

<b>Pickett v Ambiance Wine LLC</b>
2026 NY Slip Op 31575(U)
April 9, 2026
Supreme Court, New York County
Docket Number: Index No. 150671/2018
Judge: James G. Clynnes
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JAMES G. CLYNES PART 39M

Justice

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DIANE PICKETT,

Plaintiff,

- v -

AMBIANCE WINE LLC D/B/A VELLA WINE BAR &
KITCHEN, 168 MADISON AVENUE LLC, BOARD OF
MANAGERS OF THE ISIS CONDOMINIUM, EASTSIDE 77
ASSOCIATES, LLC

Defendant.

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INDEX NO. 150671/2018

MOTION DATE 08/09/2024,
08/09/2024

MOTION SEQ. NO. 004 005

DECISION + ORDER ON
MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 74, 75, 76, 77, 78,
79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 111, 112, 115, 117, 118, 126

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 005) 94, 95, 96, 97, 98,
99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 113, 114, 116, 119, 120, 127

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, the motion by Defendant The Board of Managers of the
ISIS Condominium (Motion Sequence No 004) and the motion by Defendants Ambiance Wine
LLC d/b/a Vella Wine Bar and Kitchen and 168 Madison Avenue LLC (Motion Sequence 005)
for summary judgment and dismissal of Plaintiff's Complaint and any and all cross-claims
against them are consolidated for decision and decided as follows:

Plaintiff seeks recovery for injuries allegedly sustained as a result of a September 29,
2017 accident in which Plaintiff sustained personal injuries at a commercial unit within the
condominium building located at 1480 2nd Avenue when Plaintiff entered the restaurant at the
location through one of the windows she believed to be the entrance.

Defendant The Board of Managers of the ISIS Condominium (The Board) is the board
for the association of the owners of the individual units of the condominium building. Eastside
77 Associates LLC was the developer for the building, whp built out the commercial space, and

was the initial owner of the commercial space. Eastside 77 Associates LLC sold the commercial space to 168 Madison Avenue LLC on December 7, 2012. Pursuant to the Bargain and Sale Deed, 168 Madison sold the premises to nonparty 303 E77 LLC on October 8, 2015 (NYSCEF Doc No 105).

A movant seeking summary judgment in its favor must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case (*Winegrad v NY Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). The evidentiary proof tendered, however, must be in admissible form (*Friends of Animals, Inc. v Associated Fur Mfrs.*, 46 NY2d 1065, 1067 [1979]). Once met, this burden shifts to the opposing party who must then demonstrate the existence of a triable issue of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

To establish a negligence cause of action, a plaintiff must demonstrate (1) a duty of care owed to the plaintiff; (2) a breach of that duty; (3) that the breach is a proximate cause of plaintiff's injury or damages; and (4) that the plaintiff suffered a legally cognizable injury or damages (*Rodriguez v Budget Rent-A-Car Sys., Inc.*, 44 AD3d 216, 221 [1st Dept 2007] citing *Akins v Glens Falls City Sch. Dist.*, 53 NY2d 325, 333 [1981]). Liability for a dangerous condition on property may only be predicated upon occupancy, ownership, control or special use of such premises" (*Branch v County of Sullivan*, 25 NY3d 1079, 1082 [2015], quoting *Jackson v Board of Educ. of City of N.Y.*, 30 AD3d 57, 60 [1st Dept 2006]). Where none of these factors are present, a party cannot be held liable for injuries caused by the allegedly defective condition (*Deutsch v Green Hills (USA), LLC*, 202 AD3d 909, 911 [2d Dept 2022]). A landowner or lessee is under a duty to maintain its property in a reasonably safe condition under existing circumstances, which includes the likelihood of injury to a third party (*Perez v Bronx Park S. Assoc.*, 285 AD2d 402, 403 [1st Dept 2001]).

A plaintiff seeking to recover under the doctrine of res ipsa loquitur is required to establish that, "(1) the event must be of a kind which ordinarily does not occur in the absence of someone's negligence (2) it must be caused by an agency or instrumentality within the exclusive

control of the defendant (3) it must not have been due to any voluntary action or contribution on the part of the plaintiff” (*Morejon v Rais Constr. Co.*, 7 NY3d 203, 209 [2006] citing *Corcoran v Banner Super Mkt., Inc.*, 19 NY2d 425, 430 [1967]). A management company does not have exclusive control for purposes of *res ipsa loquitur*, if there exists a written contract which provides responsibility for repair and maintenance to another (*Singh v United Cerebral Palsy of NY City, Inc.*, 72 AD3d 272, 277 [1st Dept 2010]).

Here, moving Defendants the Board and 168 Madison have established *prima facie* that they did not owe a duty of care to Plaintiff because they did not own, occupy, or control the subject window at the time of the accident.

Pursuant to Article 8 sections 8.6.4, 8.7, and 8.7.1 of the Declaration of the ISIS Condominium, the subject windows are considered a commercial limited common element which is the responsibility of the commercial unit owner (NYSCEF Doc No 90). Further, pursuant to By-Law Article 6, “[t]he interior glass surfaces of all windows located in any Unit and the exterior glass surfaces of all windows located in the Commercial Unit shall be washed and cleaned by the Unit Owner or occupant thereof at his sole cost and expense (NYSCEF Doc No 91). Vladislav Karasik (“Billy”) the 51% owner of Vella, along with his wife, ran the day-to-day operations of Vella, the commercial tenant of the unit (NYSCEF Doc No 82). Juan Rodriguez, who is employed by the management company but takes direction from the board of directors, testified that he does not provide any services to the commercial unit and that he has no responsibility there (NYSCEF Doc No 86).

John Giardino, who has lived at 303 East 77<sup>th</sup> Street for ten years and served as a member of its board of managers for five or six years, testified that the board did not have control over the architectural structure of the commercial space but did have an interest in the tenant complying with the building’s bylaws (NYSCEF Doc No 87). He further testified that any issues he knew of, as a board member, in relation to the commercial tenant Vella, had to do with general maintenance and upkeep and that he had not heard of any complaint of an individual walking through the windows (*id.*). In his affidavit, Giardino averred that the board played no

role in the build out of the commercial unit where Plaintiff's accident took place (NYSCEF Doc No 93).

There is no dispute over the validity of the deed presented which shows that the commercial unit was sold by 168 Madison to 303 E77 on October 5, 2015 (NYSCEF Doc No 105). Plaintiff's arguments in opposition regarding prejudice or surprise are unavailing.

To establish an open and obvious condition, a defendant must prove that the hazard "could not reasonably be overlooked by anyone in the area whose eyes were open" (*Westbrook v WR Activities-Cabrera Mkts.*, 5 AD3d 69, 72 [1st Dept 2004]). However, even visible hazards do not necessarily qualify as open and obvious because the nature or location of some hazards, while they are technically visible, make them likely to be overlooked (*id.*). The burden is on the defendant to demonstrate, as a matter of law, that the condition that caused the plaintiff to sustain injury was readily observable by the plaintiff employing the reasonable use of his senses (*Buccino v City of NY*, 84 AD3d 670 [1st Dept 2011]). Whether a condition is not inherently dangerous, or constitutes a reasonably safe environment, depends on the totality of the specific facts of each case (*Russo v Home Goods, Inc.*, 119 AD3d 924, 925 [2d Dept 2014]). Viewing the evidence in the light most favorable to Plaintiff, the Court finds that a triable issue of fact exists whether the open window was an open and obvious condition that was not inherently dangerous. Accordingly, it is

ORDERED that the motion by Defendant The Board of Managers of the ISIS Condominium for summary judgment (Motion Sequence No 004) is granted; and it is further

ORDERED that the motion by Defendants Ambiance Wine LLC d/b/a Vella Wine Bar and Kitchen and 168 Madison Avenue LLC (Motion Sequence 005) for summary judgment is granted only as to Defendant 168 Madison Avenue LLC and denied as to Defendant Defendant Ambiance Wine LLC d/b/a Vella Wine Bar and Kitchen; and it is further

ORDERED that the complaint and all cross-claims are dismissed against defendants The Board of Managers of the ISIS Condominium and 168 Madison Avenue LLC, and the clerk is directed to enter judgment accordingly in favor of said defendants; and it is further

ORDERED that the action is severed and continued against the remaining defendant; and it is further

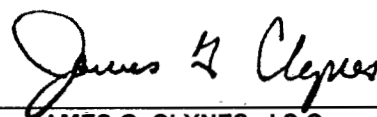
ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that within twenty days counsel for the moving parties shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk's Office, who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website).

This constitutes the Decision and Order of the Court.

4/9/2026  
DATE

  
JAMES G. CLYNES, J.S.C.

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