Hernandez v Extell Dev. Co.
2026 NY Slip Op 31841(U)
April 28, 2026
Supreme Court, New York County
Docket Number: Index No. 153683/2020
Judge: Hasa A. Kingo
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 65M

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BRANDEN HERNANDEZ,

Plaintiff,

- v -

EXTELL DEVELOPMENT COMPANY, EXTELL DEVELOPMENT COMPANY MO, EXTELL MANAGEMENT CORP., EXTELL MANAGEMENT SERVICES INC.,EXTELL HUDSON VENTURE LLC,EXTELL HUDSON WATERFRONT LLC,EXTELL RIVERSIDE LLC,EXTELL RIVERSIDE II LLC,SPE EXTELL TSP, INC.,555 TENTH AVENUE LLC,555 TENTH AVENUE II LLC,555 TENTH AVENUE TRS LLC,DREAM BUILDING SERVICES INC.,

Defendant.

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INDEX NO. 153683/2020

MOTION DATE N/A, N/A

MOTION SEQ. NO. 005 006

DECISION + ORDER ON MOTION

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EXTELL MANAGEMENT SERVICES INC., 555 TENTH AVENUE LLC, 555 TENTH AVENUE II LLC, 555 TENTH AVENUE TRS LLC

Plaintiff,

-against-

COMMAND HVAC II

Defendant.

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Third-Party
Index No. 595333/2022

HON. HASA A. KINGO:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 169, 171, 172, 173, 174, 175, 176, 181

were read on this motion for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 170, 177, 178, 179, 180

were read on this motion to/for SUMMARY JUDGMENT.

Upon the foregoing documents, it is

Motion sequence 005 is brought by defendants Extell Development Company, Extell Development Company MO, Extell Management Corp., Extell Hudson Venture LLC, Extell Hudson Waterfront LLC, Extell Riverside LLC, Extell Riverside II LLC, and SPE Extell TSP, Inc. (collectively, "the Developer Defendants"), together with third-party defendant Command HVAC II LLC ("Command"). The Developer Defendants seek dismissal of plaintiff's complaint and all crossclaims asserted against them pursuant to CPLR § 3211(a)(1), CPLR § 3211(a)(7), and CPLR § 3212. Command seeks summary judgment dismissing the third-party complaint, including the claims for common-law indemnification, contribution, contractual indemnification, and breach of contract for failure to procure insurance. The notice of motion expressly seeks summary judgment dismissing plaintiff's negligence claims against the Developer Defendants, dismissing the Owner Defendants' crossclaims against the Developer Defendants, and dismissing all third-party claims against Command.

Motion sequence 006 is brought by defendants and third-party plaintiffs Extell Management Services Inc., 555 Tenth Avenue LLC, 555 Tenth Avenue II LLC, and 555 Tenth Avenue TRS LLC (collectively, "the Owner Defendants"). The Owner Defendants seek summary judgment dismissing plaintiff's complaint on the ground that they neither created nor had actual or constructive notice of the alleged wet condition in the valet/package room. They also seek such further relief as the court deems just and proper.

For the reasons set forth below, motion sequence 005 is granted to the extent that summary judgment is awarded to the Developer Defendants and Command, and the CPLR § 3211 branches are denied as procedurally unavailable or otherwise academic. Motion sequence 006 is granted, and plaintiff's complaint is dismissed as against the Owner Defendants.

BACKGROUND AND PROCEDURAL HISTORY

This personal injury action arises from an alleged slip and fall on June 18, 2017, at the premises located at 555 Tenth Avenue, New York, New York. Plaintiff Branden Hernandez ("Plaintiff") was employed by Dream Building Services Inc. as a doorman/concierge. Plaintiff alleges that, while working at the premises, he entered the valet/package room and slipped on water that had accumulated on the floor, allegedly from a ceiling leak. The motion record reflects that the accident occurred in a discrete room used for packages and valet-related functions, and that the alleged dangerous condition was water on the floor of that room.

Plaintiff commenced this action on or about May 29, 2020. The Owner Defendants answered on or about September 10, 2020 and asserted crossclaims. The Developer Defendants and Dream Building Services Inc. previously moved to dismiss before answering. By decision and order dated April 13, 2022 and filed April 20, 2022, the court granted dismissal as to Dream Building Services Inc., plaintiff's employer, and denied the Developer Defendants' pre-answer dismissal application without prejudice. Thereafter, the Owner Defendants commenced a third-party action against Command on or about April 21, 2022. The Developer Defendants answered plaintiff's complaint on or about May 18, 2022, and Command answered the third-party complaint on or about July 12, 2022. Plaintiff filed the note of issue on September 26, 2025.

The Developer Defendants rely upon pleadings, deposition testimony, corporate and property-related agreements, and affidavits to establish that they did not own, lease, manage, maintain, control, or perform work at the premises on the date of plaintiff's accident. The record submitted with motion sequence 005 includes, among other things, a ground lease, an assignment and assumption of lease, a development services agreement, an assignment of that development services agreement, a property management agreement, and testimony concerning the respective roles of the various Extell-related entities. The Developer Defendants further contend that Extell Development Company's interest in the relevant development services agreement was assigned to nonparty Tenth Avenue Developer LLC as of March 4, 2014, more than three years before plaintiff's accident, and that the property management agreement in effect at the time placed property management responsibilities with Extell Management Services Inc., one of the Owner Defendants.

The Owner Defendants do not dispute that, as the entities most closely connected to the premises, they owed plaintiff a duty of reasonable care. Their motion instead turns on breach and notice. They argue that the record establishes that they did not create the alleged wet condition, did not know of it before plaintiff's fall, and lacked constructive notice because the condition was not shown to have existed for a sufficient period of time to be discovered and remedied. The Owner Defendants further rely on evidence that the room had been inspected the prior day, that no condition was observed, that the room was staffed by a vendor until it was closed, and that plaintiff was the first person to enter the room the next morning before its scheduled opening time.

Plaintiff opposes both motions. As to the Developer Defendants, plaintiff argues that their CPLR § 3211 application is untimely because they have answered, that the motion is procedurally defective, and that the Developer Defendants remain potentially liable under an alter ego theory because of their alleged relationship with the Owner Defendants. Plaintiff also argues that Command failed to eliminate all triable issues as to whether its HVAC work created the condition. As to the Owner Defendants, plaintiff argues that they failed to satisfy their prima facie burden on lack of notice and that questions of fact exist concerning the source and duration of the water condition.

ARGUMENTS

The Developer Defendants argue that summary judgment is warranted because the undisputed documentary and testimonial record establishes that they had no ownership, leasehold, management, maintenance, repair, or operational role at the premises on the date of plaintiff's accident. They contend that they owed no duty to plaintiff because they did not possess or control the premises and did not create the alleged condition. They also argue that the Owner Defendants' crossclaims for indemnification, contribution, and related relief must be dismissed because no predicate negligence or duty exists as to the Developer Defendants.

Command argues that the third-party complaint must be dismissed because it completed and commissioned its HVAC work before the accident, had no responsibility for ongoing maintenance of the HVAC unit above the package room at the time of the incident, had no notice of any leak, and did not create the alleged condition. Command also argues that the contractual indemnification claim fails because the record does not show that plaintiff's accident arose out of

Command's negligent work or contractual breach, and that the insurance-procurement claim fails because Command was enrolled in the applicable insurance program.

The Owner Defendants argue that plaintiff cannot establish negligence because there is no evidence that they caused the water to accumulate, had actual notice of a ceiling leak or water on the floor, or had constructive notice of the condition for a sufficient period of time before plaintiff's fall. They contend that the package room was inspected the prior day and found to be free of any problem, that the room was staffed by World Class Valet before closing, that plaintiff himself had never previously seen water or leaking in the room, and that plaintiff entered the room the next morning before its scheduled opening.

Plaintiff argues that the motions should be denied. He contends that the Developer Defendants' CPLR § 3211 request is untimely because issue has been joined and discovery completed. He also argues that the Developer Defendants and Owner Defendants are alter egos, relying in part on alleged corporate overlap and common Extell affiliation. Plaintiff further argues that Command failed to establish that its work did not create the condition and that the Owner Defendants failed to meet their prima facie burden on notice.

DISCUSSION

The proponent of a motion for summary judgment bears the initial burden of tendering sufficient evidence, in admissible form, to demonstrate the absence of any material issue of fact and entitlement to judgment as a matter of law (*Alvarez v Prospect Hosp*., 68 NY2d 320, 324 [1986]; *Winegrad v New York Univ. Med. Ctr*., 64 NY2d 851, 853 [1985]). If the movant satisfies that burden, the burden shifts to the opponent to produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Mere conclusions, expressions of hope, speculation, or unsubstantiated allegations are insufficient to defeat summary judgment (*id*.; *see also Gilbert Frank Corp. v Federal Ins. Co*., 70 NY2d 966, 967 [1988]).

As a threshold matter, plaintiff is correct that the Developer Defendants' request for relief under CPLR § 3211(a)(1) and CPLR § 3211(a)(7) is procedurally infirm to the extent it is presented as a post-answer motion to dismiss. A motion under CPLR § 3211(a) is generally made before service of the responsive pleading, although certain defenses may be preserved or raised by other procedural devices where appropriate (CPLR § 3211[e]). Here, however, that defect does not preclude consideration of the Developer Defendants' summary judgment application. Issue has been joined, discovery is complete, plaintiff filed the note of issue, and the Developer Defendants have moved under CPLR § 3212 with a developed evidentiary record. Accordingly, the court denies the CPLR § 3211 branches as procedurally unavailable or academic and addresses the motion under CPLR § 3212.

Plaintiff's additional procedural objections do not warrant denial of the motions. The court may disregard nonprejudicial defects in form where a substantial right of a party is not prejudiced (CPLR § 2001). The Court of Appeals and Appellate Division, Second Department, have recognized that trial courts should not exalt technical irregularities over the merits where the record is otherwise adequate and no prejudice is shown (*see Matter of Tagliaferri v Weiler*, 1 NY3d 605,

606 [2004]; *Bank of N.Y. Mellon v Gordon*, 171 AD3d 197, 203 [2d Dept 2019][cited for the broader CPLR § 2001 principle]). Plaintiff's objections concerning affirmation language and deposition formalities do not identify a material prejudice, and the motion record includes sworn affidavits, party deposition testimony, documentary evidence, and deposition transcripts upon which the court may properly rely. Moreover, the repeal of the mandatory statewide statement of material facts requirement does not furnish an independent basis to reject a motion otherwise supported by admissible proof.

Turning to the merits, plaintiff's negligence claims against the Developer Defendants fail because plaintiff has not raised a triable issue that those entities owed him a duty of care with respect to the premises or the condition that allegedly caused his fall. A negligence claim requires proof of a duty owed by defendant to plaintiff, breach of that duty, and injury proximately caused by the breach (*Pulka v Edelman*, 40 NY2d 781, 782 [1976]; *Solomon v City of New York*, 66 NY2d 1026, 1027 [1985]). In premises liability, liability ordinarily rests upon ownership, occupancy, control, or special use of the property, because such status gives rise to the duty to maintain the premises in a reasonably safe condition (*Balsam v Delma Eng'g Corp*., 139 AD2d 292, 296 [1st Dept 1988]; *see also Gibbs v Port Auth. of N.Y*., 17 AD3d 252, 254 [1st Dept 2005]). Absent ownership, occupancy, control, or a duty assumed by contract or course of conduct, a defendant is not liable for a dangerous condition on premises it did not control (*see Balsam*, 139 AD2d at 296; *Minott v City of New York*, 230 AD2d 719, 720 [2d Dept 1996]).

The Developer Defendants have established, prima facie, that they did not own, lease, manage, maintain, control, or operate the premises on June 18, 2017, and that they did not perform work that created the alleged wet condition. The record reflects that the Goldman entities were the fee owners, that Extell 4110 entered into the ground lease and later assigned its interests to the Owner Defendants, that Extell Development Company assigned its interest in the development services agreement to nonparty Tenth Avenue Developer LLC as of March 4, 2014, and that the property management agreement placed management responsibility with Extell Management Services Inc. The record further reflects that certain Developer Defendants had no affiliation with the subject premises or were affiliated with other projects, not the 555 Tenth Avenue premises.

Plaintiff's alter ego argument does not defeat summary judgment. New York law permits piercing the corporate veil only where the party seeking that relief establishes that the owners exercised complete domination of the corporation with respect to the transaction attacked and that such domination was used to commit a fraud or wrong against the plaintiff resulting in injury (*Matter of Morris v New York State Dept. of Taxation & Fin*., 82 NY2d 135, 141-142 [1993]; *TNS Holdings v MKI Sec. Corp*., 92 NY2d 335, 339 [1998]). Corporate affiliation, common branding, shared officers, or overlapping business relationships, without more, do not justify disregarding corporate separateness (*see Billy v Consolidated Mach. Tool Corp*., 51 NY2d 152, 163 [1980]; *Retropolis, Inc. v 14th St. Dev. LLC*, 17 AD3d 209, 210 [1st Dept 2005]). Plaintiff offers no evidence that the Developer Defendants used the Owner Defendants as instrumentalities to perpetrate a fraud or wrong, undercapitalize an entity, evade obligations, or manipulate the corporate form in a manner that caused plaintiff's accident. The assertion that Extell-related entities are affiliated is insufficient as a matter of law to impose premises liability on entities that did not own, occupy, manage, maintain, or control the location of the accident.

Nor does plaintiff identify any evidence that any Developer Defendant created the wet condition. The theory that some remote development-related role years before the accident may have contributed to an unknown leak is speculative. Speculation cannot defeat a properly supported summary judgment motion (*Zuckerman*, 49 NY2d at 562; *Kane v Estia Greek Rest., Inc*., 4 AD3d 189, 190 [1st Dept 2004]). Because the Developer Defendants established that they owed no duty and did not create the alleged condition, and because plaintiff failed to raise a triable issue of fact, the branch of motion sequence 005 seeking summary judgment dismissing plaintiff's complaint against the Developer Defendants is granted. The Owner Defendants' crossclaims against the Developer Defendants for contribution, indemnification, and related liability are likewise dismissed because those claims require some predicate duty, negligence, vicarious liability, or contractual basis that is absent from this record (*see Raquet v Braun*, 90 NY2d 177, 183 [1997]; *Trump Vil. Section 3, Inc. v New York State Hous. Fin. Agency*, 307 AD2d 891, 895 [1st Dept 2003]).

The Owner Defendants are also entitled to summary judgment dismissing plaintiff's complaint. A property owner or manager has a duty to maintain premises in a reasonably safe condition under the circumstances (*Basso v Miller*, 40 NY2d 233, 241 [1976]). However, a defendant moving for summary judgment in a slip-and-fall case may satisfy its prima facie burden by establishing that it did not create the alleged dangerous condition and lacked actual or constructive notice of it (*Gordon v American Museum of Natural History*, 67 NY2d 836, 837 [1986]; *Piacquadio v Recine Realty Corp*., 84 NY2d 967, 969 [1994]). To constitute constructive notice, the defect must be visible and apparent and must exist for a sufficient length of time before the accident to permit defendant's employees to discover and remedy it (*Gordon*, 67 NY2d at 837). A general awareness that a dangerous condition may exist is legally insufficient to constitute notice of the particular condition that caused the accident (*Piacquadio*, 84 NY2d at 969).

Here, the Owner Defendants established, prima facie, that they did not create the alleged condition and had no actual or constructive notice of it. The record reflects that the package room had been checked the day before the accident and no problem was observed, that the room was staffed by World Class Valet until it closed, that no evidence shows water leaking beyond the room or otherwise visible to building staff, and that plaintiff was the first person to enter the room the following morning before its scheduled opening time. The record also reflects that plaintiff himself had not previously observed water or leaking in the area, despite working in the building lobby full time.

Plaintiff's opposition does not raise a triable issue. Plaintiff identifies no witness who saw water on the floor before his fall, no complaint predating the accident, no record of a prior leak in the subject room, and no evidence from which a jury could reasonably infer how long the water existed before plaintiff entered the room. Where the record contains no evidence as to when the condition arose, a finding of constructive notice would be based on speculation, which is insufficient to impose liability (*Gordon*, 67 NY2d at 837-838; *see also Early v Hilton Hotels Corp*., 73 AD3d 559, 561 [1st Dept 2010]; *DeJesus v New York City Hous. Auth*., 53 AD3d 410, 411 [1st Dept 2008]). Plaintiff's observation of water after the accident does not establish that the condition was visible and apparent for a sufficient time before the fall to permit discovery and remediation (*Gordon*, 67 NY2d at 837; *Piacquadio*, 84 NY2d at 969).

Plaintiff's reliance on the possibility of a ceiling leak likewise does not defeat summary judgment. Even assuming that the water came from above the ceiling, the record does not show that the Owner Defendants knew or should have known of any leak before plaintiff's fall. A plaintiff cannot establish constructive notice merely by identifying the alleged source of water after the accident; there must be proof that the defendant had notice of the *specific* recurring or *visible* condition that caused the fall (*see Uhlich v Canada Dry Bottling Co. of N.Y.*, 305 AD2d 107, 107 [1st Dept 2003]; *Gloria v MGM Emerald Enters., Inc.*, 298 AD2d 355, 356 [2d Dept 2002]). On this record, plaintiff has shown only that water was present when he fell, not that the Owner Defendants created it, knew about it, or had a reasonable opportunity to discover and remedy it.

Command is entitled to summary judgment dismissing the third-party complaint. Common-law indemnification is available only where the party seeking indemnity was held vicariously liable without actual fault and the proposed indemnitor was negligent or exercised actual supervision or control over the injury-producing work (*McCarthy v Turner Constr., Inc.*, 17 NY3d 369, 375 [2011]; *D'Ambrosio v City of New York*, 55 NY2d 454, 460 [1982]). Contribution likewise requires proof that the proposed contributor owed a duty to the injured plaintiff or to the party seeking contribution and breached that duty in a manner contributing to the injury (*Raquet*, 90 NY2d at 183). Command established that it had completed and commissioned its HVAC work, had no ongoing responsibility for maintenance of the HVAC unit above the package room, had no notice of any leak, and was first notified of the alleged leak through this litigation. Plaintiff and the Owner Defendants identify no evidence that Command created the condition, negligently performed work that caused a leak, or had notice of any defect before plaintiff's accident.

The contractual indemnification claim against Command also fails. A party seeking contractual indemnification must establish that the indemnification provision applies to the claim at issue and that the loss falls within the scope of the contractual undertaking (*Hooper Assoc. v AGS Computers*, 74 NY2d 487, 491-492 [1989]; *Tonking v Port Auth. of N.Y. & N.J.*, 3 NY3d 486, 490 [2004]). Moreover, General Obligations Law § 5-322.1 prohibits a construction-related agreement from purporting to indemnify a party for its own negligence (*Brooks v Judlau Contr., Inc.*, 11 NY3d 204, 207-210 [2008]). The record does not support a finding that plaintiff's accident arose out of Command's negligent work, that Command had any responsibility for the condition at the time of the accident, or that Command's contractual undertaking was triggered by this occurrence.

The breach of contract claim for failure to procure insurance is also dismissed. A claim for failure to procure insurance requires proof of a contractual obligation to obtain coverage and a failure to do so (*Kinney v Lisk Co.*, 76 NY2d 215, 218 [1990]). Command submitted evidence that it was enrolled in the required insurance program, and no party opposing Command's application identifies contrary evidence creating a triable issue. Accordingly, the third-party complaint is dismissed in its entirety.

The court has considered the parties' remaining arguments and finds them either without merit or unnecessary to reach in light of the foregoing.

Accordingly, it is hereby

ORDERED that motion sequence 005 is granted to the extent that summary judgment is granted in favor of defendants Extell Development Company, Extell Development Company MO, Extell Management Corp., Extell Hudson Venture LLC, Extell Hudson Waterfront LLC, Extell Riverside LLC, Extell Riverside II LLC, and SPE Extell TSP, Inc., and plaintiff's complaint and all crossclaims are dismissed as against those defendants; and it is further

ORDERED that the branches of motion sequence 005 seeking relief pursuant to CPLR § 3211(a)(1) and CPLR § 3211(a)(7) are denied as procedurally unavailable or academic in light of the grant of summary judgment; and it is further

ORDERED that motion sequence 005 is further granted to the extent that summary judgment is granted in favor of third-party defendant Command HVAC II LLC, and the third-party complaint is dismissed in its entirety as against Command HVAC II LLC; and it is further

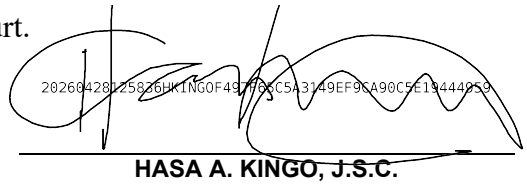
ORDERED that motion sequence 006 is granted, and plaintiff's complaint is dismissed as against Extell Management Services Inc., 555 Tenth Avenue LLC, 555 Tenth Avenue II LLC, and 555 Tenth Avenue TRS LLC; and it is further

ORDERED that counsel for defendants Extell Development Company, Extell Development Company MO, Extell Management Corp., Extell Hudson Venture LLC, Extell Hudson Waterfront LLC, Extell Riverside LLC, Extell Riverside II LLC, and SPE Extell TSP, Inc. ("the Developer Defendants"), together with counsel for defendants Extell Management Services Inc., 555 Tenth Avenue LLC, 555 Tenth Avenue II LLC, and 555 Tenth Avenue TRS LLC ("the Owner Defendants"), shall serve a copy of this decision and order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and upon the Clerk of the General Clerk's Office (60 Centre Street, Room 119), in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases; and it is further

ORDERED that upon service of this decision and order, the Clerk is directed to enter judgment accordingly, with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that any requested relief not expressly granted herein is denied.

This constitutes the decision and order of the court.



4/28/2026
DATE

HASA A. KINGO, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
	X	GRANTED		DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE