

Edwards v 321 W. 125 Assoc., L.P.

2025 NY Slip Op 34519(U)

November 26, 2025

Supreme Court, New York County

Docket Number: Index No. 150556/2023

Judge: Richard G. Latin

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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. RICHARD G. LATIN **PART** **46M**

Justice

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SHAKIRA EDWARDS,

Plaintiff,

- v -

321 W. 125 ASSOCIATES, L.P., 3M GOURMET DELI
CORP. D/B/A 3M GOURMET DELI

Defendant.

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INDEX NO. 150556/2023

MOTION DATE 11/27/2024

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 53, 54, 55, 56, 57, 58, 59, 60, 62, 63, 64

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

321 W. 125 Associates, L.P.’s (“321 West”) motion pursuant to CPLR 3212 for an order granting summary judgment dismissing the complaint and all cross-claims (NYSCEF # 39) and plaintiff Shakira Edwards’ (“Edwards”) cross motion for an order granting partial summary judgment on the issue of liability as to defendant 321 West (NYSCEF # 53) are determined as follows:

Background

Plaintiff alleges that she tripped and fell, sustaining personal injuries as a result of a defective condition on the public sidewalk adjacent to the premises located at 316 St. Nicholas Avenue, New York NY, owned by defendant 321 West (NYSCEF # 1 at 4, 6-8; NYSCEF # 41 at 1). 321 West leased part of the ground floor of the property to tenant 3M Gourmet Deli Corp. (hereinafter, 3M Deli).

Plaintiff sued defendants 321 West and tenant 3M Deli for failure to reasonably maintain the sidewalk in a reasonable safe manner so as to not cause a tripping hazard (NYSCEF # 1). 321

West filed a motion pursuant to CPLR 3212 seeking summary judgment dismissing the complaint and all cross-claims (NYSCEF # 39).

321 West advance three primary bases to argue that 321 West's motion should be granted: (1) 321 West did not cause or create the subject condition; (2) the alleged defect is trivial in nature; and (3) tenant 3M Deli is responsible for the sidewalk pursuant to the lease (NYSCEF # 40 at 7-9).

Plaintiff Edwards filed a cross motion for an order granting partial summary judgment on the issue of liability as to defendant 321 West (NYSCEF # 53). Edwards avers that 321 West had actual/constructive notice of the alleged sidewalk defect, 321 West failed to make a prima facie showing that the alleged defect was trivial, and issues of fact exist on whether the defect is actionable (NYSCEF # 54 at 4-15).

In addition, defendant 3M Deli opposes 321 West's motion (NYSCEF # 50). 3M Deli argues 321 West's motion was untimely and good cause was not shown for its late filing (*id.* at 4). In the event that 321 West's motion is timely, 3M Deli seeks summary judgment although no cross motion for summary judgment was made (*id.* at 13-18).

Discussion

A party moving for summary judgment must make a prima facie showing that it is entitled to judgment as a matter of law (*see Alvarez v Prospect Hosp*, 68 NY2d 320 [1986]). Once a showing has been made, the burden shifts to the parties opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial of the action (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). In the presence of a genuine issue of material fact, a motion for summary judgment must be denied (*see Grossman v Amalgamated Haus. Corp.*, 298 AD2d 224, 226 [1st Dept 2002]).

321 West Provided “Good Cause” for Untimely Motion

Summary judgment motions should be timely made, or good cause must be shown (*see Miceli v State Farm Mut. Auto. Ins. Co.*, 3 NY3d 725, 726 [2004]). “Statutory time frames and court-ordered time frames are not options, they are requirements, to be taken seriously by the parties” (*id.*) “Good cause” requires a “satisfactory explanation for the untimeliness—rather than simply permitting meritorious, nonprejudicial filings, however tardy” (*Fofana v 41 W. 34th St., LLC*, 71 AD3d 445, 448 [1st Dept 2010], quoting *Brill v City of New York*, 2 NY3d 648, 652 [2004]). In addition, no excuse at all, or a perfunctory excuse, cannot be “good cause” (*see id.*).

Here, 321 West did not timely file its motion within the requisite 60 days after the filing of the note of issue. Plaintiff filed the note of issue on September 26, 2024 (NYSCEF # 23). 321 West filed its motion for summary judgment on November 27, 2024. While the motion was filed past the deadline of 60 days, good cause was shown as demonstrated in the email exchange between the parties and the court under exhibit F (NYSCEF # 60). Thus, there was “leave of court on good cause shown,” as required by CPLR 3212(a).

Accordingly, 321 West’s motion and the subsequent cross motion and responses will be considered based on the showing of “good cause” (*see Miceli*, 3 NY3d at 726).

Administrative Code 7-210

In 2003, Administrative Code of the City of New York § 7-210 was enacted to shift tort liability for injuries resulting from a defective sidewalk from the City to abutting property owners (*see Vucetovic v Epsom Downs, Inc.*, 10 NY3d 517, 520 [2008]; *Gelstein v City of New York*, 153 AD3d 604, 605 [2017]; *Johnson v Manley*, 150 AD3d 1210, 1211 [2017]). In addition, section 7–210 unambiguously imposes a nondelegable duty on certain real property owners to maintain City sidewalks abutting their land in a reasonably safe condition” (*Xiang Fu He v Troon Mgt., Inc.*, 34

NY3d 167, 169 [2019]). Under this duty of care, a subject owner is liable for personal injury claims arising from the owner's negligence on maintaining the sidewalks (*id.*). Furthermore, the code makes no exception for out-of-possession landowners and so the duty applies with “full force notwithstanding an owner's transfer of possession to a lessee or maintenance agreement with a nonowner” (*id.*). In addition, the term “owner” means all owners, regardless of their out-of-possession status and whether the owner has contracted with the lessee or another to keep the sidewalk in reasonably safe condition (*id.* at 173). While an owner can shift the work of maintaining the sidewalk to another, the owner cannot shift the duty, nor exposure and liability for injuries caused by negligent maintenance, imposed under section 7-210 except when the lease agreement is comprehensive and exclusive as to the maintenance (*id.* at 173).

Here, the owner of the property is 321 West (NYSCEF # 1 at 4). Section 7-210 “unambiguously imposes a nondelegable duty” on all owners (*Xiang Fu He*, 34 NY3d at 169). 321 West argues it is not liable due to the lease’s expressly stated provision requiring tenant 3M Deli to be responsible for the sidewalks (NYSCEF # 44 at 30). 321 West asserts “[t]he Lease and Rider clearly set forth that the duties for the maintenance and repairs of the subject sidewalk are to be borne the tenant,” which is 3M Deli (NYSCEF # 62 at 6). The paragraph 62 of the lease agreement between 321 West and tenant 3M Deli provides:

“TENANT [3M Deli] covenants and agrees that it will, throughout the term of this lease, and at its own cost and expense repair and replace any and all damaged or broken windows, doors or other glass, plate or otherwise, **sidewalks** and storefront together with the frames and supports thereof on the inside and outside of the Demised premises” (NYSCEF # 44 at 30).

“Provisions of a lease obligating a tenant to repair the sidewalk abutting the premises do not impose on the tenant a duty to a third party, such as the plaintiff” (*Collado v Cruz*, 81 AD3d 542, 542 [1st Dept 2011], citing *Tucciarone v Windsor Owners Corp.*, 306 AD2d 162, 163 [1st

Dept 2003]; *see also Dalder v Inc. Vil. of Rockville Ctr.*, 116 AD3d 908, 909 [2d Dept 2014]). It is only when the lease agreement is “so comprehensive and exclusive” as to sidewalk maintenance as to entirely displace the landowner's duty to maintain the sidewalk that a tenant may be liable to a third party (*Abramson v Eden Farm, Inc.*, 70 AD3d 514, 514 [1st Dept 2010]).

Here, the lease contract rider provision that required 3M Deli at its own cost and expense to maintain the sidewalk was expressly clear and exclusive, that it entirely displaced the owner 321 West’s duty to maintain the sidewalk (*see Paperman v 2281 86th St. Corp.*, 142 AD3d 540, 541 [2d Dept 2016] [finding that “owner demonstrated that a rider to the subject lease requiring the tenant to, at its own cost and expense, keep and maintain the sidewalk “in thorough repair and good order,” was so comprehensive and exclusive as to entirely displace the owner's duty to maintain the sidewalk”], citing *Collado*, 81 AD3d at 542; *see also Abramson*, 70 AD3d at 514). Here, 3M Deli’s lease and possession of the property commenced on March 1, 2019 and was to end on February 29, 2024 (NYSCEF # 44 at 2). Plaintiff’s alleged injury occurred on March 6, 2022 (NYSCEF # 41 at 1). Thus, the property and the responsibility to reasonably maintain the property and the sidewalk from defects was 3M Deli’s responsibility.

Accordingly, 321 West’s motion is granted. In light of this determination, the court need not reach 321 West’s remaining contentions, as well as plaintiff Edwards’ partial summary judgment motion regarding 321 West’s liability as owner of the premises based on the contractual language of the lease (NYSCEF # 44 at 30). As such, plaintiff Edwards’ cross-motion to grant liability against 321 West is denied.

Conclusion

The Court has considered the parties remaining arguments and finds them unavailing.

WHEREFORE, it is hereby:

ORDERED that defendant 321 West’s motion for summary judgment on its claim dismissing the complaint and all cross-claims pursuant to CPLR 3212, is granted; and it is further


ORDERED that plaintiff Shakira Edwards’ partial cross-motion for summary judgment for an order granting partial summary judgment on the issue of liability as to defendant 321 West, pursuant to CPLR 3212, is denied; and it is further

ORDERED that the motion and cross motion are denied in all other respects; and it is further

ORDERED that, within 20 days from entry of this order, defendant 321 West shall serve a copy of this order with notice of entry upon the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the court.

<u>11/26/2025</u> DATE	 RICHARD G. LATIN, J.S.C.			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE