Bynoe v Standard Snowden Venture LP
2026 NY Slip Op 31846(U)
April 8, 2026
Supreme Court, New York County
Docket Number: Index No. 160510/2020
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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TAWANDA BYNOE,

Plaintiff,

- v -

STANDARD SNOWDEN VENTURE LP, WINNRESIDENTIAL (NY) LLC,WINNCOMPANIES, SUSAN'S CLEANING ANGELS, INC. D/B/A SCA ENTERPRISES, SAFETY FACILITY SERVICES

Defendant.

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INDEX NO. 160510/2020

MOTION DATE 03/19/2025, 04/02/2025

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 102, 103, 104, 105, 106, 107, 109, 120, 121

were read on this motion to/for STRIKE PLEADINGS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 108, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 122, 123, 124, 125, 126

were read on this motion to/for JUDGMENT - SUMMARY.

On May 30, 2020, Plaintiff sustained injuries after she allegedly slipped and fell on the walkway outside the elevator in a building owned and operated by Defendant. Plaintiff commenced this action on December 4, 2020, alleging that Defendants were negligent in creating and/or failing to remediate the wet floor that caused her injuries. Defendants Standard Snowden Venture LP, WinnResidential (NY) LLC, and WinnCompanies (collectively, "WINNCO") own and operate the building where Plaintiff fell. Defendant Safety Facility Services ("SFS") was hired by WINNCO to provide porter services, and SFS subcontracted with Susan's Cleaning Angels, Inc. d/b/a SCA Enterprises ("SCA") to provide mopping services to the building on the day of the accident.

In Motion Sequence 001, Plaintiff moves to strike WINNCO's answer to her complaint and to grant summary judgment to Plaintiff, pursuant to CPLR § 3126(3). In Motion Sequence 002, Defendants SCA and SFS move for summary judgment against Plaintiff's complaint and Co-Defendants' WINNCO's cross-claims, pursuant to CPLR § 3212. The Court discusses each in turn, below.

I. Motion Sequence 001: Plaintiff's Motion to Strike WINNCO's Answer and Grant Summary Judgment

CPLR § 3126(3) reads, in relevant part:

> If any party… refuses to obey an order for disclosure or willfully fails to disclose information which the court finds ought to have been disclosed pursuant to this article, the court may make such orders with regard to the failure or refusal as are just, among them: an order striking out pleadings or parts thereof.

However, "there must be a conclusive showing that the noncomplying party's conduct was willful, contumacious or due to bad faith" (*Lowitt v Burton I Korelitz, MD, PC*, 152 AD2d 506 [1st Dept 1989] citing *Dauria v City of New York*, 127 AD2d 459 [1st Dept 1987]). "Striking a defendant's answer is a drastic remedy and is inappropriate when the contumacious behavior or noncompliance is attributable to defendant's counsel rather than to the defendant" *(id.*, citing *Bako v VT Trucking Co*, 143 AD2d 561 [1st Dept 1988]).

Plaintiff moves to strike WINNCO's answer under CPLR § 3126(3), and after striking said answer, moves for summary judgment. Plaintiff alleges that there is a surveillance camera on the subject property that recorded the accident, and that WINNCO failed to preserve and produce this video during discovery. Plaintiff principally relies on an incident report prepared by Defendant WinnResidential (NY) LLC, which states that "There is a 14 Second Video Clip from camera #7, Elevator #1. There is lobby video of the actual fall available" (Plaintiff's Exhibit I, NYSCEF Doc. No. 87 at 3). Moreover, Plaintiff states that non-party witness to the accident,

Jeffrey Ward, was informed of the video's existence by the building's superintendent in a conversation shortly following the accident. This video has not been produced, and a Jackson Affidavit was submitted by WINNCO confirming that the video cannot be located (Plaintiff's Motion, NYSCEF Doc. No. 77 at 7). Plaintiff argues that WINNCO's failure to preserve the video constitutes spoilation of evidence, and warrants the striking of their pleadings.

WINNCO states that, as stated in its Jackson Affidavit, there is a question of fact as to whether the surveillance video exists. In support of this, WINNCO cites to deposition testimony of the building superintendent, who stated that he did not know if a video existed of Plaintiff's fall (building superintendent's deposition, NYSCEF Doc. No. 83 at 39). In his deposition testimony, the building superintendent also states that an outside company, Sonitec, has access to viewing surveillance footage, and that Defendant WinnResidential cannot review the camera footage (*id.*, at 76). Moreover, WINNCO argues that there is no evidence that WINNCO ever possessed or willfully destroyed any video surveillance footage.

Plaintiff argues that at the very least, WINNCO should be sanctioned for negligently destroying the video surveillance footage. The Court finds, however, that there is no definitive evidence of such video's existence, nor is there any evidence that WINNCO destroyed it. Defendants provided a Jackson Affidavit, detailing that they are unable to locate the video, and the Court has not held that the surveillance video footage exists, let alone, that WINNCO engaged in willful spoliation. While the incident report says that a video exists, and while the building superintendent allegedly stated to a non-party, at the time, that he had seen the video, the building superintendent later testified under oath that he did not know if a video existed.

Plaintiff's motion is denied as the Court has not found that evidence spoliation has occurred. Moreover, Plaintiff's requested remedy is too drastic absent a showing of willful

conduct, which is required for the striking of a party's pleadings under the plain language of CPLR § 3126(3). Given that there is no proof as to the surveillance video's existence, the Court is unable to find that WINNCO willfully, negligently, or otherwise destroyed such evidence. Plaintiff's motion is therefore denied in its entirety.

II. Motion Sequence 002: Motion for Summary Judgment by Defendants Susan's Cleaning Angels and Safety Facility Services against Plaintiff, and Co-Defendants' Cross Claims

To prevail on a motion for summary judgment pursuant to CPLR § 3212, the movant must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 323 [1986]). Once the movant submits competent proof demonstrating that there is no substance to its opponent's claims and no disputed issues of fact, the opponent, in turn, is required to "lay bare [its] proof and come forward with some admissible proof that would require a trial of the material questions of fact on which [its] claims rest" (*Ferber v Sterndent Corp.*, 51 NY2d 782, 783 [1980]). The party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted (*see Dauman Displays, Inc. v Masturzo*, 168 AD2d 204, 205 [1st Dept 1990]).

a. Defendants SCA and SFS' Motion for Summary Judgment dismissing Plaintiff's claims

Defendants SCA and SFS move for summary judgment and dismissal against Plaintiff pursuant to CPLR § 3212, arguing that Plaintiff was the sole proximate cause of her injuries. On the date of the accident, SCA and SFS point out that in her deposition, Plaintiff states she personally observed the porter mopping, personally observed the wet-floor sign, and personally saw that the floor was wet and "shiny" (Plaintiff's deposition, NYSCCEF Doc. No. 94 at 33-35,

147). Moreover, SCA and SFS point out that in her deposition, Plaintiff testified that she was told by her husband, who was with her at the time she fell, to stay on the elevator in order to avoid the wet floor (Plaintiff's deposition, NYSCEF Doc. No. 94 at 35).

Separate from the issue of proximate cause, SCA, who provided mopping services on the day of the accident, argues that they were not negligent. SCA states they placed the wet floor sign in a conspicuous location, in accordance with building and management requirements; and that Plaintiff stated in her deposition that she saw said sign, yet chose to proceed onto the wet floor, anyway. SFS argues that they were a "middleman," and owed no duty to Plaintiff, as they did not create the hazardous condition. Rather, SFS subcontracted with SCA to provide mopping services, and as a "middleman" between the building owner and the mopping work, SFS claims it cannot be held liable for Plaintiff's injuries.

Plaintiff counters that there is a question of fact as to the proximate cause of her injuries. Specifically, Plaintiff states that there are questions of fact regarding whether the mopping schedule was reasonable under the circumstances, and whether the mopping equipment was proper on the day of the accident. Plaintiff states that a jury might find that mopping a building lobby on a Saturday morning, like at present, is unreasonable. Plaintiff also argues that the presence of a mop bucket on the day of the accident indicates a deviation from proper mopping protocols, given the building superintendent testified that the protocol was to mop the lobby without a bucket. Plaintiff states that it is also building policy to clean the floors with a mop that is "more dry than wet" (building superintendent deposition, NYSCEF Doc. No. 97 at 45). The floors were not properly mopped on the day of the accident, Plaintiff posits, because the floor was so wet that it was "shiny" (Plaintiff deposition, NYSCEF Doc. No. 94 at 147).

Moreover, Plaintiff states that the building superintendent testified that WINNCO did not provide the cleaning schedule to SCA. The building superintendent testified that the schedule was provided to SCA by SFS. As such, SFS could be found negligent if the cleaning schedule is determined to be unreasonable. The same is true of written instruction for SCA's mopping responsibilities: Plaintiff avers that the instructions came from SFS, not WINNCO.

SFS avers that the superintendent testified that the mopping schedule was set prior to WINNCO's operation and management of the building. SFS also states that as a matter of policy, SFS follows the cleaning schedule set by the building superintendent or management company, and does not create its own cleaning schedule (SFS deposition, NYSCEF Doc. No 99 at 28).

