

Stoutenborough v Vanderbilt Glass Sys., Inc.

2025 NY Slip Op 34603(U)

November 28, 2025

Supreme Court, New York County

Docket Number: Index No. 155522/2022

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M

Justice

-----X

KATHLEEN STOUNTENBOROUGH,
Plaintiff,

- v -

VANDEBUILT GLASS SYSTEM, INC., SUN MECHANICAL
CORP., RIVERVIEW EAST OWNERS, INC., MILFORD
MANAGEMENT CORP.,

Defendant.

-----X

RIVERVIEW EAST OWNERS, INC., MILFORD MANAGEMENT
CORP.

Plaintiff,

-against-

CHRISTOPHE LUDWIG, NIROSHI RUBY LUDWIG

Defendant.

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INDEX NO. 155522/2022
MOTION DATE 06/27/2025, 07/24/2025
MOTION SEQ. NO. 004 005

DECISION + ORDER ON MOTION

Third-Party
Index No. 595704/2023

The following e-filed documents, listed by NYSCEF document number (Motion 004) 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 131, 134, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 188, 189, 190, 191, 192, 193, 197, 198, 199, 203, 204, 205, 206, 207, 208, 209, 215

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 005) 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 185, 186, 187, 194, 195, 196, 200, 210, 211, 212, 213, 214

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, and after a final submission date of September 16, 2025, Motion Sequence 004 and Motion Sequence 005 are consolidated for disposition and decided as follows:

- A. Defendants/Third-Party Plaintiffs Riverview East Owners, Inc. ("Riverview") and Milford Management Corp.'s ("Milford") (collectively "Third-Party Plaintiffs") motion for summary

judgment (“Mot. Seq. 004”) dismissing Plaintiff Kathleen Stoutenborough’s (“Plaintiff”) Amended Complaint and granting Third-Party Plaintiffs’ summary judgment on their contractual indemnification claim against Third-Party Defendants Christophe Ludwig and Nirosh Ruby Ludwig (collectively the “Ludwigs”) and common law indemnification against Defendant Vanderbuilt Glass System, Inc. (“Vanderbuilt”) is denied.

B. Plaintiff’s motion for summary judgment (“Mot. Seq. 005”) on the issue of liability against Defendants Vanderbuilt and Riverview is denied.

I. Background

On October 7, 2021, Vanderbuilt was replacing windows in Unit 18D (the “Apartment”) at 251 East 32nd Street, New York, New York (the “Premises”) (NYSCEF Doc. 121 at 28-29). The Premises is a cooperative building owned by Riverview and managed by Milford. The Ludwigs live in the Apartment pursuant to a proprietary lease (NYSCEF Doc. 122 at 11). The Apartment was under renovation, and there were other construction workers renovating the Apartment’s kitchen (NYSCEF Docs 100; 121 at 37-38; and 122 at 15-16). Mr. Ludwig testified another contractor, non-party My Contracting Company was engaged in renovations in the Apartment (NYSCEF Doc. 122 at 35-36). There was also construction in over thirty other apartments on the Premises due to a fire which occurred in Unit 18C (NYSCEF Docs. 121 at 89-90 and 122 at 17; 47-48). Vanderbuilt employed a flagman to work on the sidewalk and ensure nothing fell on pedestrians and worked with the Premises’ superintendent to set up cones and tape to cordon off sections of the sidewalk (NYSCEF Doc. 121 at 23; 40). Plaintiff, a pedestrian was walking near the Premises when she felt something hit her head (NYSCEF Doc. 148 at 17; 25-26; 41; 56). She learned a yellow utility knife hit her.

According to Vanderbilt, at the time of Plaintiff's accident, Vanderbilt employees were transporting windows from the ground floor to the Apartment, and there were no Vanderbilt employees in the Apartment (NYSCEF Doc. 121 at 46-47). Vanderbilt's witness also testified the utility knives they use were red or black, while the utility knife that allegedly hit Plaintiff was yellow (*id.* at 21; 51). According to the affidavits of a My Contracting employees Ignacio Morales and Rafael Palchisaca, they were working in the Apartment at the time of Plaintiff's accident and heard Vanderbilt employees admit it was their knife (NYSCEF Doc. 100).

Now, Third Party Plaintiffs move for summary judgment dismissing Plaintiff's Amended Complaint asserted against them, and seeking summary judgment on their contractual indemnification claims against the Ludwigs and common law indemnification against Vanderbilt. Plaintiff moves for summary judgment on the issue of liability against Riverview and Vanderbilt.

II. Discussion

A. Standard

"Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact." (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]). The moving party's "burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party." (*Jacobsen v New York City Health and Hosps. Corp.*, 22 NY3d 824, 833 [2014]). Once this showing is made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial (*See e.g., Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

B. Plaintiff's Motion ("Mot. Seq. 005")

Plaintiff's motion for summary judgment is denied. On May 15, 2025, Plaintiff moved for summary judgment under motion sequence 003 and withdrew that motion on July 17, 2025 after opposition was filed. On July 24, 2025, Plaintiff filed this motion for summary judgment premised on the same evidence as the prior motion. Successive motions for summary judgment are disfavored and should not be entertained without a showing of newly discovered evidence or other justification (*see, e.g. Maggio v 24 West 57 APF, LLC*, 134 AD3d 621, 625-26 [1st Dept 2015]).

Plaintiff does not provide any justification or newly discovered evidence, arguing instead she is allowed to withdraw a filed motion for summary judgment and then file a subsequent motion. While that may be true if Plaintiff withdrew the motion prior to opposition being submitted, the opposing parties are prejudiced by the withdrawal and renewed filing where, as here, Plaintiff withdrew her original motion after opposition was filed. If Plaintiff's tactics were condoned, it would give all parties multiple bites at the apple, as once opposition is filed, a movant could unilaterally withdraw their motion and re-file a second motion addressing issues raised in the opposition. This tactic inflicts undue prejudice on parties opposing the motion, would result in an unworkable rule, and is precisely what the rule barring successive summary judgment motions prohibits (*see, e.g. Bullaro v Ledo, Inc.*, 234 AD3d 433, 433-34 [1st Dept 2025]; *Perretta v New York City Transit Auth.*, 230 AD3d 428, 432 [1st Dept 2024]; *Kucher v Sohayegh*, 201 AD3d 521, 521-22 [1st Dept 2022]). Therefore, the motion is denied.

Were the Court to consider the merits of the motion, it would still be denied due to issues of fact as to what hit Plaintiff and where the object came from. There is conflicting testimony as to what hit plaintiff, who owned the object, and where the object came from, creating issues of fact which cannot be resolved on summary judgment. To wit, Vanderbilt's witness claimed none of

its employees used the yellow utility knife that allegedly hit her. Moreover, there was purportedly ongoing construction in multiple other apartments due to recent fire damage at the Premises, and according to Plaintiff's submissions, there were employees of non-party My Contracting in the Apartment on the date of the accident who could have been the source of the object that hit Plaintiff.¹ Thus, even if the Court entertained Plaintiff's unjustified successive motion for summary judgment, it would still be denied due to issues of fact.

C. Third-Party Plaintiffs' Motion (Mot. Seq. 004)

Third-Party Plaintiffs' motion is denied. Similar issues of fact preclude Third-Party Plaintiffs motion for summary judgment dismissing Plaintiff's Amended Complaint. To show entitlement to summary judgment the movant must do more than point to gaps in Plaintiff's evidence (*see, e.g. Maria v Concourse Estate, LLC*, 200 AD3d 578 [1st Dept 2021] citing *Vargas v Riverbay Corp.*, 157 AD3d 642 [1st Dept 2018]). Third-Party Plaintiffs fail to show affirmatively the object which hit Plaintiff was unrelated to ongoing construction at the Premises. Because there is not yet any finding of negligence against any party, Third-Party Plaintiffs' motion for summary judgment on their claim for common law indemnification against Vanderbuilt and contractual indemnification against the Ludwigs is denied as premature (*see Pena v Intergate Manhattan LLC*, 194 AD3d 576, 578 [1st Dept 2021]; *see also Pueng Fung v 20 West 37th Street Owners, LLC*, 74 AD3d 635, 636 [1st Dept 2010]).

Accordingly, it is hereby,

ORDERED that Defendants/Third-Party Plaintiffs Riverview and Milford's motion for summary judgment ("Mot. Seq. 004") dismissing Plaintiff's Complaint and granting them

¹ These witnesses have not been deposed.

summary judgment on their contractual indemnification claim against the Ludwigs and common law indemnification against Vanderbuilt is denied; and it is further

ORDERED that Plaintiff's motion for summary judgment ("Mot. Seq. 005") on the issue of liability against Defendants Vanderbuilt and Riverview is denied; and it is further

ORDERED that within ten days of entry, counsel for Defendants shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

11/28/2024
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, 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	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					OTHER
					REFERENCE