

Soultanis v Secur-A-Door, Inc.

2025 NY Slip Op 34518(U)

May 5, 2025

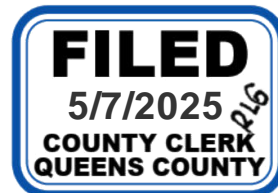
Supreme Court, Queens County

Docket Number: Index No. 723277/2020

Judge: Leonard Livote

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: PART 33

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ALEXANDER SOULTANIS,

Plaintiff,

- v -

SECUR-A-DOOR, INC., WINIFRED CLARK

Defendant.

INDEX NO. 723277/2020

MOTION DATE 06/24/2024,
06/24/2024

MOTION SEQ. NO. 009 010

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 009) 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 99, 101, 106, 107, 108, 109

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 010) 90, 91, 92, 93, 94, 95, 96, 97, 98, 102, 103, 104, 105, 110 were read on this motion to/for

JUDGMENT - SUMMARY

The above-numbered papers were read on this motion (Mot. Seq. 009) by defendant Secur-A-Door (Secur) seeking: (i) an Order pursuant to CPLR § 3212 granting summary judgment in favor of Secur, dismissing plaintiff's complaint and all cross-claims that have been interposed against Secur, as a matter of law on the issue of liability, and (ii) granting Secur such other and further relief as this Court may deem just, proper, and equitable.

The above-numbered papers were read on this motion (Mot. Seq. 010) by defendant The Dipippo Law Group, LLC as temporary administrator of the Estate

of Winifred Q. Clark (Clark) seeking: (i) an Order pursuant to CPLR § 3212 dismissing all claims and cross-claims against Clark.

Upon the foregoing papers the motions are determined as follows:

Background

Plaintiff Alexander Soultanis (Plaintiff) commenced the within personal injury action to recover for injuries he allegedly suffered when he slipped and fell on a sidewalk. The sidewalk is adjacent to the premises owned by Clark and leased to Secur (premises). Clark is an out-of-possession landlord. The lease between Clark and Secur provides that Clark was exempt from any and all liability for injuries to persons caused by or resulting from ice or snow. The lease also provides that Secur would keep the subject sidewalk clear of ice or snow.

Plaintiff testified that the incident occurred on a sunny day, one or two days after the last snowfall in the area. Secur's witness, principal Mr. Shlomo Peleg, testified that Secur's employees had a general custom and practice of removing snow and ice on the subject sidewalk if it was present when the employees arrived at work for the day. Prior to the incident a path had been shoveled in the snow by Secur. Plaintiff's co-worker testified that he saw black ice in the area where the incident occurred that appeared as if water had run down the sidewalk and become frozen. Plaintiff's other co-worker testified that immediately before the incident, he warned Plaintiff of the presence of black ice. Plaintiff testified that he was caused

to fall on both ice and a sidewalk crack. Specifically, he testified that his right foot caught on some dry pavement and went behind him, causing him to fall back on his right foot. He further testified that his left foot continued sliding on the ice as he fell.

Secur and Clark now separately move for summary judgment dismissing the complaint and cross-claims asserted against them.

Secur's Motion (Mot. Seq. 009)

In support of its motion for summary judgment, Secur argues as follows. Under the lease, Clark, as landlord, was responsible for all structural repairs, including sidewalk maintenance. Secur, as tenant, did not have any contractual or statutory duty to repair the sidewalk. To the extent that Plaintiff's fall was caused by a crack in the sidewalk, Secur was not responsible for repairing the sidewalk. To the extent Plaintiff's fall was caused by ice which had accumulated in a crack in the sidewalk, Secur was not negligent in clearing the snow and ice which had accumulated prior to the incident. There is no evidence that Secur created, caused, or had actual or constructive notice of any ice at the time of the incident.

Secur also moves for dismissal of the cross-claims for contractual or common law indemnification, arguing that no basis for liability exists.

In opposition to Secur's motion for summary judgment, Clark argues as follows. To the extent that Plaintiff's fall was caused by the crack in the sidewalk,

Plaintiff did not establish that “but for” the crack the ice would not have formed. To the extent that Plaintiff’s fall was caused by ice, Secur was contractually obligated to exercise due care to remove any snow and ice that had accumulated on the sidewalk. Secur also had notice of the ice condition because its principal testified that its employees to have cleared the snow and ice prior to the incident.

In opposition to both Secur’s motion and Clark’s motion for summary judgment (discussed below), Plaintiff argues as follows. Plaintiff pled and testified that he was caused to fall on both ice and a sidewalk defect. Secur’s motion and Clark’s motion proffer countering arguments about issues of fact, thus necessitating that both motions be denied.

Summary judgment is a drastic remedy that should only be employed when there is no doubt as to the absence of any triable issues of a material fact (*Kolivas v Kirchoff*, 14 AD3d 493 [2nd Dept 2005]). Issue finding, rather than issue determination is the court's function. If there is any doubt about the existence of a triable issue of fact, or a material issue of fact is arguable, summary judgment should be denied (*Celardo v Bell*, 222 AD2d 547 [2d Dept 1995]). A court is obliged to draw all reasonable inferences in favor of the non-moving party and may not pass on issues of credibility" (*Rizzo v Lincoln Diner Corp.*, 215 AD2d 546 [2d Dept 2005]).

Administrative Code of the City of New York § 7-210(a) imposes a duty upon owners of certain real property to maintain the sidewalk abutting their property in a reasonably safe condition, and provides that said owners are liable for personal injury that is proximately caused by such failure (*Sangaray v West Riv. Assoc., LLC*, 26 NY3d 793, 797, 28 N.Y.S.3d 652, 48 N.E.3d 933; see *Xiang Fu He v Troon Mgt., Inc.*, 34 NY3d 167, 171, 114 N.Y.S.3d 14, 137 N.E.3d 469). The code makes no exception for out-of-possession landowners and the duty applies with full force notwithstanding an owner's transfer of possession to a lessee or maintenance agreement with a nonowner (*Xiang Fu He v Troon Mgt., Inc.*, 34 NY3d 167, 169 [2019]). However, Code § 7-210 does not impose strict liability upon the property owner, and the injured party has the obligation to prove the elements of negligence to demonstrate that an owner is liable (*Muhammad v St. Rose of Limas R.C. Church*, 163 AD3d 693, 693, 81 N.Y.S.3d 131; see *Xiang Fu He v Troon Mgt., Inc.*, 34 NY3d at 171).

Where a defendant-movant's submissions fail to eliminate all triable issues of fact as to whether the ice upon which the injured plaintiff slipped existed prior to the accident and whether the defendant lacked actual or constructive notice of a preexisting condition, precluding summary judgment is proper (*Licari v Brookside Meadows, LLC*, 214 AD3d 780, 781-82 [2d Dept 2023]; citing *Stukes v. New York City Hous. Auth.*, 203 A.D.3d 980, 161 N.Y.S.3d 841; *Kearse v. 40 Wall St.*

Holdings Corp., 185 A.D.3d 1015, 126 N.Y.S.3d 679; *Viera v. Rymdzionek*, 112 A.D.3d 915, 977 N.Y.S.2d 390).

In slip-and-fall cases on snow or ice, the general rule is that the owner or lessee of property abutting a public sidewalk is under no duty to remove ice and snow that naturally accumulates upon the sidewalk unless a statute or ordinance specifically imposes tort liability for failing to do so. In the absence of a statute or ordinance imposing tort liability on the lessee, it can be held liable only if it, or someone on its behalf, undertook snow and ice removal efforts which made the naturally-occurring conditions more hazardous. (*Ramjohn v Yahoo Green, LLC*, 149 AD3d 992, 993-994 [2d Dept 2017]) (internal citations omitted).

In order for a landowner to be liable in tort to a plaintiff who is injured as a result of an allegedly defective condition upon property, it must be established that a defective condition existed and that the landowner affirmatively created the condition or had actual or constructive notice of its existence (*Lezama v. 34-15 Parsons Blvd, LLC*, 16 A.D.3d 560, 560 [2d Dept. 2005]; see *Fontana v. R.H.C Dev., LLC*, 69 A.D.3d 561 [2d Dept 2010]; 6 A.D.3d 372, 373 [2d Dept 2004]).

The right to contractual indemnification depends upon the specific language of the contract (*Shaughnessy v Huntington Hosp. Assn.*, 147 AD3d 994, 999 [2d Dept 2017], quoting *Kielty v AJS Constr. of L.I., Inc.*, 83 AD3d 1004, 1006 [2d Dept 2011]).

Here, Secur argues that the repair of the sidewalk was Clark's responsibility, and cites City code and the lease between the parties to support that argument. Clark claims that the ice that formed adjacent to the premises is Secur's responsibility to inspect and clear, and points to Plaintiff's testimony that he slipped on ice.

Secur's submissions fail to eliminate triable issues of fact as to whether the crack in the sidewalk maintained by Clark was the proximate cause of Plaintiff's fall, or if the snow and ice removal efforts by Secur created or exacerbated the hazardous condition caused Plaintiff's fall. To the extent Plaintiff's fall may have been caused by ice, Secur's principal testified that Secur was responsible for snow and ice removal as per the lease. Secur also fails to establish that it exercised due care in removing snow. To the extent Plaintiff's fall may have been caused by a crack in the sidewalk that Clark was allegedly responsible for, Plaintiff's testimony raises a factual issue. Plaintiff testified that his slip was due to "[t]he icy condition on the angled cement," referring to the driveway. Plaintiff also testified that his "right foot caught some dry pavement and went behind me. [His] right leg went behind [him] and [he] fell back on to [his] right foot."

Regarding Secur's argument for dismissal of the contractual and common-law indemnification claims, since there are issues of fact as to whether Plaintiff's injuries were caused in whole or in part by Secur, Secur fails to establish its prima

facie entitlement to judgment as a matter of law (*see Shaughnessy*, 147 AD3d at 1000; *Langner v Primary Home Care Servs., Inc.*, 83 AD3d 1007, 1007 [2d Dept 2011]). As such, summary judgment on this branch of the motion is not appropriate.

Therefore, the court denies Secur's motion for summary judgment dismissing the complaint and cross-claims for contractual and common-law indemnification asserted against it.

Clark's Motion (Mot. Seq. 010)

In support of its motion for summary judgment, Clark argues as follows. Clark is not liable for the Plaintiff's accident because Plaintiff testified that he slipped on ice, and that Secur's witness, Mr. Shlomo Peleg, testified that Secur was solely responsible for snow and ice removal. All claims against Clark should be dismissed because Clark had no duty to remove snow or ice at the location and did not create or contribute to the hazardous condition. To the extent that Plaintiff claims his fall was caused by a crack in the sidewalk, there is no admissible evidence that the condition of the sidewalk contributed to the presence of ice leading to the incident.

Here, while it is undisputed that Secur was obligated under the lease to perform snow and ice removal at the leased premises, there is a material issue of fact as to whether the Plaintiff's injuries were caused by the cracked sidewalk or

the ice. To the extent that Plaintiff's fall may have been caused by the crack, Clark fails to present any evidence that it had no duty to repair the cracked sidewalk or that it lacked actual or constructive notice of that defective condition (*see Lauzon v Stop & Shop Supermarket*, 188 AD3d 856, 857 [2d Dept 2020], 188 AD3d at 857; *Rivera v Waterview Towers, Inc.*, 181 AD3d 844, 845 [2d Dept 2020]).

Furthermore, Clark's contention that they do not own the premises is contradicted by the lease agreement provided by Secur and also Clark's own contention that it is an out-of-possession landlord. As such, this branch of Clark's motion for summary judgment dismissing the complaint against it is denied.

In view of the foregoing, the branch of Clark's motion dismissing cross-claims for common-law indemnification and contribution against Secur must be denied as issues of fact remain as to the proximate cause of the plaintiff's accident (*see Dow v Hermes Realty, LLC*, 155 AD3d 824, 826 [2d Dept 2017]).


Therefore, the Court denies Clark's motion for summary judgment dismissing the complaint and cross-claims for common-law indemnification and contribution asserted against it. Accordingly, it is

ORDERED that defendant Secur's motion (Mot. Seq. 009) for summary judgment, pursuant to CPLR § 3212, dismissing the complaint and cross-claims asserted against it is denied; and it is further

ORDERED that defendant Clark's motion (Mot. Seq. 010) for summary judgment, pursuant to CPLR § 3212, dismissing the claims and cross-claims against it is denied.

Any other and/or further relief requested and not addressed is denied.

This constitutes the Order of the Court.

<u>5/5/2025</u> DATE		 LEONARD LIVOTE, 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

