

Zarnadze v Wise Bar & Grill LLC

2026 NY Slip Op 30157(U)

January 14, 2026

Supreme Court, Kings County

Docket Number: Index No. 511682/2023

Judge: Kerry J. Ward

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At an IAS Term, Part 3 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 14th day of January, 2026.

PRESENT:

HON. KERRY J. WARD, A.J.S.C.

IRAKLI ZARNADZE AND TEIMURAZ
MAGLAKELIDZE,

Plaintiffs,

-against-

WISE BAR & GRILL LLC d/b/a WISE BAR & GRILL,
SPIELVOGEL FAMILY ASSOCIATES, LLC, THE SARA
SPIELVOGEL GST TRUST, GUARDIAN RISK
MANAGEMENT CONSULTANTS LLC d/b/a
GUARDIAN SECURITY, AMERICAN FIRE &
SECURITY, INC., ABC COMPANY, Said Name Being
Fictitious and Intended to be The Security Company, and
JOHN DOE(S) 1-3, Said Names Being Fictitious and
Intended to be the Assailants of the Plaintiffs,

Defendants.

WISE BAR & GRILL LLC d/b/a WISE BAR & GRILL,

Third-Party Plaintiff,

-against-

GUARDIAN RISK MANAGEMENT CONSULTANTS
LLC d/b/a GUARDIAN SECURITY, AMERICAN FIRE &
SECURITY INC. AND NEXT INSURANCE INC.,

Third-Party Defendants.

Defendants, Spielvogel Family Associates LLC and The Sara Spielvogel GST Trust (hereinafter "Moving Defendants"), move for summary judgment, dismissing the Complaint of

Plaintiffs Irakli Zarnadze and Teimuraz Maglakelidze with prejudice and dismissing all crossclaims by Defendant/Third-Party Plaintiff Wise Bar & Grill LLC d/b/a/ Wise Bar & Grill (“Defendant Wise Bar”) pursuant to CPLR § 3212. In the alternative, Defendants contend that, should Plaintiffs’ claims not be dismissed, they are entitled to indemnification from Defendant/Third-Party Plaintiff Wise Bar, by virtue of the indemnification provision contained in the lease agreement for the premises. Plaintiffs and Defendant/Third-Party Plaintiff Wise Bar oppose the motion.

Moving Defendants’ motion for summary judgement dismissing Plaintiffs’ Complaint and dismissing all crossclaims by Defendant Wise Bar pursuant to § 3212 is hereby granted.

Background and Procedural History

This action is brought by Plaintiffs asserting a cause of action based in negligence, arising from an incident which occurred on April 8, 2023, at 35 Neptune Avenue, Brooklyn, New York (the “Premises”). Plaintiffs Irakli Zarnadze and Teimuraz Maglakelidze allege that they sustained injuries during an altercation at the Premises, which is owned by Defendant Spielvogel Family Associates, LLC and operated by Defendant/Third-Party Plaintiff Wise Bar (“Wise Bar”).

Plaintiffs filed a Summons and Verified Complaint on April 19, 2023 (Exhibit 1, NYSCEF Doc. 154), followed by a Supplemental Summons and Amended Verified Complaint, filed on April 21, 2023 (Exhibit 2, NYSCEF Doc. 155). On July 5, 2023, Defendant/Third-Party Plaintiff, Wise Bar interposed an Answer with counterclaims and crossclaims (Exhibit 3, NYSCEF Doc. 156). Plaintiffs filed a Second Supplemental Summons and Second Amended Verified Complaint on July 7, 2023 (Exhibit 4, NYSCEF Doc. 157), and on August 18, 2023, Moving Defendants interposed their Answer (Exhibit 5, NYSCEF Doc. 158). Defendant/Third-Party Plaintiff Wise Bar filed a Third-Party Summons and Complaint on September 19, 2023 (Exhibit 6, NYSCEF Doc. 159). Plaintiffs filed a Third Supplemental Summons and Third Amended Verified Complaint on November 6, 2023 (Exhibit 8, NYSCEF Doc. 161), and on November 22, 2023, Defendant/Third-Party Defendant, Guardian Risk Management Consultants LLC d/b/a Guardian Security, interposed an Answer (Exhibit 9, NYSCEF Doc. 162). Defendant/Third-Party Defendant, American Fire & Security, Inc., interposed an Answer on April 5, 2024 (Exhibit 11, NYSCEF Doc. 164).

Moving Defendants submit an affidavit and other documentary evidence establishing ownership of Wise Bar (Exhibit F, NYSCEF Doc. 146). In addition, Moving Defendants submit lease and assignment documents establishing that the Premises was leased subject to a triple net lease to Defendant/Third-Party Plaintiff Wise Bar (Exhibit D, NYSCEF Doc. 144; Exhibit A, NYSCEF Doc. 174). Article 14, Repairs and Maintenance, in the Rider to the Lease states that Tenant Wise Bar, at its sole expense, is responsible for taking good care of the premises, which includes “making repairs, ordinary or extraordinary, interior or exterior, non-structural or otherwise, including all of the roof or basement areas” (Exhibit A at p. 37). In addition, Article 2, Non-Liability and Indemnification, in the Rider to the Lease, states that the Landlord (Moving Defendants) shall not be liable to the Tenant (Wise Bar) for any “bodily or personal injury or damage to Tenant, Tenant’s invitee, guest, servant, employee, agent, licensees or to any other person or for any damage to, or loss (by theft or otherwise) of, any property of Tenant...irrespective of the cause of such injury, damage, or loss, unless caused wholly by or due to the willful acts or gross negligence of the Landlord occurring within the scope of employment without any negligence on the part of the Tenant, Tenant’s agents, employees, invitees, guests, or any other third-party” (*Id.* at p. 42). Finally, the Rider states in relevant part that “any and all agents, servants, employees, staff, and independent contractors of Wise Bar, including without limitation security guards, providers of security systems, bouncers, entertainers, DJs, and performer or any other person, entity, contractor, independent contractor or service hired by Wise Bar...” (*Id.* at p. 9).

