

<b>Chang v COA 200 E. 34th, LLC</b>
2026 NY Slip Op 31430(U)
April 1, 2026
Supreme Court, New York County
Docket Number: Index No. 155070/2023
Judge: Leslie A. Stroth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH PART 12M

Justice

-----X

BETTY CHANG,

Plaintiff,

- v -

COA 200 E. 34TH, LLC, LA GIARA,

Defendant.

-----X

COA 200 E. 34TH, LLC

Plaintiff,

-against-

CORE SCAFFOLD SYSTEMS INC.

Defendant.

-----X

INDEX NO. 155070/2023
MOTION DATE 05/15/2025
MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

Third-Party
Index No. 595377/2024

The following e-filed documents, listed by NYSCEF document number (Motion 003) 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 75, 76, 77

were read on this motion to/for JUDGMENT - SUMMARY

The instant action arises from a trip and fall on September 8, 2022, on an alleged sidewalk defect next to a construction site located at 200 East 34th Street, New York, New York (the "Premises"), which is owned by defendant COA 200 E. 34th, LLC ("COA"). Plaintiff alleges that on or around 7:30pm on September 8, 2022, she tripped on the portion of the sidewalk that is located at the corner of a tree well, causing her to injure her right ankle.

Defendant COA filed a third-party complaint against Core Scaffold Systems, Inc. ("Core"), a subcontractor that was hired by Noble Construction Group ("Noble"), the construction manager, to install a hoist, barriers, sidewalk shed, sidewalk bridge and at the Premises, as well as roof protection for the neighboring property. The third-party complaint

asserts claims for common law indemnification, common law contribution, contractual indemnification, and breach of contract. Third-party defendant Core now moves for summary judgment, seeking to dismiss the third-party complaint.

As an initial matter, in its opposition papers, COA concedes that it was not in privity with Core and, as such, it does not have a basis for the contractual indemnification and breach of contract claims. Therefore, these claims are dismissed.

Turning to the common law claims, Core argues that the claims for common law indemnification and contribution must be dismissed because there is no evidence that it was negligent. Core points to Plaintiff's allegations, which state that she tripped on a sidewalk defect, and pictures provided by Plaintiff, which show that the alleged defect appears to be the height differential between the dirt in the tree well and the sidewalk (*see* NYSCEF Doc. No. 66, Plaintiff's Responses to Discovery Demands). Core argues that the sidewalk shed that it installed, which can be seen in Plaintiff's pictures, does not touch any part of the alleged defect. Core also provides an affidavit from its vice president, Erind Gazheli, who affirms that Core did not do any work on the sidewalk or tree well, that it was not hired to do any work on the sidewalk or tree well, and that it had no duty to inspect, repair, or maintain the sidewalk or tree well (*see* NYSCEF Doc. No. 62). The Gazheli affidavit further states that the sidewalk bridge was installed on August 2, 5, 7, 17, and 18, 2020, more than two years before Plaintiff's alleged accident (*see id.*).

In opposition, COA asserts that there are questions of fact as to whether Core was negligent in inspecting, cleaning and maintaining the sidewalk and whether Core created the alleged sidewalk defect, and that further discovery and depositions are needed to determine whether Core is responsible. Specifically, COA argues that Core was hired to install a hoist,

barriers, and sidewalk bridge in the same area where Plaintiff's accident allegedly occurred.

COA also notes that Core's contract with Noble required Core to maintain the sidewalk to maintain the sidewalk in a safe (*see* NYSCEF Doc. No. 63 at 32-34). Additionally, COA points to Core's daily logs, which show that Core relocated fences, installed sliding gates, and installed a shed along Third Avenue before Plaintiff's alleged accident (*see* NYSCEF Doc. No. 64).

In reply, Core argues that COA's assertion that more discovery may establish Core's liability is mere speculation, which is insufficient to defeat a motion for summary judgment (*see Frierson v Concourse Plaza Associates*, 189 AD2d 609 [1st Dept 1993]). Core also asserts that its contract only imposed a duty to maintain the sidewalk in a safe condition during the performance of the work, and Core's work on the sidewalk was completed on August 18, 2020.

A party seeking indemnity must prove “. . . not only that the proposed indemnitor's negligence contributed to the causation of the accident, but also that the party seeking indemnity was free from negligence” (*see Martins v Little 40 Worth Assoc., Inc.*, 72 AD3d 483 [1st Dept 2010]). “Common-law indemnification is generally available in favor of one who is held responsible solely by operation of law because of his relation to the actual wrongdoer” (*McCarthy v Turner Constr., Inc.*, 17 NY3d 369, 375 [2011] [internal quotations omitted]). Similarly, contribution is only available where tortfeasors combine to cause an injury (*Godoy v Alabaster of Miami*, 302 AD2d 57 [2d Dept 2003]).

The court finds that there are issues of fact as to whether Core was free from negligence. Although the Gazheli affirmation asserts that the installation of the sidewalk bridge was completed on August 18, 2020, the daily logs show that Core was continuing to perform work on the Premises, including the removal and installation of a new sidewalk shed, up until December 14, 2022. Additionally, the defect alleged by Plaintiff appears to be a height differential between

the sidewalk and the dirt in the tree well, which is located next to the sidewalk shed that was installed by Core. As such, there are questions of fact as to whether Core's work caused or contributed to Plaintiff's alleged accident.

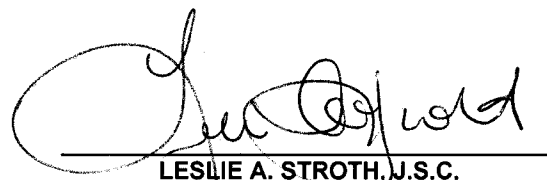
Accordingly, it is

ORDERED that third-party defendant Core Scaffold Systems, Inc.'s summary judgment motion is granted with respect to the contractual indemnification and breach of contract claims, and those claims are dismissed, and it is denied in all other respects; and it is further

ORDERED that the clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the Court.

4/1/2026  
DATE

  
LESLIE A. STROTH, J.S.C.

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