

Urrego v 11 11 Rest. Lounge
2026 NY Slip Op 31520(U)
April 7, 2026
Supreme Court, New York County
Docket Number: Index No. 160091/2024
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

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INDEX NO. 160091/2024

ELIZABETH URREGO,

MOTION DATE 03/14/2025

Plaintiff,

MOTION SEQ. NO. 002

- v -

11 11 RESTAURANT LOUNGE, 211 SPORT BAR INC
D/B/A 11 11 RESTAURANT LOUNGE, GROW
HOSPITALITY GROUP CORP., 3950 REALTY CORP.,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 43, 44, 46, 47, 48, 50, 51, 52, 53, 54, 55, 56, 57, 58

were read on this motion to/for DISMISS

Plaintiff commenced this action after falling in a stairway at 3964 Tenth Avenue, contending that Defendants were negligent in their control, management, operation, and maintenance of the stairway by failing to address a wet, slippery, and otherwise hazardous condition that caused her to fall. 3950 Realty Corp. ("3950 Realty") owns the property and leased it to non-party Antonio Francisco Guerrero, and 211 Sport Bar Inc., d/b/a 11:11 Restaurant Lounge ("211 Sports Bar") subsequently was substituted as the tenant on the lease with landlord 3950 Realty's consent. Plaintiff alleges that Defendants were negligent in mopping, washing, cleaning, wiping down, and placing warning signs and barriers at the stairway; and that Defendants negligently hired, retained, and supervised staff to maintain the stairway at issue, which staff was negligent in constructing, inspecting, cleaning, and erecting safety barriers for the stairway.

Defendant 3950 Realty moves to dismiss Plaintiff's claims against it, and to dismiss the cross-claims of co-defendant 211 Sports Bar pursuant to CPLR §§ 3211(a)(1) and (a)(7). For the reasons outlined below, 3950 Realty's motion is denied in its entirety.

LEGAL STANDARD

A party's motion seeking relief pursuant to CPLR § 3211(a)(1) on the ground that its defense is founded upon documentary evidence “may be appropriately granted only where the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law” (*see Goshen v Mutual Life Ins. Co. of New York*, 98 NY2d 314 [2002], quoting *Leon v Martinez*, 84 NY2d 83, 88 [1994]). “A motion to dismiss pursuant to CPLR 3211(a)(1) will be granted only if the document evidence resolves all factual issues as a matter of law and conclusively disposes of the plaintiff's claims” (*J.A. Lee Elec., Inc. v City of New York*, 119 AD3d 652, 653 [2d Dept 2014]; *Fortis Fin. Servs. V Fimat Futures USA*, 290 AD2d 383 [1st Dept 2002]).

On a motion to dismiss pursuant to CPLR § 3211(a)(7) for failure to state a cause of action, the facts alleged in the complaint must be accepted as true, the plaintiff is accorded the benefit of every possible favorable inference, and the court's function is to determine simply whether plaintiff's facts fit within any cognizable legal theory (*see Leon*, 84 NY2d at 87-88; *Siegmund Straus, Inc. v. East 149th Realty Corp.*, 104 AD3d 401 [1st Dept 2013]). “Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss” (*Zurich Am. Ins. Co. v City of New York*, 176 AD3d 1145, 1147 [2d Dept 2019], quoting *EBC I, Inc. v Goldman Sacks & Co.*, 5 NY3d 11, 19 [2005]).

An out-of-possession landlord is generally not liable for the conditions resulting in injury on a relinquished property, absent a contractual, statutory, or otherwise covenanted obligation, because control and possession of the property has been relinquished to the tenant (*see Hernandez v Neubert Realto Corp.*, 169 AD2d 645,646 [1st Dept 1991]).

DISCUSSION

Defendant 3950 Realty asserts that on February 1, 2020, it relinquished control of the premises pursuant to a lease with Antonio Francisco Guerrero. 211 Sports Bar was subsequently substituted as the tenant on this lease. 3950 Realty argues it is an out-of-possession landlord because it relinquished possession of the property in the lease, and because 3950 Realty does not operate, supervise, inspect, or repair the property. Moreover, 3950 Realty maintains that it only has a limited right of re-entry “at reasonable times for limited purposes” (3950 Realty’s Motion, NYSCEF Doc. No. 37 at 6).

3950 Realty argues that as an out-of-possession landlord, it cannot be liable for Plaintiff’s damages absent a statutory or contractual duty, because 211 Sports Bar is the tenant-operator tasked with maintaining the premises in good repair. In support of this, 3950 Realty cites to the lease itself, which reads,

Tenant shall, at its own cost and expense, keep and maintain in good repair and order, and in safe condition and make replacements as required to the exterior and interior of the building and improvements comprising the demised premises and their full equipment and appurtenances and each part thereof, and shall use all precautions to prevent waste, damage or injury to the demised premises and each and every part thereof. Tenant shall be responsible for the maintenance of the entire building not limited to the roof all walls interior and exterior, all internal and external plumbing lines, electrical lines and equipment, and gas lines, if any, which exclusively services the demised premises and are located in the demised premises, or which were installed by Tenant.

(Lease, NYSCEF Doc. No. 32 ¶ 47). 3950 Realty argues that this lease term does not confer contractual duty upon 3950 Realty to provide maintenance, repairs, cleaning, or any other service at the premises.

3950 Realty continues, stating that because Plaintiff's claims against it must be dismissed, so must 211 Sports Bar's cross-claim for indemnification. 3950 Realty argues that because Plaintiff cannot prove negligence against it, then 3950 Realty does not owe a duty of indemnification to 211 Sports Bar (3950 Realty's motion, NYSCEF Doc. No. 37 at 10-11). The lease between 3950 Realty and 211 Sports Bar does not contain a provision that details owner's duty to indemnify tenant (*see* Lease between 3950 Realty and Guerrero, NYSCEF Doc. No. 32).

Regarding Plaintiff's claim for negligent retention, supervision, and hiring of employees, 3950 Realty argues that this claim must also be dismissed because 3950 Realty did not retain, supervise, or hire employees at the subject premises. Moreover, 3950 Realty states it "had no obligation to maintain, clean, or repair the premises, and did not do so" (3950 Realty's motion, NYSCEF Doc. No. 37 at 10).

Conversely, Plaintiff argues that 3950 Realty is liable because it is not an out-of-possession landlord. Instead, Plaintiff argues that the lease between 3950 Realty and 211 Sports Bar specifically permits 3950 Realty to re-enter to make repairs, replacements, and improvements as deemed necessary, or when 3950 Realty deems it necessary based on 211 Sports Bar's failure to address same. Plaintiff refers to a provision of the lease that reads,

Owner and Owner's agents shall have the right (but shall not be obligated) to enter the demised premises in any emergency at any time, and, at other reasonable times, to examine the same and to make such repairs, replacements and improvements as Owner may deem necessary and reasonably desirable to any portion of the building, or which Owner may elect to perform in the demised premises after Tenant's failure to make repairs, or perform any work which Tenant is obligated to perform under this lease, or for the purpose of complying

with laws, regulations and other directions of governmental authorities. Tenant shall permit Owner to use, maintain and replace pipes and conduits in and through the demised premises, and to erect new pipes and conduits therein provided, wherever possible, they are within walls or otherwise concealed. Owner may, during the progress of any work in the demised premises, take all necessary materials and equipment into said premises without the same constituting an eviction, nor shall Tenant be entitled to any abatement of rent while such work is in progress, nor any damages by reason of loss or interruption of business or otherwise... If Tenant is not present to open and permit an entry into the demised premises, Owner or Owner's agents may enter the same whenever such entry may be necessary or permissible by master key or forcibly, and provided reasonable care is exercised to safeguard Tenant's property...

(NYSCEF Doc. No. 32 ¶ 13). Plaintiff points out that this lease provision does not conclusively establish that 3950 Realty surrendered control of the premises as an out-of-possession landlord, and consequently, that 3950 Realty is not an out-of-possession landlord. Moreover, Plaintiff argues that 3950 Realty's motion is premature, stating that no discovery has been conducted, and no depositions have been held.

In light of the foregoing, Defendant 3950 Realty's motion is denied in its entirety. The documentary evidence provided, namely the lease, does not conclusively establish that 3950 Realty is an out-of-possession landlord, because the lease explicitly allows 3950 Realty the right of re-entry to make repairs as it deems necessary, with entrance by master key or force.

Similarly, 3950 Realty's motion to dismiss co-defendant 211 Sports Bar's cross-claims for indemnification must also be denied at this time. 3950 Realty sought dismissal of 211 Sports Bar's cross-claims based on the argument that the cross-claims are null if Plaintiff claims against 3950 Realty are dismissed, and they are not.

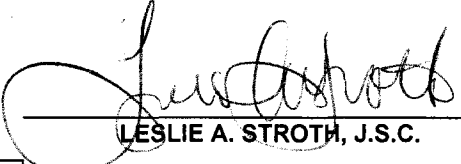
Accordingly, it is hereby

ORDERED that Defendant 3950 Realty Corp.'s motion to dismiss Plaintiff's claims, pursuant to CPLR §§ 3211(a)(1) and (a)(7), is denied; and it is further

ORDERED that Defendant 3950 Realty Corp.'s motion to dismiss the cross-claim of co-defendant 211 Sport Bar Inc. d/b/a 11:11 Restaurant Lounge, pursuant to CPLR §§ 3211(a)(1) and (a)(7), is denied.

The foregoing constitutes the decision and order of the Court.

4/7/2026
DATE


LESLIE A. STROTH, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
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