

Solidgold Realty, LLC v BKNY USA LLC

2025 NY Slip Op 33326(U)

September 5, 2025

Supreme Court, New York County

Docket Number: Index No. 152322/2020

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

-----X

SOLIDGOLD REALTY, LLC

Plaintiff,

- v -

BKNY USA LLC

Defendant.

-----X

INDEX NO. 152322/2020

MOTION DATE 02/14/2025

MOTION SEQ. NO. 009

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 009) 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 213, 215, 216, 235, 236, 237, 239, 240, 241, 242, 243, 279, 280, 281, 282, 283, 331, 332

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

Upon the foregoing documents, the motion is granted.

Background

Plaintiff Solidgold Realty, LLC is the owner of an apartment building in Brooklyn. The neighboring property is owned by defendant BKNY USA LLC (“Owner”), who in 2018 was conducting a construction project to build a residential building. Plaintiff and Owner entered into a license agreement related to the project in August of 2018. In the course of the project, Owner hired defendant Blue Stone Concrete Corp. (“Excavator”) to conduct excavation work near the property line. Shortly after the work began, structural damage appeared in Plaintiff’s property, including cracks and visible leaning of the building. Four crack monitors were installed on August 31, 2018, with a further eight monitors installed through February 2019 as the damage to Plaintiff’s property escalated. A crack monitoring plan, which had been called for in the pre-construction survey, was not implemented until after the excavation activities had already caused

damage. Plaintiff filed this underlying proceeding in March of 2020. Discovery has been conducted, and the note of issue has been filed.

Standard of Review

Under CPLR § 3212, a party may move for summary judgment and the motion “shall 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 judgment in favor of any party.” CPLR § 3212(b). Once the movant makes a showing of a prima facie entitlement to judgment as a matter of law, the burden then shifts to the opponent to “produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action.” *Stonehill Capital Mgt. LLC v. Bank of the W.*, 28 N.Y.3d 439, 448 [2016]. The facts must be viewed in the light most favorable to the non-moving party, but conclusory statements are insufficient to defeat summary judgment. *Id.*

Discussion

Plaintiff brings the present motion seeking partial summary judgment as to liability against Owner and Excavator, pursuant to New York City Administrative Code § 3309.4. This section of the Building Code imposes strict liability for excavation work that causes damage adjoining property. *See, e.g., 211-12 N. Blvd. Corp. v. LIC Contr., Inc.*, 186 A.D.3d 69, 71 [1st Dept. 2020]. A plaintiff moving for summary judgment as to liability under this provision must make a showing that the defendant was granted a license to “access, inspect, and protect its property.” *Id.*, at 75. Owner and Excavator both oppose the motion. For the reasons that follow, the motion is granted as to both defendants.

Plaintiff Has Established Owner's Liability

Owner opposes the motion on the grounds that there are questions of fact going to their negligence. They argue that they did not exercise supervisory control over the excavation work that damaged Plaintiff's building, and that the Excavator deviated from the construction plan without informing Owner. NYC Admin. Code § 3309.4 imposes strict liability on "the person who causes an excavation or fill to be made." It is a matter of law that the owner, general contractor, and contractor who physically performs the excavation are considered a person who causes an excavation to be made. *Georgitsi Realty, LLC v. Armory Plaza, Inc.*, 213 A.D.3d 641, 646 [2nd Dept. 2023]. The issue of degree of control over the work merely goes to the potential expansion of liability under the Building Code. *Id.*, at 647.

Owner also argues that the excavation may not have been the sole cause of the damage to Plaintiff's property. But the standard for this provision of the Building Code is that the excavation was a proximate cause of at least some of the damage to the adjoining property, not that it was the only proximate cause. *DFAWEAST, LLC v. Friedland Props. Inc.*, 211 A.D.3d 462, 463 [1st Dept. 2022]. Finally, Owner opposes on the grounds that there was preexisting damage to Plaintiff's building. But the condition of the building prior to the excavation work merely goes to damages, and not liability under the Building Code. *211-12 N. Blvd.*, at 8. Plaintiff has established prima facie entitlement to summary judgment on liability against Owner, and Owner has not established a triable issue of fact in opposition.

Plaintiff Has Established Excavator's Liability

Plaintiff is also moving for partial summary judgment against the excavator Blue Stone. The Excavator opposes the motion on the grounds that the building had pre-existing damage, that questions of fact remain going to the various proximate causes of the damage, and that they were under the impression that they were not responsible for monitoring the site. As addressed above,

these arguments have only raised triable issues of fact as to amount of damages, not as to liability. Excavator also argues that they did not enter into a licensing agreement with Plaintiff, as they did not sign the August 2018 Agreement except to acknowledge their duty to obtain insurance for the project. But they were clearly performing the excavation work in question pursuant to the license agreement as a subcontractor on the project. NYC Admin. Code § 3309.4 does not require that a subcontractor performing the excavation sign the license agreement as a full party, simply that the work was conducted pursuant to such an agreement. Excavator has failed to establish a triable issue of fact as to liability. Accordingly, it is hereby

ADJUDGED that the motion is granted; and it is further

ORDERED that plaintiff Solidgold Realty LLC is granted summary judgment as to liability against defendants BKNY USA LLC and Blue Stone Concrete Corp.; and it is further ORDERED that an assessment of damages against defendants BKNY USA LLC and Blue Stone Concrete Corp. is directed which shall occur at the time of trial or other such resolution of the matter.

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9/5/2025
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: