

Minier v 2BT Hous. Dev. Fund Corp.

2025 NY Slip Op 34929(U)

December 19, 2025

Supreme Court, New York County

Docket Number: Index No. 161889/2023

Judge: Phaedra F. Perry-Bond

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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. PHAEDRA F. PERRY-BOND PART 35

Justice

-----X INDEX NO. 161889/2023

YACAIRA MINIER,

Plaintiff,

11/15/2024,
12/04/2024,
10/08/2025

MOTION DATE

- v -

MOTION SEQ. NO. 001 002 003

2BT HOUSING DEVELOPMENT FUND CORPORATION,
TWO BRIDGESET ASSOCIATES LP, SETTLEMENT
HOUSING FUND LP, GRENADIER REALTY CORP.,
SPRING SCAFFOLDING LLC, HAMILTON-MADISON
HOUSE,

DECISION + ORDER ON MOTION

Defendant.

-----X

SPRING SCAFFOLDING LLC

Plaintiff,

Third-Party
Index No. 595347/2024

-against-

MD SCAFFOLDING INC.

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 41, 42, 43, 44, 45, 46, 47, 48, 49, 60, 62, 63, 66, 70, 71, 75, 96

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

The following e-filed documents, listed by NYSCEF document number (Motion 002) 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 61, 65, 67, 68, 69, 72, 73, 74, 78, 97

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

The following e-filed documents, listed by NYSCEF document number (Motion 003) 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 98, 101, 102, 103, 104

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

Upon the foregoing documents, motion sequences 001 through 003 are consolidated for disposition and decided as follows:

- A. Defendant Hamilton-Madison House's ("Hamilton") motion for summary judgment (Mot Seq. 001) dismissing Plaintiff Yacaira Minier's ("Plaintiff") Complaint and all crossclaims asserted against it is granted.
- B. Defendant/Third-Party Plaintiff Spring Scaffolding LLC's ("Spring Scaffolding") motion for summary judgment (Mot. Seq. 002) dismissing Plaintiff's Complaint and all crossclaims asserted against it, for indemnification from Two Bridgeset Associates LP ("Two Bridgeset Associates"), and default judgment against Third-Party Defendant MD Scaffolding Inc. ("MD Scaffolding") is granted in part and is otherwise denied without prejudice with leave to renew upon further discovery.
- C. MD Scaffolding's motion for summary judgment (Mot. Seq. 003) dismissing all claims and crossclaims asserted against it is denied without prejudice with leave to renew upon further discovery.

I. Background

Two Bridgeset Associates owns the Premises at 253 South Street, New York, New York (the "Premises") and Hamilton is a tenant who leased the second and third floors of the Premises (NYSCEF Doc. 46). On January 3, 2023, Two Bridgeset Associates contracted Spring Scaffolding to erect and dismantle a sidewalk shed (NYSCEF Doc. 53). Spring Scaffolding engaged MD Scaffolding as a subcontractor (NYSCEF Doc. 54). Spring Scaffolding claims that according to its records, the last time it or MD Scaffolding were at the Premises was on March 23, 2023. Plaintiff alleges that on July 5, 2023, she fell while walking on the sidewalk in front the Premises due to a dangerous condition on the sidewalk (NYSCEF Doc. 45). Now, Hamilton, Spring Scaffolding, and MD Scaffolding each move for summary judgment.

II. Discussion

A. Hamilton's Motion for Summary Judgment (Mot. Seq. 001)

Hamilton's motion for summary judgment dismissing all claims and crossclaims asserted against it is granted. As a preliminary matter, none of the defendants oppose Hamilton's motion, so any crossclaims asserted against Hamilton are dismissed as abandoned (*Saidin v Negron*, 136 AD3d 458 [1st Dept 2016]). Hamilton met its *prima facie* burden of demonstrating it did not create the alleged sidewalk condition, nor did it have a duty to maintain the sidewalk, through the uncontroverted affirmation of Isabel Ching and the lease agreement between Hamilton and Two Bridgeset Associates (NYSCEF Docs. 46-47). These documents establish that Hamilton is a tenant occupying the second and third floor of the Premises which operates a non-profit social service administrative office and behavioral health outpatient site, with no responsibility for the sidewalk where Plaintiff fell.

New York City Administrative Code § 7-210 imposes an affirmative, non-delegable obligation on a premises owner to maintain a sidewalk, and although a landlord can enter into agreements requiring the tenant to maintain the sidewalk, the duty to a plaintiff remains exclusively with the landlord (*Choudhry v Starbucks Corp.*, 213 AD3d 521, 522 [1st Dept 2023] citing *Xiang Fu He v. Troon Mgt., Inc.*, 34 NY3d 167 [2019]; see also *Collado v Cruz*, 81 AD3d 542 [1st Dept 2011]). Here, the lease does not delegate any duty to Hamilton with respect to the sidewalk. Rather, responsibility for maintenance of the exterior and structural portions of the Premises is delegated to Two Bridgeset Associates.

The only party to oppose this motion is Plaintiff, who fails to raise a triable issue of fact. Plaintiff's opposition is based on procedural objections rather than pointing to a specific triable issue of fact. Plaintiff's objections based on Hamilton's attorney affirmation failing to comply with

CPLR 2106 is without merit and, to the extent it does not contain the specific requisite language, the Court overlooks this ministerial error pursuant to CPLR 2001. Plaintiff fails to show she was prejudiced by this technical irregularity (*see Warshaw Burstein Cohen, Schelsinger & Kuh, LLP v Longmire*, 82 AD3d 586, 586-587 [1st Dept 2011]).

Plaintiff's argument that the motion is premature is insufficient. Plaintiff's opposition is based solely on an attorney affirmation (*see generally* CPLR 3212[f]). An affidavit from someone with personal knowledge of the facts underlying the claim is required "to demonstrate that essential facts exist but cannot yet be stated." (*354 Chauncey Realty, LLC v Brownstone Agency, Inc.* 213 AD3d 544 [1st Dept 2023]). The attorney's non-probative and speculative opposition is insufficient to establish the existence of facts not yet uncovered but in the exclusive possession of the Moving Defendants which would be required to oppose the motion (*see also Crimlis v City of New York*, 179 AD3d 575, 575-576 [1st Dept 2020]). Tellingly, the other Defendants, who had an interest in Hamilton remaining in the case by virtue of their now dismissed crossclaims, have failed to come forward with any opposition or evidence indicating Hamilton had any responsibility for maintaining the sidewalk or creating a dangerous condition on the sidewalk. Plaintiff's argument as it relates to prematurity is therefore based on impermissible speculation and conjecture (*see also De Felix v 590 East Fordham Road Corp.*, 199 AD3d 453 [1st Dept 2021]). The Court has considered the remainder of Plaintiff's contentions and finds them unavailing.

B. Spring Scaffolding's Motion (Mot. Seq. 002)

Spring Scaffolding's motion for summary judgment dismissing all claims and crossclaims against it, for indemnification, and for default judgment against MD Scaffolding, is granted in part and is otherwise denied, without prejudice, with leave to renew upon further discovery. Spring Scaffolding withdrew the branch of its motion for default judgment against MD Scaffolding, so

that branch of the motion is moot (*see* NYSCEF Doc. 78). Spring Scaffolding's motion for summary judgment is granted to the extent that Hamilton's crossclaims asserted against Spring Scaffolding are dismissed without opposition. Moreover, to the extent Plaintiff alleges Spring Scaffolding violated New York City Administrative Code § 7-210, this claim is dismissed because Spring Scaffolding is a contractor and § 7-210 imposes non-delegable liability only on property owners.

The remainder of Spring Scaffolding's motion is denied, without prejudice, as premature. Spring Scaffolding relies on an affidavit from Lorant Varga, Spring Scaffolding's vice president, who claims that before, during, and after the installation of the scaffolding, no sidewalk defects were noted (NYSCEF Doc. 52 at ¶ 10). However, the record he refers to (NYSCEF Doc. 56) has a series of columns with various acronyms and numbers which are not explained or interpreted at all. This, at a minimum, requires Mr. Varga or some other knowledgeable employee to produce some evidence to interpret for the parties and the Court the meaning of the various acronyms and numbers included in Spring Scaffolding's work logs.

Mr. Varga also claims, without any evidentiary support aside from a conclusory and self-serving assertion, that the installation of the sidewalk shed "could not have caused, and did not cause, the damage and defect described by the plaintiff." He further relies on undated photographs with no indication that those photographs even show the location or alleged condition which caused Plaintiff's fall (NYSCEF Doc. 57). Given Spring Scaffolding's heavy burden, and its admission that it constructed a lengthy sidewalk shed in the location of Plaintiff's fall several months prior to her fall, Spring Scaffolding failed to meet its *prima facie* burden of demonstrating that its construction activities did not create or exacerbate a dangerous condition on the sidewalk. While Spring Scaffolding relies on the argument that it had no duty to maintain the sidewalk after

its work was completed, it ignores the separate issue of whether its construction work created or exacerbated a hazardous condition on the sidewalk (*see also Coulton v City of New York*, 29 AD3d 301, 302 [1st Dept 2006] [issue of fact as to whether scaffolding contractor failed to provide sufficient space for pedestrians or whether contractor created or worsened alleged dangerous condition on sidewalk precluded summary judgment]).

Because issues of fact remain as to Spring Scaffolding's negligence, and there has not yet been any finding of negligence against Two Bridgeset Associates, Spring Scaffolding's motion for summary judgment on its claims for indemnification is denied, without prejudice, as premature (*see Cackett v Gladden Properties, LLC*, 183 AD3d 419, 422 [1st Dept 2020]).

C. MD Scaffolding's Motion for Summary Judgment (Mot. Seq. 003)

MD Scaffolding's motion for summary judgment is denied.¹ The same issues of fact which precluded summary judgment in favor of Spring Scaffolding likewise preclude summary judgment in favor of MD Scaffolding. Specifically, issues of fact remain as to whether MD Scaffolding created or worsened the allegedly dangerous condition on the sidewalk. While MD Scaffolding relies on the affidavit of Konstantine Oleynikov, MD Scaffolding fails to submit any of its own contemporaneous records to corroborate his claim that it was last on site on March 23, 2023. The affidavit also fails to state whether MD Scaffolding caused or exacerbated any dangerous condition. While the affidavit says MD Scaffolding did not receive any complaint and was not asked to return to the site, that does not negate issues of fact as to whether MD Scaffolding caused or exacerbated a dangerous condition on the sidewalk. MD Scaffolding's motion is denied, without prejudice, with leave to renew upon a more fully developed record.

¹ In motion sequence 002 the Court granted the motion to the extent of dismissing Hamilton's crossclaims and dismissing Plaintiff's claims alleging a violation of New York City Administrative Code § 7-210. That holding does not apply to motion sequence 003 because Hamilton has not asserted crossclaims against MD Scaffolding and Plaintiff has not asserted any claim alleging a violation of Administrative Code § 7-210 against MD Scaffolding.

Accordingly, it is hereby,

ORDERED that Defendant Hamilton’s motion for summary judgment (Mot Seq. 001) dismissing Plaintiff’s Complaint and all crossclaims asserted against it is granted; and it is further


ORDERED that Spring Scaffolding’s motion (Mot. Seq. 002) is granted to the extent that Hamilton’s crossclaims and Plaintiff’s claim alleging a violation of New York City Administrative Code § 7-210 asserted against Spring Scaffolding are dismissed, and the remainder of Spring Scaffolding’s motion is denied, without prejudice, with leave to renew upon further discovery²; and it is further

ORDERED that MD Scaffolding’s motion for summary judgment (Mot. Seq. 003) is denied, without prejudice, with leave to renew upon further discovery; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff 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.

12/19/2025
DATE


HON. PHAEDRA F. PERRY-BOND, 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

² The branch of the motion seeking default judgment is withdrawn (NYSCEF Doc. 78)