

Muminovic v KPMG LLP
2026 NY Slip Op 30345(U)
February 2, 2026
Supreme Court, New York County
Docket Number: Index No. 151651/2014
Judge: Arlene P. Bluth
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

JASMINA MUMINOVIC,

Plaintiff,

- v -

KPMG LLP, 345 PARK AVENUE L.P., RUDIN
MANAGEMENT CO. INC.,

Defendant.

-----X

KPMG LLP,

Third-Party Plaintiff,

-against-

MERLIN INDUSTRIES, INC.,

Third-Party Defendant.

-----X

KPMG LLP,

Second Third Party Plaintiff,

-against-

ARAMARK CORPORATION, PEPSICO, INC.,
C C VENDING, INC., and PEPSI-COLA BOTTLING
COMPANY OF NEW YORK, INC.

Second Third Party Defendants.

-----X

345 PARK AVENUE L.P. AND RUDIN
MANAGEMENT CO. INC.,

Third Third-Party Plaintiffs,

-against-

ARAMARK SERVICES, CC VENDING, INC.
PEPSI-COLA BOTTLING COMPANY OF
NEW YORK, INC., and MERLIN INDUSTRIES, INC.,

Third Third-Party Defendants.

INDEX NO. 151651/2014

MOTION DATE , 01/15/2026

MOTION SEQ. NO. 009 010 011
012 013

**DECISION + ORDER ON
MOTION**

-----X
PEPSI-COLA BOTTLING COMPANY OF
NEW YORK, INC.,

Fourth-Third Party Plaintiff,

-against-

C C VENDING, INC.,

Fourth-Third Party Defendant.
-----X

The following e-filed documents, listed by NYSCEF document number (Motion 009) 365, 366, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441

were read on this motion to/for REARGUMENT/RECONSIDERATION.

The following e-filed documents, listed by NYSCEF document number (Motion 010) 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 428, 469, 470, 472, 473, 474, 478, 482, 483, 484, 497, 498, 499, 500, 501, 502, 503

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

The following e-filed documents, listed by NYSCEF document number (Motion 011) 423, 424, 425, 426, 429, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 476, 480, 485, 486

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER.

The following e-filed documents, listed by NYSCEF document number (Motion 012) 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 460, 461, 462, 463, 464, 465, 466, 467, 468, 475, 477, 479

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

The following e-filed documents, listed by NYSCEF document number (Motion 013) 487, 488, 489, 490, 491, 492, 493, 494, 495, 496

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

Motion Sequence Numbers 009, 010, 011, 012 and 013 are consolidated for disposition.

They are decided as described below.

Background

Before the Court delves into this case, the undersigned must apologize for the extensive delay in the issuance of this decision. It seems that the judge previously assigned to this case may have held oral argument back in early 2025 and then did nothing with respect to these motions

prior to retiring from the bench. This Court was horrified to see that these motions were still pending when this case was recently transferred to this part.

Plaintiff brings this case arising out of a slip and fall while she was working as a cleaning person. She testified that she was working in the kitchen on the 23rd floor of a building when she slipped and fell on water that apparently came from a nearby soda machine (NYSCEF Doc. No. 437 at 41-42). Plaintiff explained that “I finished and my cart was full of garbage. So I needed to go and change the garbage, the cart. I push the cart and I slip on the water” (*id.* at 42). Plaintiff worked for non-party Triangle (*id.* at 14).

Plaintiff emphasized that this leak was recurring issue and that she had seen water in this location prior to her accident (NYSCEF Doc. No. 448 at 25). She claimed she saw people from the property management company working on the machine about a month before the accident (*id.* at 28). Plaintiff even insisted that she saw this person working on the machine five times prior to her accident (*id.* at 31).

The direct defendants, including the tenant KPMG, argue that there were no complaints about this vending machine and stress that plaintiff admitted she never complained herself about the purported leaks.

Alas, this is where the relatively straightforward nature of this case takes a turn regarding the question of the vending machine. The record is replete with many, many contracts for this single vending machine and so this Court will endeavor to organize the dispute by motion.

MS009

In this motion, defendants KPMG, LLP (“KPMG”), 345 Park Avenue, (“345”) and Rudin Management Co. (“Rudin”) move to reargue a decision issued by the prior judge assigned to this matter. That motion is denied.

MS010

In this motion, defendants move *inter alia* for summary judgment on KPMG’s claim for contractual indemnification against third-party defendant Aramark Corporation (“Aramark”), its claim for failure to procure insurance against Aramark, its claim for contractual indemnification against Merlin Industries, Inc. (“Merlin”), 345 and Rudin’s demand to dismiss plaintiff’s complaint, and all of these defendants’ remaining claims against Aramark and Merlin.

KPMG contends that in its contract with Aramark, Aramark was supposed to indemnify KPMG for Aramark’s negligence. It blames Aramark for inferior maintenance of the soda machine that caused plaintiffs’ purported injuries. KPMG contends that it was Aramark who is responsible for maintaining the machine and that Aramark later contracted with another entity, CC Vending (a defendant in multiple third-party actions here) to stock and maintain this machine.

Aramark contends that it was not its job to mop and maintain the floors of the subject pantry/kitchen and emphasizes that KPMG hired another entity, third-party defendant Merlin to do that work. It also points out that KPMG hired plaintiff’s employer Triangle to take out the trash. Aramark contends that KPMG was aware as early as 2008 that CC Vending was to handle the subject soda machine.

The Court grants the branch of KPMG's motion that seeks contractual indemnification. The agreement provides in relevant part that "Repair, Replacement and Maintenance: Client shall reasonably furnish building maintenance services for the Food Service Facilities, shall promptly make all equipment repairs and replacements, and shall be responsible for compliance with all federal, state and local safety and health laws and regulations with respect to the Food Service Facilities. Aramark shall provide Client with written notification of any required repairs or replacements of Equipment" (NYSCEF Doc. No. 398, ¶ 3[B]). And Aramark agreed to provide vending equipment (*id.* ¶ 3[E]). And there is no dispute that the agreement required Aramark to obtain insurance naming KPMG as an additional insured (*id.* ¶ 12).

Aramark does not dispute the contents of the agreement. Instead, it appears to contend that KPMG knew that it entered into its own subcontract with CC Vending and that KPMG hired other contractors to handle cleaning and garbage removal. However, the fact that Aramark may have done its own subcontracting does not eviscerate the contract between KPMG and Aramark.

Critically, Aramark did not explain how KPMG may have been negligent. After all, "[A] party seeking contractual indemnification must prove itself free from negligence, because to the extent its negligence contributed to the accident, it cannot be indemnified therefor" (*Giannas v 100 3rd Ave. Corp.*, 166 AD3d 853, 857, 88 NYS3d 442 [2d Dept 2018] [internal quotations and citations omitted]). Here, plaintiff says she slipped from water coming from a vending machine that Aramark was contracted to supply to KPMG and KPMG had no duty to maintain or repair the vending machine. KPMG is therefore entitled to contractual indemnity. Of course, as will be discussed below, Aramark is certainly entitled to blame its subcontractor and other contractors at the site.

With respect to the failure to procure insurance issue, the Court denies that branch of the motion as Aramark included an additional insured endorsement that states insurance coverage is afforded to “1) Any person, organization or entity for whose protection and benefit the Named Insured has or shall have, by contract or agreement, agreed to procure liability insurance” (NYSCEF Doc. No. 483). The aforementioned agreement clearly applies. The Court emphasizes that if KPMG is denied coverage under this endorsement it may, of course, bring a proper motion to renew. But the fact is that in response to the claim that it failed to procure insurance, Aramark contends that it did get the required coverage and attached this document as proof. That suggests that it complied with this term of the contract.

The Court denies the branch of this motion that seeks summary judgment against Merlin as the prior judge dismissed all of the claims against that defendant in NYSCEF Doc. No. 360. Defendants move to reargue that decision in MS009, but this Court denied that motion.

Defendants also seek summary judgment for 345 and Rudin against plaintiff on the theory that they are an out of possession landlord and property manager.

The Court denies this branch of the motion. 345 and Rudin had offices at the building and staff who regularly worked there, including maintenance staff that responded to tenant complaints (NYSCEF Doc. No. 498 at 31, 32 [deposition testimony noting that maintenance crew work a light tan uniform with the insignia of 345 Park on it]). That raises a clear issue of fact (*Grullon v 57-115 Assoc., L.P.*, 229 AD3d 608, 609, 215 NYS3d 428 [2d Dept 2024] [finding an issue of fact concerning an out of possession landlord and building manager where

they maintained an office in the building]). And plaintiff testified that she saw a Rudin engineer working on the machine with a flashlight on five occasions (NYSCEF Doc. No. 448 at 69).

