

Gayle v Welcome Parking LLC
2025 NY Slip Op 35277(U)
April 15, 2025
Supreme Court, Kings County
Docket Number: Index No. 535016/2022
Judge: Sharon A. Bourne-Clarke
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At IAS Part 44 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 320 Jay Street, Borough of Brooklyn, City and State of New York, on the 15th of April, 2025

PRESENT: HON. SHARON A. BOURNE-CLARKE
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

LUCRECIA GAYLE,

DECISION AND ORDER
Index No. 535016/2022

Plaintiff,

-against-

WELCOME PARKING LIMITED LIABILITY
COMPANY, WELCOME PARKING CORP. and AMBOY
PROPERTIES CORPORATION,

Defendants.

WELCOME PARKING, LLC I/S/H/A WELCOME
PARKING CORP.,

Third-Party Plaintiff,

-against-

BROOKDALE HOSPITAL MEDICAL CENTER a/k/a
ONE BROOKLYN HEALTH SYSTEMS, INC.,

Third-Party Defendant.

The following papers were read on this motion pursuant to CPLR 2219(a):

<u>Papers</u>	<u>NYSCEF Doc. Nos.</u>
Notice of Motion – Order to Show Cause – Exhibits and Affidavits Annexed	No(s). 73-90; 91-106
Answering Affidavits and Exhibits	No(s). 109-111
Replying Affidavits and Exhibits	No(s). 112-121

The matters before the Court are two motions for summary judgment. Defendant AMBOY PROPERTIES CORPORATION (“Amboy Properties”) moves (Motion Sequence 2) for summary judgment dismissing the complaint, asserting that it is the alter ego of third-party defendant BROOKDALE HOSPITAL MEDICAL CENTER a/k/a ONE BROOKLYN HEALTH SYSTEMS,

INC. (“Brookdale Hospital”), plaintiff’s employer, and that plaintiff’s claims are therefore barred by Workers’ Compensation Law §§ 11 and 29(6).

Defendant and third-party plaintiff WELCOME PARKING, LLC I/S/H/A WELCOME PARKING CORP. (“Welcome Parking”) moves (Motion Sequence 3) for summary judgment dismissing the complaint and all cross-claims as against it, on the grounds that it owed no duty of care to plaintiff, did not create the alleged condition, and lacked actual or constructive notice thereof.

Background

This action arises from personal injuries allegedly sustained by plaintiff, Lucrecia Gayle, as a result of a slip-and-fall on May 18, 2022, in a parking garage located at Brookdale Hospital, 1 Brookdale Plaza (also identified as 601 and 637 Amboy Street), Brooklyn, New York.

At the time of the incident, plaintiff was employed by Brookdale Hospital as an Imaging Technologist. The accident allegedly occurred at approximately 7:30 a.m. as plaintiff was commencing her shift. Plaintiff alleges that she tripped and fell due to a defective condition along an expansion joint within the parking structure.

Plaintiff claims to have sustained injuries including left shoulder tendonitis, herniated discs, and chronic headaches, and further alleges that she was unable to work from May 18, 2022 through September 8, 2022. At her deposition on October 22, 2024, plaintiff testified that she applied for workers’ compensation benefits for the period of her alleged disability. The Court was further advised at oral argument that plaintiff received an award of workers’ compensation benefits arising from the subject incident.

Plaintiff commenced this action on November 22, 2022, against Welcome Parking, the parking facility’s management company, and Amboy Properties, the entity holding title to the subject premises. Welcome Parking joined issue on April 5, 2023, and Amboy Properties joined issue on August 8, 2023.

On June 14, 2023, Welcome Parking commenced a third-party action against Brookdale Hospital seeking contractual indemnification pursuant to a management agreement dated January 1, 2013, between Welcome Parking and One Brooklyn Health Systems, Inc.

Pursuant to the terms of that agreement, Welcome Parking was retained to provide parking management services. The agreement expressly provides that responsibility for the design, structural maintenance, and repair of the parking facility remains with Brookdale Hospital. While Welcome Parking is required to report observed defects within 24 hours, it is not responsible for performing repairs, and such reporting obligation does not shift responsibility for structural maintenance.

At an examination before trial conducted on May 28, 2025, Brookdale Hospital's maintenance supervisor, Richard Cantey, testified that repairs within the parking structure were performed either by Brookdale Hospital personnel or by third-party contractors retained by Brookdale Hospital (Exhibit N, at pp. 13–14).

At an examination before trial conducted on November 13, 2024, Dhiman Sharma, Director of Operations for Welcome Parking, testified that Welcome Parking's responsibilities were limited to revenue collection and general management of the parking operations, including maintenance of the parking office, and did not include structural maintenance or repair of the parking facility (Exhibit L, at pp. 18–19).

Defendants Welcome Parking and Amboy Properties now move for summary judgment.

Analysis

“A movant for summary judgement motion pursuant to CPLR § 3212 must tender sufficient evidence to eliminate any material issues of fact from the case and show entitlement to judgement as a matter of law.” *Zuckerman v. City of New York*, 49 N.Y.2d 557, at 562(1980); *Napolitano v. Suffolk County Dep't of Pub. Works*, 65 A.D.3d 676 (2d Dep't 2009). “Where a moving party has demonstrated its entitlement to summary judgment, the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure so to do, and the submission of a hearsay affirmation by counsel alone does not satisfy this requirement.” *Id* at p. 560. “Summary judgment is designed to expedite all civil cases by eliminating claims which can properly be resolved as a matter of law. Since it deprives the litigant of his [or her] day in court it is considered a drastic remedy which should only be employed when there is no doubt as to the absence of triable issues.” *Andre v*

Pomeroy, 35 NY2d 361, 363 (1974). “Only a genuine and material issue raised by evidentiary facts will suffice to defeat a properly made and supported summary judgement motion.” Id at 364.

Motion for Summary Judgment – Amboy Corporation (MTN SEQ 2).

Amboy Properties Corporation moves for summary judgment pursuant to CPLR 3212, asserting that plaintiff’s claims are barred by Workers’ Compensation Law §§ 11 and 29(6), which provide that an employee’s exclusive remedy for workplace injuries lies in workers’ compensation benefits, as Amboy Properties is the alter ego of third-party defendant Brookdale Hospital.

It is well settled that “an injured employee's sole remedy against his or her employer is recovery under the Workers' Compensation Law.” *Workers' Compensation Law §§ 11, 29(6)*. “The protection against lawsuits brought by injured workers which is afforded to employers by Workers' Compensation Law §§ 11 and 29(6) also extends to entities which are alter egos of the entity which employs a plaintiff. A defendant moving for summary judgment based on the exclusivity defense of the Workers' Compensation Law under this theory must show, prima facie, that it was the alter ego of the plaintiff's employer. A defendant may establish itself as the alter ego of a plaintiff's employer by demonstrating that one of the entities controls the other or that the two operate as a single integrated entity. A mere showing that the entities are related is insufficient where a defendant cannot demonstrate that one of the entities controls the day-to-day operations of the other.” *Salinas v 64 Jefferson Apts., LLC*, 170 AD3d 1216, at 1217 (2d Dept 2019). “A defendant may establish itself as the alter ego of a plaintiff's employer by demonstrating that one of the entities controls the other or that the two operate as a single integrated entity.” *Quizhpe v Luvin Constr. Corp.*, 103 AD3d 618 (2d Dept 2013).

Here, Amboy Properties has proffered sufficient evidence to substantiate its claim that it is the alter ego of Brookdale Hospital, the employer of plaintiff, Ms. Gayle. In support, Amboy Properties submitted minutes of the annual meetings of the Boards of Trustees of One Brooklyn Health Systems, Brookdale Hospital, and Amboy Properties. The Boards of Trustees share the same presiding chairman, board members, management, and staff. Further, Amboy Properties lacks indicia of a separate corporate existence, as it does not maintain a distinct physical address, staff, email address, or domain. The meeting minutes further demonstrate that the day-to-day operations of Amboy Properties are controlled by Brookdale Hospital.

As Brookdale Hospital is the employer of Ms. Lucrecia Gayle, and plaintiff testified at her deposition that she sought and received workers' compensation benefits for her injuries, her claims are barred by Workers' Compensation Law §§ 11 and 29(6).

Accordingly, Amboy Properties' Motion for Summary Judgment is hereby **GRANTED**, and the complaint and all cross-claims are **DISMISSED** as against Amboy Properties.

Motion for Summary Judgment – Welcome Parking (MTN SEQ 3).

Defendant Welcome Parking also moves for summary judgment dismissing the complaint and all cross-claims, arguing that it owed no duty of care to plaintiff, did not create the alleged condition, and lacked actual or constructive notice thereof. Welcome Parking further seeks summary judgment on its third-party complaint for contractual indemnification against One Brooklyn Health Systems, Inc. d/b/a Brookdale Hospital.

“A duty of reasonable care owed by the tort-feasor to the plaintiff is elemental to any recovery in negligence. Foreseeability of injury does not determine the existence of duty ... Unlike foreseeability and causation, both generally factual issues to be resolved on a case-by-case basis by the fact finder, the duty owed by one member of society to another is a legal issue for the courts.” *Eiseman v State*, 70 NY2d 175 (1987) citing *De Angelis v Lutheran Med. Ctr.*, 58 NY2d 1053 (1983); *Pulka v Edelman*, 40 NY2d 781 (1976). “In the absence of duty, there is no breach and without a breach there is no liability.” *Id* at 782.

Here, as a matter of law, Welcome Parking owed no duty of reasonable care to plaintiff with respect to the alleged condition. While the Court notes that the reporting system under the management agreement may have lacked structure, the contractual language is clear. Paragraph 10 of the Management Agreement provides that “**nothing herein shall relieve Client (Brookdale) of its sole responsibility for the design, construction, and structural maintenance of the Parking Facility and its mechanical, electrical, plumbing, and security systems.**” (Management Agreement dated January 1, 2013).

Further, the agreement requires Brookdale Hospital to hold harmless Welcome Parking. Additionally, the Court finds that there is no evidence that Welcome Parking created the alleged condition or was responsible for performing any repairs.

Accordingly, Welcome Parking's motion for summary judgment is hereby **GRANTED**, and the plaintiff's complaint and all cross-claims are **DISMISSED** as against Welcome Parking.

Third Party Complaint

Welcome Parking further moves for summary judgment on its third-party complaint against Brookdale Hospital, seeking contractual indemnification for any and all claims arising from this action.

"The right to **contractual** indemnification depends upon the specific language of the contract." *Bellefleur v Newark Beth Israel Med. Ctr.*, 66 AD3d 807 (2d Dept 2009) citing *George v Marshalls of MA, Inc.*, 878 NYS2d 143 (2009); *Canela v TLH 140 Perry St., LLC*, 849 NYS2d 658 (2008). "The promise to indemnify should not be found unless it can be clearly implied from the language and purpose of the entire agreement and the surrounding circumstances." *Id at 808* citing *George v Marshalls of MA, Inc.*, 61 AD3d at 930 (2009); *Hooper Assoc. v AGS Computers*, 74 NY2d 487 (1989).

Here, the agreement is unambiguous. Paragraph 15 of the Management Agreement dated January 1, 2013, between Welcome Parking and Brookdale Hospital provides that Brookdale Hospital is solely responsible for design and structural conditions and is contractually obligated to indemnify Welcome Parking for claims arising therefrom. The provision states, in pertinent part: **"It is agreed that any actions, costs, claims, losses, expenses, and/or damages resulting from design or structural faults or defects are the responsibility of Client."**

Accordingly, Welcome Parking has established its prima facie entitlement to summary judgment on its third-party complaint.

Thus, Welcome Parking's motion for summary judgment on its third-party complaint is hereby **GRANTED**. Brookdale Hospital shall indemnify and hold harmless Welcome Parking from any actions, costs, claims, losses, expenses, and/or damages arising from this action.

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Conclusion

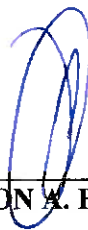
For the reasons set forth above, it is hereby

ORDERED that Amboy Properties' motion for summary judgment is **GRANTED**, and the complaint and all cross-claims are **DISMISSED** as against Amboy Properties; and it is further **ORDERED** that Welcome Parking's motion for summary judgment is **GRANTED**, and plaintiff's complaint and all cross-claims are **DISMISSED** as against Welcome Parking; and it is further **ORDERED** that Welcome Parking's motion for summary judgment on its third-party complaint is **GRANTED**.

This constitutes the Decision and Order of the Court.

Dated: April 15th, 2026

ENTER:



HON. SHARON A. BOURNE-CLARKE, J.S.C.