

Perez v King Clean Professional Off. Cleaning Inc.

2026 NY Slip Op 31228(U)

March 26, 2026

Supreme Court, Kings County

Docket Number: Index No. 516484/2020

Judge: Anne J. Swern

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This opinion is uncorrected and not selected for official publication.

At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 26th day of March 2026.

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

DONNA PEREZ,

Plaintiff(s),

-against-

KING CLEAN PROFESSIONAL OFFICE CLEANING INC. and ONE EDGEWATER EQUITIES LLC,

Defendant(s).

ONE EDGEWATER EQUITIES LLC,

Third-Party Plaintiff(s)

-against-

STATEN ISLAND UNIVERSITY HOSPITAL,

Third-Party Defendant.

DECISION & ORDER

Index No.: 516484/2020

Motion Seq.: 7 and 9

Return Dates: 12/18/2025
03/26/2026

Recitation of the following papers as required by CPLR 2219(a):

	NYSCEF Papers Numbered
007 Notice of Motion and Supporting Documents	135-154
Affirmations in Opposition and Supporting Documents.....	187-200, 202-203, 231-232
Reply Affirmations and Supporting Documents.....	234-236
009 Notice of Cross-Motion and Supporting Documents	240-241
Affirmation in Opposition and Supporting Documents.....	242-244

Upon the foregoing papers, the decision and order of the Court is as follows:

This is an action for personal injuries commenced by plaintiff when she fell in the course of her employment with the third-party defendant, Staten Island University Hospital (“SIUH”).

The premises where she fell were owned by One Edgewater Equities, LLC (“Edgewater”) and leased to SIUH.

Plaintiff alleges that her accident occurred when she fell on a wet floor. She testified that immediately before she fell, an employee of King Clean Professional Office Cleaning (King Clean) had mopped the floor. King Clean was hired by SIUH to maintain the premises.

Procedural History

On 9/12/2025, Edgewater moved for an order of summary judgment per CPLR § 3212 a) dismissing plaintiff’s complaint on the basis that under the lease, it was only obligated to perform structural repairs; and b) awarding judgment on its third-party indemnification claims against SIUH (MS #7). On 10/6/2025, SIUH cross-moved for summary judgment dismissing the third-party complaint based on Workers Compensation Law § 11 (MS #8). Both motions were scheduled for 12/18/2025 for oral arguments. Upon SIUH’s failure to appear for oral argument, the cross-motion was marked off calendar without a decision per the Part 75 Rules relating to motion appearances and oral argument (MS #8). The Court reserved decision on Edgewater’s motion (MS #7).

On 1/6/2026, SIUH re-filed their cross-motion for an order restoring it to the Court’s calendar and thereafter grant summary judgment dismissing the third-party complaint. The motion was calendared by the Court for 2/19/2026 in the Central Compliance Part whereupon the motion was adjourned and rescheduled for 3/26/2026 for oral argument in Part 75. The Court held in abeyance a decision on Edgewater’s motion for summary judgment pending oral argument of SIUH’s motion to restore since a determination of Edgewater’s motion would dictate the outcome of SIUH’s underlying cross-motion for grant summary judgment.

DISCUSSION

The Court first addresses the motions by Edgewater and SIUH. SIUH had opposed Edgewater's motion for an award of contractual indemnification on the basis that under Workers Compensation Law § 11, any claim for indemnification is barred as a matter of law unless the employer expressly opts out of the statute's protections or the injured plaintiff sustains a grave injury as defined by the statute. Here, neither exception to Workers Compensation Law § 11 can be established by Edgewater. Therefore, in its initial cross-motion, SIUH argues that Edgewater's motion must be denied and their motion dismissing the third-party complaint must be granted. In reply to its motion and in opposition to SIUH's initial cross-motion, Edgewater argues that the indemnification language in the lease is unambiguous. Therefore, SIUH's motion is without merit and its motion for contractual indemnification must be granted.¹

Where, as here, "plaintiff has not sustained a 'grave injury,'² section 11 of the Workers' Compensation Law bars third-party actions against employers for indemnification or contribution unless the third-party action is for contractual indemnification pursuant to a written contract in which the employer 'expressly agreed' to indemnify [the third-party plaintiff] for injuries to its workers. Requiring the indemnification contract to be clear and express furthers the spirit of the legislation" (*Tonking v Port Authority of New York & New Jersey*, 3 NY3d 486, 490 [2004] [italics added]). Here, the indemnification does not express a clear and unambiguous intent that SIUH opted out of the protections of the Workers Compensation Law and agreed to

¹ "Tenant shall assume the risk of, be responsible for, have the obligation to insure against, and indemnify Landlord and hold it harmless from any and all liability...for any loss, damage, injury or death to person or property occurring in the premise's caused by Tenant...contractors...and anyone else entering the Premises at the invitation of or with the consent of Tenant."

² A grave injury is defined as a permanent total disability under section 11, *i.e.*, an injury that results in (1) the unemployability in any capacity, which keeps with legislative intent and sets a more objectively ascertainable test than equivalent, or competitive, employment and/or (2) can participate in activities of daily living (*See Rubeis v Aqua Club Inc.*, 3 NY3d 408, 417 [2004]). Here, plaintiff has made no such claims.

indemnify Edgewater for injuries to SIUH's employees. Accordingly, Edgewater's motion for summary judgment on its claims for indemnification is denied.

Based on the foregoing findings, the Court grants SIUH's motion to restore its cross-motion for summary judgment dismissing the third-party complaint since the Court did not issue a short form order. Instead, the Court entered an administrative decision from which no right of appeal lies absent a motion on notice seeking to restore same to the calendar of the Court. Upon restoring the cross-motion, SIUH is granted summary judgment dismissing the third-party complaint based on Workers Compensation Law § 11.

Turning now to that portion of Edgewater's motion seeking to dismiss plaintiff's complaint that it was only responsible for structural repairs to the premises under the lease agreement, it contends that it cannot be held liable as an out-of-possession landlord for transient conditions. In support of this argument, Edgewater cites *Stryker v D'Agostino Supermarkets, Inc.*, 88 AD3d 584 [2d Dept 2011] and *Sorrentini v Netta Realty Grp.*, 100 AD3d 484 [1st Dept 2012]. In opposition, both King Clean and plaintiff argue that because Edgewater retained the right of re-entry to inspect the premises, the motion must be denied as there are questions of fact concerning actual and constructive notice of the condition that is alleged to have caused plaintiff's accident. It is also argued that discovery is still outstanding.

Summary judgment may be granted only when no triable issue of fact exists (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]). "A party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, producing sufficient evidence to demonstrate the absence of any material issue of fact. However, a failure to demonstrate a prima facie entitlement to summary judgment motion, requires a denial of the motion regardless of the adequacy of the opposing papers" (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993], citing

Alvarez v Prospect Hospital, 68 NY2d 324). “Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution” (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003] and *Alvarez v. Prospect Hospital*, 68 NY2d 324).

The Court’s only role upon a motion for summary judgment is to identify the existence of triable issues, and not to determine the merits of any such issues (*Vega v Restani Construction Corp.*, 18 NY3d 499, 505 [2012]) or the credibility of the movant’s version of events (see *Xiang Fu He v Troon Management, Inc.*, 34 NY3d 167, 175 [2019] [internal citations omitted]). The Court must view the evidence in the light most favorable to the nonmoving party, affording them the benefit of all reasonable inferences that can be drawn from the evidence (see *Negri v Shop & Stop, Inc.*, 65 NY2d 625, 626 [1985]). The motion should be denied where the facts are in dispute, where different inferences may be drawn from the evidence, or where the credibility of the witnesses is in question (see *Cameron v City of Long Beach*, 297 AD2d 773, 774 [2d Dept. 2002]).

Edgewater’s motion for summary judgment dismissing plaintiff’s complaint against it is granted. Plaintiff and King Clean have not rebutted Edgewater’s *prima facie* entitlement to summary judgment by demonstrating material issues of fact with respect to Edgewater’s duties under the lease (*Stryker v D’Agostino Supermarkets, Inc.*, 88 AD3d 584 and *Sorrentini v Netta Realty Grp.*, 100 AD3d 484).

To survive a motion for summary judgment, the opposition must satisfy two elements to impose liability on an out-of-possession landlord with respect to transient conditions. First, it must be established that the landlord retained an obligation to maintain the premises and second, it specifically retained “the obligation to rectify transient conditions of the type that allegedly

caused the plaintiff's accident" (*Sorrentini v Netta Realty Grp.*, 100 AD3d 485-486). Further, where a landlord only retains the responsibility for structural repairs, plaintiff must demonstrate that the purported hazard constituted a structural or design defect that violated a specific statutory provision such as the New York City Administrative Code (*Stryker v D'Agostino Supermarkets, Inc.*, 88 AD3d 585, citing *Boateng v Four Plus Corp.*, 22 AD3d 322, 324 [1st Dept 2005] [Landlord entitled to summary judgment despite a question of fact as to constructive notice of a recurring unsafe condition in the tenant's leased premises.]). Here, per §5.05 of the lease agreement Edgewater did not retain the right to re-enter the premises leased to SIUH for anything other than structural repairs, environmental samplings and inspections, repairs, alternations or improvements (*Sorrentini v Netta Realty Grp.*, 100 AD3d 485-486).

The Court has considered the parties' remaining arguments and finds same to be without merit.

Accordingly, it is hereby

ORDERED that defendant ONE EDGEWATER EQUITIES, LLC's motion for summary judgment per CPLR § 3212 dismissing plaintiff's complaint and all crossclaims against it is GRANTED in its entirety (MS #7), and it is further

ORDERED that defendant ONE EDGEWATER EQUITIES, LLC's motion for summary judgment per CPLR § 3212 granting an award of common law and contractual indemnification against third-party defendant STATEN ISLAND UNIVERSITY HOSPITAL is DENIED (MS #7), and it is further

ORDERED that third-party defendant STATEN ISLAND UNIVERSITY HOSPITAL's motion to restore its underlying motion for summary judgment per CPLR § 3212 dismissing the third-party complaint and all crossclaims against it is GRANTED (MS #9), and it is further

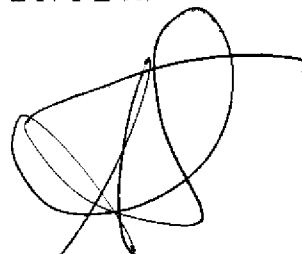
ORDERED that upon restoring third-party defendant STATEN ISLAND UNIVERSITY HOSPITAL's underlying motion for summary judgment per CPLR § 3212 dismissing the third-party complaint and all crossclaims against it is GRANTED (MS #9), and it is further

ORDERED that the Clerk of the Court shall enter judgment dismissing this action as against ONE EDGEWATER EQUITIES, LLC only, and it is further

ORDERED that the Clerk of the Court shall enter judgment dismissing the third-party action as against STATEN ISLAND UNIVERSITY HOSPITAL.

This constitutes the decision and order of the Court.

ENTER:

A handwritten signature in black ink, appearing to be "Anne J. Swern", written over a horizontal line. The signature is stylized and somewhat abstract.

Hon. Anne J. Swern, J.S.C.
Dated: 3/26/2026