Finally, the Court denies the branch of the motion that seeks contribution and common law indemnification in favor of the direct defendants and against Aramark.

“In distinction, in the case of common-law indemnification, the one seeking indemnity must prove not only that it was not guilty of any negligence beyond the statutory liability but must also prove that the proposed indemnitor was guilty of some negligence that contributed to the causation of the accident for which the indemnitee was held liable to the injured party by virtue of some obligation imposed by law” (*Correia v Professional Data Mgt., Inc.*, 259 AD2d 60, 65, 693 NYS 2d 596 [1st Dept 1999]). There is no evidence, as will be discussed in greater detail below, that Aramark was guilty of some negligence. It seems that Aramark contracted out the vending machine task to another entity (which then contracted it out to yet another entity).

MS011

In this motion, Aramark moves for summary judgment on its claims for contractual indemnification from CC Vending as well as its claims for contribution and common law indemnification against CC Vending and Pepsi-Cola Bottling Company of New York, Inc. (“Pepsi-Cola”).

Aramark contends that it had a contract with CC Vending in which CC Vending was supposed to indemnify Aramark for any negligence or claims from the agreement. Aramark argues that CC Vending agreed, under this contract, to provide vending machines in KPMG’s office at 345 Park Avenue and that CC Vending agreed to install and repair these machines.

It also insists that it is entitled to summary judgment against CC Vending and Pepsi-Cola for contribution and common law indemnification because the vending services were contracted out to CC Vending, who then entered into its own contract with Pepsi-Cola.

In opposition, CC Vending contends that it satisfied its obligations under the contract at all times to install, repair and maintain all equipment necessary. It argues that the subject machine was owned by Pepsi-Cola and that Pepsi-Cola was obligated to service and repair the machine. CC Vending contends that it was responsible for restocking the machine and notifying Pepsi-Cola of any problems.

Pepsi-Cola contends that it never got any reports about the vending machine and that the only time it ever went to this specific location (the 23rd floor pantry/kitchen) was to replace the vending machine in 2012, about eight months after the accident.

“In contractual indemnification, the one seeking indemnity need only establish that it was free from any negligence and was held liable solely by virtue of the statutory liability. Whether or not the proposed indemnitor was negligent is a non-issue and irrelevant. In distinction, in the case of common-law indemnification, the one seeking indemnity must prove not only that it was not guilty of any negligence beyond the statutory liability but must also prove that the proposed indemnitor was guilty of some negligence that contributed to the causation of the accident for which the indemnitee was held liable to the injured party by virtue of some obligation imposed by law” (*Correia*, 259 AD2d at 65).

The Court grants the motion with respect to contractual and common law indemnification between Aramark and CC Vending. The subject contract states that CC Vending was to “Install, repair and maintain all equipment (including service vehicles) necessary or appropriate for Subcontractor's performance of this Agreement; provided, however, ARAMARK shall remain

the owner of all vending and related equipment” (NYSCEF Doc. No. 455 ¶ 2[A]). If, as plaintiff alleges, the accident happened because the vending machine was leaking then it was clearly CC Vending’s responsibility to repair and maintain the equipment with respect to Aramark. That CC Vending points the finger towards Pepsi-Cola is of no moment because of the contractual obligations CC Vending undertook to Aramark. And CC Vending agreed to procure insurance for Aramark that named it as an additional insured (*id.* ¶ 6[B]). Because Aramark contracted out the procuring and maintenance of the vending machine to CC Vending, it is entitled to common law indemnification in the alternative.

However, the Court denies Aramark’s motion to the extent it seeks common law indemnification from Pepsi-Cola. As noted above, common law indemnification requires proof that the party against whom this relief is sought was negligent. Here, there is an issue of fact as to which party was ultimately responsible for noticing the leak and repairing the vending machine.

To the extent that Aramark made a broad-based request to dismiss all claims against it, that branch of its motion is denied.

MS012

Pepsi-Cola moves in this application to dismiss the claims against it. It claims that even if water had leaked from this machine, it did not create or have actual or constructive notice of the leak.