The above conflicting testimony indicates that there is a question of fact as to who provided the cleaning schedule—WINNCO, SFS, or SCA—and whether SCA was negligently mopping the premises on the day of the accident. Plaintiff's testimony that there was a bucket on the day of the accident, and that the floor was so wet that it was visibly shiny, create issues of fact as to whether reasonable protocols were being followed.

In light of the foregoing, the motion for summary judgment and dismissal against Plaintiff is denied.

b. SCA and SFS Motion for Summary Judgment against WINNCO's cross-claims of contractual indemnity and failure to procure insurance, and common-law indemnity

SCA and SFS argue that they are entitled to summary judgment as to WINNCO's cross-claims for contractual indemnity and failure to procure insurance. Namely, SCA and SFS argue that there was no written contract with WINNCO, and that SFS' services were acquired via verbal agreement that did not include a promise to indemnify or procure insurance. As such, SCA and SFS cannot be held liable for WINNCO's claims for indemnification or failure to procure insurance. Moreover, given that SCA's only contractual relationship was with SFS, SCA

argues it is also entitled to summary judgment and dismissal as to WINNCO's cross-claims, because SCA did not have a contract with WINNCO.

In response, WINNCO states that four years prior to the accident, WINNCO had a contract with SFS that contained an indemnity clause. This contract was limited in time and location, and did not include the building at issue, but WINNCO posits that the agreement was to continue "for other like periods, upon same terms and conditions" (WINNCO's Opposition, NYSCEF Doc. No. 110 at 3). WINNCO concedes that it is true: there is no contract that specifically details SFS' responsibility to mop in the building at issue. However, WINNCO argues that extrinsic evidence demonstrates that the parties intended to include the property at issue within this older contract.

In the contract that WINNCO states was later modified to include the subject property, it reads, "[t]his Agreement… may not be changed or modified orally, but only by a specific amendment in writing signed by the party against whom any such change or modification is to be enforced" (Contract between WINNCO and SFS, NYSCEF Doc. No. 112 at ¶ 15). Thus, by the very terms of the contract itself, WINNCO's argument that it was modified in the future, to include the subject property without a writing signed by either party, cannot stand. Therefore, WINNCO's cross-claims that are based on contractual liability (contractual indemnification and failure to procure insurance) must be dismissed against SFS and SCA, because there is no written, controlling contract, and because the only contract that could potentially apply, cannot be modified without a signed, written amendment. As such, SFS and SCA's motion for summary judgment as to WINNCO's contractual claims is granted.

As to WINNCO's claims of common-law indemnification, the one seeking indemnity must show "...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, 484 [1st Dept 2010]).

The parties agree that SCA was actively mopping at the time of the accident, and Plaintiff maintains that SCA was doing so negligently. Should a jury find that WINNCO was not negligent and that SCA and/or SFS was negligent, they could be obligated to WINNCO for common-law indemnification. As such, SFS and SCA's motion for summary judgement, seeking dismissal of WINNCO's common-law indemnity claim, is denied.

In light of the foregoing, Motion Sequence 002 is denied with respect to Plaintiff's claims, and partially granted as to WINNCO's cross-claims for indemnification. Defendants SFS and SCA are entitled to summary judgment and dismissal as to WINNCO's contractual indemnification and failure to procure insurance claims. However, SFS and SCA's motion for summary judgment and dismissal as it pertains to WINNCO's cross-claim against SFS and SCA for common-law indemnification, is denied.

Accordingly, it is hereby

ORDERED that Plaintiff's motion to strike the answer of Defendants Standard Snowden Venture LP, WinnResidential (NY) LLC, and WinnCompanies, is denied in its entirety; and it is further

ORDERED that the summary judgment motion for dismissal of Plaintiff's claims by Defendants Susan's Cleaning Angels, Inc. d/b/a SCA Enterprises and Safety Facility Services is denied; and it is further

ORDERED that Defendants Susan's Cleaning Angels, Inc. d/b/a SCA Enterprises and Safety Facility Services' motion for summary judgment is granted as it pertains to Co-

Defendants' cross-claims for contractual indemnification and failure to acquire insurance; and it is further

ORDERED that Defendants Susan's Cleaning Angels, Inc. d/b/a SCA Enterprises and Safety Facility Services motion for summary judgment is denied as it pertains to Plaintiff's claims, and Co-Defendants' cross-claim for common-law indemnification.

The foregoing constitutes the order and decision of the Court.

4/8/2026
DATE

LESLIE A. STROTH, J.S.C.

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