

Albright v Associated Supermarket Group LLC

2025 NY Slip Op 33658(U)

September 18, 2025

Supreme Court, Kings County

Docket Number: Index No. 505687/2020

Judge: Steven Z. Mostofsky

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 9, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse of 360 Adams Street, Brooklyn, New York on the 18th Day of September, 2025.

P R E S E N T:

HON. Steven Z. Mostofsky,
Justice.

-----X

MOZELL ALBRIGHT and KEVIN ALBRIGHT,

Plaintiffs,

- against -

Index No.: 505687/2020
Motion Seq. No.: 7 and 8

ASSOCIATED SUPERMARKET GROUP LLC,
ASSOCIATED FOOD STORES INC., ASSOCIATED
SUPERMARKETS OF NOSTRAND AVENUE,
USNOR REALTY LLC, JESADAN MEAT CORP,
MARTIN'S PASTRY SHOPPE, INC. and ASHLEY
TYLER HUNTER DISTRIBUTORS INC.,

Defendants.

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The following e-filed papers read herein:

NYSCEF Doc Nos.:

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and

Affidavits (Affirmations) Annexed _____

185-190

Opposing Affidavits (Affirmations) _____

195-197

Affidavits/ Affirmations in Reply _____

199-200

Exhibits _____

Var.

On March 6, 2020, plaintiffs Kevin and Mozell Albright sued Associated Supermarket and Usnor Realty. The complaint, and subsequent amended pleadings, also named Associated

Food Stores, Inc. and Associated Supermarkets of Nostrand Avenue as defendants who have not appeared in the action. On September 10, 2020, plaintiffs served a supplemental summons and amended complaint against Jesadan Meat Corp., as a defendant.

On April 29, 2021, Associated, Usnor, and Jesadan, filed a third-party action against Martin's Pastry Shoppe, Inc., which plaintiffs added as a direct defendant on December 22, 2021. Martins then impleaded Ashley Tyler Hunter Distributors Inc., on January 13, 2022. Plaintiffs, with court approval, added Ashley Tyler as a direct defendant on May 20, 2022. All defendants answered the third amended complaint, except Ashley Tyler, who failed to answer Martins' fourth-party complaint, resulting in a default judgment on August 3, 2022.

Plaintiff Mozell Albright alleges that she sustained personal injuries inside the Associated Supermarket located at 975 Nostrand Avenue, Brooklyn, New York after tripping and falling to the floor as a result of a negligently placed bread crate.

Ashley Tyler moves for summary judgment (Mot. Seq. 7) and dismissal of plaintiff and her spouse's claims, vacatur of the default judgment in favor of Martin's against Ashley Tyler, denial of Martins motion for summary judgment, and dismissal of Martins' crossclaims against Ashley Tyler.

Ashley Tyler, neither created nor was responsible for the condition alleged to have caused the plaintiff's fall. Brad Stechman, Ashley Tyler's account manager, testified that he and his brother were the only Ashley Tyler employees who delivered Martins' products to Associated Supermarket (*NYSCEF Doc. No. 169* at ¶¶ 36–38). When restocking the supermarket Stechman testified that the bread crates were kept next to a dolly and not placed on the floor (*NYSCEF Doc. No. 169* at ¶¶ 40–41). Plaintiff is unable to identify whether she tripped over a

crate, box, dolly, and cannot identify the color, size, or any markings relating the crate to Ashley Tyler.

Plaintiff failed to meet its prima facie burden of establishing that Ashley Tyler was present at the store on the date of the alleged incident (*Gibbs v. Port Auth. of N.Y.*, 17 A.d.3d 252, 254 [1st Dept 2006]). Plaintiff testified she saw an unidentified man kneeling in the aisle unloading unspecified products from one or more bread crates on the floor (*NYSCEF Doc. No. 169* at ¶¶ 6–8). The evidence submitted is inconclusive as to whether an Ashley Tyler employee was present at Associated at the time of the incident or that an Ashley Tyler employee placed the crates on the floor.

Moreover, Ashley Tyler seeks vacatur of the default judgment in favor of Martin's against Ashley Tyler. Martins was granted default judgment on its third-party claims for indemnification and breach of contract against Ashley Tyler by Judge Richard Velasquez on August 3, 2022 (*See NYSCEF Doc. No. 122*). Furthermore, Ashley Tyler's remaining relief seeking denial of Martins motion for summary judgment, and dismissal of Martins' crossclaims against Ashley Tyler are rendered moot as per Justice Mostofsky's decision dated June 5, 2025 (*See NYSCEF Doc. No. 202*), that dismissed plaintiffs complaint in its entirety, dismissal of any and all crossclaims, and summary judgment on its crossclaims for indemnification and breach of contract against Ashley Tyler (Mot. Seq. 6). Martin's summary judgment motion against plaintiff was granted rendering all claims asserted against Ashley Tyler moot (*Id.*).

Therefore, Ashley Tyler's motion for summary judgment is granted because it neither created nor was responsible for the condition alleged to have caused the plaintiff's fall.

Associated Supermarket cross-moves (Mot. Seq. 8) dismissing the plaintiff's complaint in its entirety.

Associated has failed to demonstrate that the bread crate or dolly plaintiff tripped over was open and obvious. Plaintiff alleges that the trip occurred due to one of the crates being placed on the floor, not the bread crate dolly itself (*NYSCEF Doc. No. 197*). Even if the condition was open and obvious, this does not necessarily mean summary judgment is appropriate, as it does not relieve the property owner of their duty to maintain the premises in a safe condition but is relevant to the issue of the plaintiff's comparative negligence (*See Cupo v Karfunkel*, 1 AD3d 48, 51-52 [2d Dept 2003]).

Moreover, there is an issue of fact as to whether Associated had actual or constructive notice, or caused the defective condition, which caused plaintiff's alleged incident. Plaintiff did not recall seeing anyone in the aisle prior to her incident but recalls seeing a man in the aisle stocking the shelf with bread products after the incident (*NYSCEF Doc. No. 175 at 73-74*). However, Plaintiff could not recall if there was one or multiple crates or describe the crates.

Associated has failed to meet its prima facie burden of showing that the bread crate dolly plaintiff tripped over was open and obvious, and that it had actual or constructive notice of, or created, the defective condition that caused plaintiff's incident.

Therefore, Associated Supermarket's cross-motion (Mot. Seq. 8) dismissing plaintiff's complaint in its entirety is denied.

Accordingly, it is hereby ordered:

ORDERED that Ashley Tyler's motion for summary judgment (Mot. Seq. 7) is granted to the extent that Ashley Tyler, either created or was responsible for the condition alleged to have caused the plaintiff's fall.

ORDERED that Associated Supermarket's cross-motion (Mot. Seq. 8) dismissing plaintiff's complaint in its entirety is denied.

This constitutes the decision and order of the court.

ENTER:

A handwritten signature in black ink, appearing to be "S. Mostofsky", written over a horizontal line.

HON. STEVEN Z. MOSTOFSKY

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