Marte v Alfred Weissman Real Estate, LLC
2025 NY Slip Op 35283(U)
June 20, 2025
Supreme Court, Queens County
Docket Number: Index No. 707488/20
Judge: Timothy J. Dufficy
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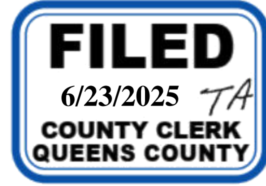
Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY



PRESENT: HON. TIMOTHY J. DUFFICY **PART 35**
Justice

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JEURY MARTE,

Plaintiff,

-against-

Index No.: 707488/20

Mot. Date: 3/18/25
Mot. Seq. 3

ALFRED WEISSMAN REAL ESTATE, LLC, 555 STORAGE GROUP LLC and TUCKAHOE OWNERS, LLC

Defendants.

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TUCKAHOE OWNERS, LLC and ALFRED WEISSMAN REAL ESTATE LLC

Third-Party Plaintiffs,

-against-

POP DISPLAYS USA, LLC,

Third-Party Defendants.

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The following papers were read on the motion by the defendants for an order, pursuant to to CPLR 3212, granting summary judgment in favor of defendants Alfred Weissman Real Estate LLC and Tuckahoe Owners, LLC, and dismissing the plaintiff's Complaint against them.

	PAPERS NUMBERED
Notice of Motion - Affirmation - Exhibits....................	EF 113-124
Answering Affirmation...	EF 126
Replying Affirmation...	EF 127

As an initial matter, the court record reflects that the action has been discontinued against defendant 555 Storage Group LLC (NYSCEF Doc. No. 91) and that the third-

party action against Pop Displays USA, LLC (Pop) has also been discontinued (see NYSCEF Doc. No. 85).

This negligence action arises from a slip and fall on ice, on January 30, 2019, at the premises, located at 555 Tuckahoe Road, Yonkers, New York (premises). The premises were owned by Tuckahoe Owners, LLC (Tuckahoe). Alfred Weissman Real Estate LLC (Weissman) was the agent for Tuckahoe. Plaintiff was an employee of third-party defendant Pop which was a subtenant of tenant Qwest/CenturyLink (Qwest).

The action was commenced by the filing of a Summons and Complaint, on June 15, 2020, which sounds in common law negligence. Plaintiff also does not allege any statutory violations in the Verified Bill of Particulars.

Defendants bring the instant motion for summary judgment, submitting, among other things, the plaintiff's deposition transcript, a photograph marked at the plaintiff's deposition, the deposition transcript of Joseph Genzano (Genzano) of Weissman, an affidavit from Genzano, and a copy of the lease agreement between Tuckahoe and Qwest.

Plaintiff testified that he was employed as a truck driver for Pop and the accident occurred, on January 30, 2019, at 6:00 a.m., at the exit to the yard where the Pop trucks were located. He went inside the Pop office in the building, clocked in, and then he walked out of the door on the left-hand side of the building, in order to go to the trucks. As he stepped out the door, he slipped on a patch of ice, causing him to fall on his buttocks and sustain injuries. The area where he fell was outside and open to the sky. The accident occurred outside, and it did not occur on any stairway. The nearest stairway was at least three steps away, inside the building. He identified a photograph (NYSCEF Doc. No. 121) and testified that he took the photograph right after he fell. There was a patch of ice near a cone shown in the photograph.

Genzano testified that 555 Tuckahoe Road is comprised of two commercial condominium units, 1 and 3. At the time of this incident, in January, 2019, there was a building on Condo Unit 1, but no buildings on Condo 2 or 3. The building on Unit 1 was rented to Qwest and Pop, plaintiff's employer, was a subtenant of Qwest. Pop did not pay rent to Tuckahoe. Genzano would not go into the building. He testified that, pursuant to a triple net lease agreement, the tenant was responsible for maintaining the premises. Genzano testified that it was the tenant's responsibility to clear snow and ice from the area where this accident occurred.

Section 8.1 of the lease: Tenant's Obligations: states, in pertinent part:

> Throughout the Term, Tenant, at its sole cost and expense, shall take good care of the Premises and all sidewalks, drives and parking areas, landscaped areas, curbs, gutters and vaults adjoining the Building, and will keep the same in good working order and condition, ordinary wear and tear excepted, and make all necessary repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen. **Tenant shall remove snow, ice, debris or any unlawful obstruction**. (emphasis added)

A movant for summary judgment must make *prima facie* showing of entitlement to summary judgment as a matter of law through the submission of sufficient evidence to demonstrate the absence of any material issues of fact, and he or she must do so by tender of evidentiary proof in admissible form (*see Alvarez v Prospect Hosp*., 68 NY2d 320 [1986]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 853 [1985]). Once the movant has made the *prima facie* showing, the burden shifts to the opposing party to come forward with sufficient proof in admissible form to establish the existence of triable issue of fact (*Alvarez v Prospect Hosp*., *supra*, 68 NY2d 320, 324).

"An owner or tenant in possession of [real property] owes a duty to maintain the property in a reasonably safe condition" (*Patterson v H.E.H., LLC*, 217 AD3d 879, 880, [2d Dept. 2023] [internal quotation marks omitted]). However, an out-of-possession landlord is not liable for injuries caused by a dangerous condition on leased premises in the absence of a duty imposed by statute or assumed by contract or a course of conduct" (*Achee v Merrick Vil., Inc*., 208 AD3d at 543-544 [2d Dept 2022]; *see Sweeney v Hoey*, 211 AD3d 1071, 1071-1072 [2d Dept 2022]; *Alnashmi v Certified Analytical Group, Inc*., 89 AD3d 10, 18 [2d Dept 2011].)

It is well-established law that an out-of-possession landowner is generally not liable for injuries occurring on its premises unless the landlord retains control of the premises or is contractually obligated to perform maintenance and repairs (*see Putnam v Stout*, 38 NY2d 607 [1976]; *Brewster v Five Towns Health Care Realty Corp*., 59 AD3d 483 [2d Dept 2009]; *Chapman v Silber*, 97 NY2d 9 [2001]).

The determinative factor in premises liability cases is control (*see Siegel v Hofstra University*, 154 AD2d 449 [2d Dept 1989]. Absent a duty of care, there is no breach and no liability (*id.*; *see Marasco v C.D.R. Electronics Security & Surveillance Systems Co., et. al.*, 1 AD3d 578 [2d Dept 2003].

"An 'out-of-possession landlord [is] not liable for injuries caused by dangerous conditions on leased premises in the absence of a statute imposing liability, a contractual provision placing the duty to repair on the landlord, or a course of conduct by the landlord giving rise to a duty' " (*McDonnell v Blockbuster Video, Inc.*, 203 AD3d 713, 714 [2d Dept 2022], quoting *Muller v City of New York*, 185 AD3d 834, 835 [2d Dept. 2020].)

Here, the Complaint sounds in common-law negligence and the pleadings do not allege the violation of a statute (*see Ferraro v 270 Skip Lane, LLC*, 177 AD3d 651, 652 [2d Dept 2019]).

The Court finds that the defendants established, *prima facie*, they were out of possession that they were out-of-possession landlords not bound by contract or a course of conduct to maintain the area of the premises where the plaintiff was injured (*See Marmolejo-Cuellar v. Spar Knitwear Corp*., 236 AD3d 889 [2d Dept 2025]; *Skjoldal v Pacific W. Constr. Corp*., 222 AD3d 1021, 1023 [2d Dept 2023]).

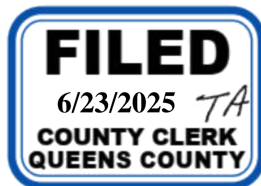
In opposition, the plaintiff fails to raise an issue of fact. Plaintiff's arguments regarding "stairs" are unavailing, as even viewing the evidence in a light most favorable to the plaintiff, the record is clear that this accident did not involve stairs. While reservation of a right of entry for inspection and repair may constitute sufficient retention of control to impose liability for injuries caused by a dangerous condition, but only where the condition violates a specific statutory provision **and** there is a significant structural or design defect (*see Tragale v. 485 Kings Corp*., 39 AD3d 626 [2d Dept 2007]; *Ingargiola v Waheguru Mgt*., 5 AD3d 732, 733 [2d Dept 2004]; *Stark v Port Authority of New York and New Jersey*, 224 AD2d 681 [2d Dept 1996] [emphasis added].) As stated above, the plaintiff does not allege any specific statutory violations, and snow or ice is not a significant structural or design defect for which an out-of-possession landlord may be held liable (see *Fuentes-Gil v Zear LLC*, 163 AD3d 421 [1st Dept. 2018]; *Bing v 296 Third Ave. Group, L.P.*, 94 AD3d 413, 413 [1st Dept 2012], *lv denied* 19 NY3d 815 [2012]).

Accordingly, it is

ORDERED that the defendants' motion for summary judgment is granted; and it is further

ORDERED that the Complaint is dismissed.

Dated: June 20, 2025



TIMOTHY J. DUFFICY, J.S.C.