The direct defendants (KPMG, 345 and Rudin) contend that Pepsi-Cola did not meet its prima facie burden because it never submitted proof as to when the subject machine was installed or that it was ever in good condition. They point out that there is a specific form

required prior to the installation of one of its machines and that this document was never exchanged in discovery. Defendants contend that there should have been such a record from when the machine was installed and after it was replaced following the accident.

The Court denies this motion in its entirety. There are issues of fact concerning notice of the leak. Plaintiff testified that this leak was a recurring issue (*e.g.*, NYSCEF Doc. No. 448 at 28). And the fact is that Pepsi-Cola did not show indisputable proof that it correctly installed the vending machine in the first instance or why it changed the machine after the accident. In other words, a fact finder might lay blame with Pepsi-Cola for some or all of the leak from the machine.

MS013

CC Vending moves to dismiss the second, third and fourth third-party complaints against it on the ground that it had no duty under the contract with Pepsi-Cola to inspect the vending machine. It contends that Pepsi-Cola owned the vending machine and so it had the duty to repair the vending machine in question.

Pepsi-Cola contends in opposition that the prior judge assigned to this case granted Pepsi-Cola's motion for summary judgment on liability against CC Vending on Pepsi-Cola's second cause of action in the fourth party complaint, which sought defense and indemnity due to CC Vending's failure to procure contractually-required insurance. Pepsi-Cola contends that it was CC Vending who was responsible for notifying it of any issues with the vending machine and that CC Vending's employee was on site weekly for years prior to the alleged accident.

CC Vending did not offer any reply.

The Court denies this motion given the prior judge's decision (NYSCEF Doc. No. 471). Moreover, there are clearly issues of fact concerning the exact cause of plaintiff's accident. As noted in the voluminous record submitted on this motion, one theory is that the machine itself was faulty. However, the Court cannot overlook the fact that CC Vending, under its contract with Pepsi-Cola, had a duty to notify Pepsi-Cola of any issues with the machine (NYSCEF Doc. No. 439, ¶ 3). And CC Vending's witness testified that he went to this pantry/kitchen once a week (NYSCEF Doc. No. 433 at 31). Of course, this witness denied any knowledge concerning a leak (*id.* at 46).

Summary

Through the maze of contracts for a single vending machine, it is clear that there are material issues of fact. Plaintiff's testimony suggests that the leak was a recurring issue and one she had noticed prior to her accident. In fact, she claimed she saw people from Rudin working on the machine on at least five occasions. That significant of a leak certainly raises issues of fact about notice. The fact finder may ultimately discredit plaintiff's testimony and find that it was not a recurring issue and that, therefore, there was not the requisite notice to pursue her claims. Or the fact finder might think that there was a dangerous condition that caused plaintiff's injuries, and the relevant parties had the requisite notice.

On these papers, however, it is unclear which party may have partial (or even full) responsibility for the machine and for the maintenance of the machine. Many of the parties entered into contractual agreements with indemnification clauses and that created obligations to report any repair or maintenance issues. It will ultimately be up to a jury to apportion blame.

Accordingly, it is hereby

ORDERED that defendants KPMG LLP, 345 Park Avenue L.P. and Rudin Management Co. Inc.’s motion to reargue (MS009) is denied; and it is further

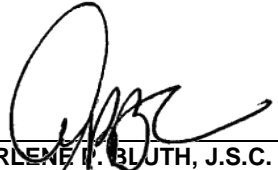
ORDERED that defendants KPMG LLP, 345 Park Avenue L.P. and Rudin Management Co. Inc.’s motion (MS010) is granted only to the extent that KPMG LLP is entitled to contractual indemnity from defendant Aramark and denied with respect to the remaining branches of the motion; and it is further

ORDERED that Aramark Corporation’s motion (MS011) is granted only to the extent that it is entitled to contractual and common law indemnification from CC Vending, Inc. and denied with respect to the remaining branches of the motion; and it is further

ORDERED that Pepsi-Cola Bottling Company of New York, Inc.’s motion (MS012) dismissing the claims against it is denied; and it is further

ORDERED that CC Vending, Inc.’s motion (MS013)’s motion is denied.

2/2/2026
DATE


ARLENE T. BLUTH, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input checked="" type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE