that their repair of the blinds did not contribute to the blinds falling from the ceiling. The un rebutted testimony of Douglas Schulman establishes that MS&G did not install the window shade. Mr. Schulman testified that he could tell that the shade was not installed by MS&G because they did not use extrusions in the shape of the extrusion of the window shade at issue (see Schulman February 1, 2022 Tr at p. 22-24, NYSCEF Doc. No. 96). Furthermore, Mr. Schulman testified that the screenshot of MS&G’s internal workflow database (NYSCEF Doc. No. 172) should show all of the work done by MS&G at the given address for AAC, and that it is unlikely that any work would be excluded (*Id.* at p. 43-44). The workflow database does not show that MS&G installed the shades. The basis for plaintiff’s contention that MS&G installed the shade was that they were “the only shade company in our contact list and we had to call them one time prior” (Rodriguez February 25, 2020 Tr at p. 54, In 7-11; NYSCEF Doc. No. 95). The plaintiff’s contention that MS&G installed the shade is nothing more than speculation, and is insufficient to rebut the defendant’s showing that it did not install the shade that injured the plaintiff when it fell.

MS&G acknowledges that it did maintenance and repair work on blinds in the AAC conference room including replacing a clutch on a conference room shade in August of 2012; repair in July of 2012; and installing a hold down bracket in 2010 (Schulman February 1, 2022 Tr at p. 59, In. 21-25). Mr. Schulman testified that MS&G may have installed the hardware/fixture in question that detached from the ceiling at the time of the incident in question on AAC’s premises (see *Id.* at p. 60 In 22-25). Furthermore, Mr. Schulman testified that he did not know if MS&G worked on the shade at issue, but acknowledged that if MS&G did perform work on the hardware depicted in Plaintiff’s Exhibits 14 and 15, it would have involved installing a molly and screw into the ceiling (*Id.* at p 69). It was the molly/screw detaching (or the sheetrock ceiling to which they were affixed breaking) that led to the blind falling. Accordingly, giving the plaintiff the benefit of every possible inference, there is a question of fact as to whether MS&G installed the hardware that attached the shade to the ceiling when they replaced the clutch in August of 2012, and whether that caused or contributed to the failure which lead to plaintiff’s injury. Therefore, MS&G is not entitled to summary judgment.

### **10E53 OWNER LLC’s and SL GREEN REALTY CORP**

Defendants 10 E. 53 Owner LLC and SL Green (the “Landlord defendants”) move for summary judgment dismissing the complaint against them. The Landlord

defendants contend that they are out-of-possession landlords and there is no evidence that they installed, maintained, repaired, inspected, or were responsible for the installation, maintenance, repair or inspection of the shades that allegedly fell on the plaintiff. In opposition to the motion, the plaintiff now contends that the ceiling itself was defective despite her bill of particulars indicating that it was the installation of the blinds that was the problem. As set forth more fully below, the Landlord defendants are entitled to summary judgment dismissing the complaint against them.

“Landowners generally owe a duty of care to maintain their property in a reasonably safe condition, and are liable for injuries caused by a breach of this duty. The duty is premised on the landowner's exercise of control over the property, because the person in possession and control of property is best able to identify and prevent any harm to others. In contrast, a landowner who has transferred possession and control [i.e., an out-of-possession landlord] is generally not liable for injuries caused by dangerous conditions on the property” (*Henry v Hamilton Equities, Inc.*, 34 NY3d 136, 142 [2019] [internal citations and quotations omitted]). “An out-of-possession landlord is generally not liable for negligence with respect to the condition of property after transfer of possession and control to the tenant unless the landlord ‘(1) is contractually obligated to make repairs or maintain the premises or (2) has a contractual right to reenter, inspect, and make needed repairs and liability is based on a significant structural or design defect that is contrary to a specific statutory safety provision’” (*Ledesma v AMA Grocery, Corp.*, 145 AD3d 477 [1st Dept 2016]). “It is well settled that a landlord is not responsible for the condition of premises which has arisen since the letting of the same, unless there is contained in the lease a covenant to repair” (*Curran v Flammer*, 49 AD 293, 294 [1st Dept 1900]). “Where an owner is not completely out-of-possession, it may be held liable as long as it had adequate notice of and a reasonable opportunity to repair the dangerous condition” (*Ledesma v AMA Grocery, Corp.*, 145 AD3d 477, 477 [1st Dept 2016]).

The Landlord defendants are out of possession landlords. Pursuant to section 15.1 of the Lease, “Tenant shall, at its expense, throughout the term of this Lease, take good care of the Premises, the fixtures and appurtenances therein and Tenant’s Property. Tenant shall be responsible for all repairs, interior and exterior, structural and non-structural, ordinary and extraordinary, in and to the Premises and the Building and the facilities and systems thereof, the need for which arises out of (a) the performance or existence of Tenant's work or Alterations, (b) the installation, use or operation of Tenant's Property in the Premises” (Lease p. 24, NYSCEF Doc. No. 85). Furthermore, as set forth in the testimony of Arthur Herner, the former property manager for the building, SL Green would only inspect work done in the tenant premises if it was related to the building systems, electrical, mechanical, or plumbing (Herner June 22, 2022 Tr p. 67, In 8-12, NYSCEF Doc. No. 142). Additionally, when AAC took over the space it was filled with walls and small cubicles. AAC gutted it and built it out with the large executive offices, three other offices, and the conference room, none of which previously existed (see Briody November 15, 2021 Tr at p. 27, NYSCEF Doc. No. 140). The installation of the blinds was not in the final plan submitted to the landlord, they were added shortly after AAC moved in (see *Id.*). There is no indication that the landlord had any notice of the alleged dangerous condition. In fact, there had been no

indication that there was any issue with the ceiling or the connection of the blinds to the ceiling in the ten years they had been installed, which supports the Landlord defendants' position that they are entitled to summary judgment (see *Hoffman v Mucci*, 124 AD3d 723, 723-24 [2d Dept 2015] [summary judgment granted where allegedly dangerous storm door used without incident for approximately 15 years before the day of the subject incident]). In short, the Landlord defendants were out-of-possession landlords, were not contractually obligated to make repairs or maintain the premises, and to the extent they had any right to enter and make repairs, no significant structural or design defect that is contrary to a specific statutory safety provision has been identified. Accordingly, the Landlord defendants have established their right to summary judgment. The plaintiff has not set forth proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action against the Landlord defendants. Additionally, photos of the premises show that the ceiling of the conference room is lower than, and of a different material than, the ceiling in the rest of the premises (see NYSCEF Doc. Nos. 112, 113). This would at least imply that the ceiling in the conference room was part of the buildout done by AAC, and is not part of the building structure.

### **Conclusion**

For the reasons set forth hereinabove, it is hereby

ORDERED the motion (motion sequence 003) for summary judgment by defendants S.L. Green Realty Corp and 10E53 Owner LLC is GRANTED; and it is further

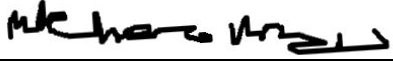
ORDERED that all claims against defendants S.L. Green Realty Corp and 10E53 Owner LLC are DISMISSED; and it is further

ORDERED that the motion (motion sequence 004) for summary judgment by defendants Manhattan Shade & Glass Ltd and Manhattan Shade & Glass Co. Inc. is DENIED.


(Signatures on the following page)

This constitutes the decision and order of the court.

**Motion Sequence 003**

<u>8/22/2025</u> DATE			 NICHOLAS W. MOYNE, J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> SUBMIT ORDER
			<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> OTHER
			<input type="checkbox"/> REFERENCE

**Motion Sequence 004**

<u>8/22/2025</u> DATE			 NICHOLAS W. MOYNE, J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> SUBMIT ORDER
			<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> OTHER
			<input type="checkbox"/> REFERENCE