Moving Defendants’ documentary evidence is further supported by a sworn Affidavit submitted by Susan D. Spielvogel, on behalf of Defendants, which states, “under the lease agreement, the tenant assumed full responsibility for the premises...my family trust did not operate, supervise, maintain, control or direct the operation of the tenant...hire any employees to work at the property...my family trust did not hire any security companies or contractors to work at the property...did not supervise, direct, instruct, or control any security personnel that worked at the property” (NYSCEF Doc. 146 at p. 2).

Moving Defendants submit video evidence of the altercation which led to Plaintiffs’ injuries at the subject Premises (Exhibit E). Upon review, it appears that Plaintiffs’ injuries arose from an altercation with another bar patron.

Defendant/Third-Party Plaintiff Wise Bar contends that the instant motion by Moving Defendants is premature. Wise Bar alleges that there is a genuine issue of fact as to whether a dangerous or defective condition was present on the property which caused Plaintiff to trip resulting in serious personal injury. Wise Bar further alleges that there exists a genuine issue of material fact as to the ownership of the premises where the accident occurred, as well as the precise location of the incident - specifically, whether it took place on property owned by the Moving Defendants or on the adjoining premises.

In their opposition, Defendant/Third-Party Defendant Guardian similarly contends that Moving Defendants' motion is premature as discovery is in its infancy, and evidence as to Moving Defendants' role at the Premises, including whether Moving Defendants owed a duty to Plaintiffs at the time of the accident, is still outstanding.

Law and Analysis

Pursuant to CPLR 3212, “[a] motion [for summary judgment] shall be granted if . . . the cause of action . . . [is] established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party” (CPLR 3212 [b]; *Rodriguez v. City of New York*, 31 N.Y.3d 312 [2018]). The motion for summary judgment must also “show that there is no defense to the cause of action” (*Id.*). The party moving for summary judgment must make a *prima facie* showing that it is entitled to summary judgment by offering admissible evidence demonstrating the absence of any material issues of fact and it can be decided as a matter of law (CPLR § 3212 [b]; *see Jacobsen v New York City Health and Hosps. Corp.*, 22 N.Y.3d 824 [2014]; *see also Brill v City of New York*, 2 N.Y.3d 648 [2004]). In deciding a summary judgment motion, the court does not make credibility determinations or findings of fact. Its function is to identify issues of fact, not to decide them (*see Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499, 505 [2012]). Once a *prima facie* showing has been made, however, the burden shifts to the non-moving party to prove that material issues of fact exist that must be resolved at trial (*see Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]).

A defendant real property owner, or a party in possession or control of real property who moves for summary judgment can establish its *prima facie* entitlement to judgment as a matter of law by showing that it neither created the allegedly dangerous or defective condition nor had actual or constructive notice of its existence (*see Chang v. Marmon Enters., Inc.*, 172 A.D.3d 678-679

[2d Dept. 2019].) An out-of-possession landlord is not liable for injuries that occur on premises unless the landlord retained control over the premises and has a ‘duty imposed by statute or assumed by contract or course of conduct’ (see *Vaughan v. Triumphant Church of Jesus Christ*, 193 A.D.3d 1104, 1105 [2d Dept. 2021]). Even if a defendant is considered an out-of-possession landlord who assumed the obligation to make repairs to its property, it cannot be held liable for injuries caused by a defective condition on the property unless it either created the condition or had actual or constructive notice of it (*Id.*). Finally, when an out-of-possession landlord retains no control over the premises and has no contractual obligation to maintain the premises or make repairs, and a personal injury accident occurs, the landlord is precluded of liability in a premises liability suit (see *Grippio v City of New York*, 45 AD3d 639 [2d Dept 2007]).

In the present case, based on the documentary and video evidence, Moving Defendants were out of possession landlords that leased the building to Defendant Wise Bar & Grill pursuant to a triple net lease. Notably, Moving Defendants did not employ any persons at the building, did not assist in operating the establishment at the premises and did not assume any responsibility for the management of the bar (Exhibit A, NYSCEF Doc. 174). While Defendant/Third-Party Plaintiff Wise Bar alleges that a defective condition existed on the Premises, which caused Plaintiff to trip and sustain serious personal injury, based on the record before the Court, there is no admissible evidence to suggest that such defective condition existed at the time of the incident. The Court would also note that the video evidence (Exhibit E) does not support a finding that Plaintiffs’ injuries were caused by a defect on the Premises.

Accordingly, Moving Defendants’ motion for summary judgement dismissing Plaintiffs’ Complaint and dismissing all crossclaims by Defendant/Third-Party Plaintiff Wise Bar pursuant to § 3212 is hereby granted.

This constitutes the Decision and Order of the Court.

ENTER:



HON. KERRY J. WARD, A.J.S.C.

Hon. Kerry J. Ward, A.J.S.C.