Kibble v Loschiavo Props. LLC
2016 NY Slip Op 32120(U)
June 23, 2016
Supreme Court, Queens County
Docket Number: 704687/14
Judge: Darrell L. Gavrin
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NEW YORK SUPREME COURT - QUEENS COUNTY

Present: **HONORABLE DARRELL L. GAVRIN** IA PART 27
Justice

JOHN KIBBLE and ANDREA KIBBLE,	Index No. 704687/14
Plaintiffs,	Motion Date March 31, 2016
- against-	
LOSCHIAVO PROPERTIES LLC, 12-68 150TH STREET LLC, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and PREFERRED FLOORS OF WHITESTONE INC.,	Motion Cal. No. 95 & 96
	Motion Seq. No. 3 & 4
Defendants.	

The following papers read on this motion by defendant, Preferred Floors of Whitestone Inc., for an order granting summary judgment dismissing the complaint and all cross claims; defendants, Loschiavo Properties LLC, and 12-68 150th Street LLC, separately move for an order granting summary judgment dismissing the complaint and all cross claims.

	Papers Numbered
Notice of Motion - Affirmation - Exhibits............................	EF36-39
Affirmation in Opposition - Exhibits....................................	EF55-56
Reply Affirmation...	EF57
Notice of Motion - Affirmation - Exhibits............................	EF40-53

Upon the foregoing papers, these motions are consolidated for the purposes of a single decision and order and are determined as follows:

Background

Plaintiff, John Kibble, alleges that on March 30, 2014, at approximately 2:15 p.m., he sustained personal injuries, when he tripped and fell on the sidewalk adjacent to the premises known as 12-68 150th Street, Whitestone, New York. The premises is owned by defendant, 12-68 150th LLC, and managed by defendant, Loschiavo Properties LLC (Loschiavo Properties). Defendant, Preferred Floors of Whitestone Inc. (Preferred Floors), was the tenant at said premises. Mr. Kibble sustained a broken metatarsal in his left hand and underwent hand

surgery.

Pleadings and Timeliness

Plaintiffs, John Kibble, and his wife, Andrea Kibble, commenced this action on July 1, 2014, and alleged separate negligence claims against 12-68 150th LLC, Loschiavo Properties, Preferred Floors, and Consolidated Edison Company of New York (Con Ed). Andrea Kibble asserted for loss of companionship.

Defendant, Preferred Floors, served a verified answer and interposed seven affirmative defenses and cross claims against the co-defendants for common-law indemnification, common-law contribution, contractual indemnification, and for breach of contract based upon a failure to procure insurance coverage.

Defendants, Loschiavo Properties and 12-68 150th Street LLC, served an answer and interposed five affirmative defenses and cross claims against Con Ed for common-law contribution and indemnification.

Defendant, Con Ed, served an answer and interposed three affirmative defenses and a cross claim against Loschiavo Properties, 12-68 150th Street LLC, and Preferred Floors for common-law indemnification.

Plaintiff, Andrea Kibble, discontinued her claim pursuant to stipulations dated June 5, 2015 and July 16, 2015. Plaintiff, John Kibble, filed his note of issue on September 11, 2015, so that the 120th day was January 9, 2016, a Saturday. Therefore, the 120-day period expired on January 11, 2016 (*see* General Construction Law §§ 24, 25-a). Defendant, Preferred Floors, timely served its motion to dismiss by e-filing on December 22, 2015, and defendants, Loschiavo Properties, and 12-68 150th Street LLC, timely served their motion to dismiss by e-filing on January 11, 2016. Defendants' motions, therefore, will be considered on the merits.

Deposition Testimony

Kibble testified at his deposition that on Sunday, March 30, 2014, he drove from his home in Whitestone to Christo Stationery to purchase lottery tickets; that he parked his car on 150th Street and 14th Avenue, and "walked about 20 feet to the corner, crossed (150th Street) going east, to the east side of the street and made a left and walked about 50, 60 feet to the store" (Tr. 11). He stated that he was in the store for ten minutes and that when he left the store, it was raining slightly. He crossed 150th Street and stepped between two parked cars; that there was 6 to 10 feet between these parked cars; that he could see the concrete sidewalk in front of him; that he stepped onto the concrete sidewalk and turned left towards the corner, when his right foot hit a mound of asphalt, causing him to trip and fall. He stated that he took two steps once he was on the side walk prior to the accident. He stated that the asphalt was where a "normal concrete sidewalk" would be, and that it was an "obvious patch" which extended from

the "curb in" (Tr 23). He stated that he never saw the asphalt patch until his accident; that it was about 4 to 5 inches higher than the rest of the surrounding sidewalk; that he was looking straight ahead when he fell; and that he was unaware of any witnesses to his accident.

Mr. Kibble was shown a photograph of the asphalt patch which he identified as an accurate depiction of where the accident occurred. He stated that yellow markings on the sidewalk depicted in the photograph was present when he fell; that these markings are "a sign that Con Ed puts when they are doing work" (Tr 41); that he worked as a steam fitter in construction for 44 years; and that based on his experience the markings are used by Con Ed to mark the location of gas mains (Tr 53). He stated that he lives about six blocks from the site of the accident and that at the time of the accident he was not aware of any work performed by Con Ed at that time. Mr. Kibble stated that within two or three weeks after April 4, 2014, he observed that at the site where he fell, were there had been asphalt, there was fresh concrete with barriers around it.

Allen Simon was deposed on behalf of Preferred Floors. Simon, the store manager for 14 years, stated that he had no duties with respect to the "maintenance of the exterior sidewalks on the building" (Tr 6); that Loschiavo Properties and 12-68 150th Street LLC own the property; that he parks in the back parking lot and enters the store from 14th Avenue; that he was not sure if he saw the black patch on 150th Street before March 30, 2014, and also stated that it was there for a period of time in the early spring, late winter of 2014. He stated that he did not observe anyone putting in the black patch, and that before March 30, 2014, he did not receive any complaints about the black patch and he did not make any complaints about it to anyone.

Mr. Simon stated that he was not aware of receiving any municipal violations about the black patch and that prior to March 30, 2014, he did not know of any accidents in the area of the black patch. He averred that he did not believe that Preferred Floors had a lease with 12-68 150th LLC; that his independent installers helped with the removal of snow and ice in the winter on the 14th Avenue side where they would load supplies; and that he would occasionally ask them to clean the sidewalk to the curb on 150th Street so that they would not get a ticket from the Department of Sanitation.

Simon stated that there is small office in the building premises for Loschiavo Properties, which includes Mark Loschiavo, his mother Gloria Loschiavo and his sister Barbara Murray. He further stated that Mark Loschiavo owns the property and owns Preferred Floors. He stated that he never discussed the black patch with Mark Loschiavo, Gloria Loschiavo, Barbara Murray, or Josie Ventura. He stated that Ms. Ventura runs Loschiavo Properties and that its office is not in Preferred Floors.

Ventura was deposed on behalf of Loschiavo Properties. Ventura stated that Loschiavo Properties is engaged in the business of property management, and that she has been employed as its manager since 1997. She stated that in March 2014, her duties included "repairs and

maintenance, banking, administrative duties, such as payroll, bill payments" (Tr 6). She stated that most of the buildings are commercial, and her duties with respect to responsibilities with respect to maintenance and repair were structural.

Ventura stated that she has managed the building located at 12-68 150th Street, Whitestone, New York, since 1997 and was its manager in March 2014. She stated that said building is owned by 12-68 150th Street LLC and that Mark Loschiavo is a member of this limited liability company. She also stated that Loschiavo Properties has three members, Gloria Loschiavo and her children Mark Loschiavo and Barbara Murray; that in March 2014 all three members were active in the business; and that she reported to all three members at different times. Ventura stated that her office was inside Preferred Floors; that there was never a lease agreement between the owner of the subject premises and Preferred Floors, as Mark Loschiavo is an owner of both entities. She stated that for the year before March 30, 2014, Loschiavo was generally present on the premises with respect to either Preferred Floors or 12-68 150th Street, LLC and that he has an office is also located in Preferred Floors, which he shares with Gloria Loschiavo.

Ventura stated that Freddy's Pizza has been a tenant in said building at least since 1997, pursuant to a written lease. She stated that Loschiavo Properties only provided building maintenance to the residential tenants; that Preferred Floors provided building maintenance to the premises known as 12-68 150th Street; and that in the winter of 2014, Preferred Floors removed snow from the sidewalks in front of the subject building.

Ventura identified the subject premises depicted in a photograph and stated that before March 30, 2014, she had no recollection of ever seeing the black area depicted on a flag of concrete in said photograph; that she never recalled a tree planted in the black area; that the residential tenants would place their garbage curbside on Wednesday and Sunday nights; that prior to March 30, 2014, she never received any type of notice from a governmental municipality that the sidewalk in the vicinity of the black patch had to be repaired; and that neither Loschiavo Properties or 12-68 150th Street LLC ever received a bill or assessment for the repairs to the sidewalk.

Ventura stated that she occasionally walked on the 150th side of the building and usually enters from 14th Avenue; that prior to March 30, 2014, no one ever complained about the black area of the sidewalk; that she never received any municipal violations regarding the black area of the sidewalk; that between 1997 and March 30, 2014, she had no recollection of Loschiavo Properties hiring a contractor to repair sidewalks adjoining the building on either 14th Avenue or 150th Street; that she had no recollection of hiring a contractor to repair the sidewalk where the black patch was located; and that for the past 10 years there was no need to repair the sidewalks, as there were no cracks or defects.

Ventura identified a photograph which depicts a brand new cement flag. The black patch did not appear in said photograph. She stated that Loschiavo Properties did not install the new

sidewalk flag which was directly across the building's entrance for the residential tenants; that she never saw the work performed, and that to her knowledge neither Loschiavo Properties or Preferred Floors had any involvement with the sidewalk repair.

Ventura stated that she took the photographs after seeing a sign "repairing your gas systems." She stated that Con Ed was working on a major project on 150th Street, from 14th Avenue down to the Cross Island Parkway, and that she took photographs as she was not sure whether Con Ed's construction project would require reopening the new sidewalk flag. She stated that she never spoke to anyone at Con Ed about the work it performed.

Yesenia Campoverde was deposed on behalf of Con Ed. She stated that she is a "Specialist" and that her duties include searching for documents and testifying at depositions and trials on behalf of Con Ed. She stated that a co-worker conducted a record search for documents pertaining to plaintiff's accident and the subject location. Ms. Campoverde stated that an opening ticket is generated by Con Ed when an excavation is performed, a paving order is the final restoration order that is generated after the excavation is completed, and that a corrective action request is generated when a condition needs to be fixed. She stated that an emergency control system ticket is generated when a complaint or outage is called in to Con Ed.

Ms. Campoverde identified a NYC Department of Transportation Permit No. Q01-2012284-225(225), valid from October 10, 2012 through November 8, 2012, which allowed Con Ed to open the roadway or sidewalk in front of 12-68 150th Street for the purpose of a "major installation of gas" (Tr 28).

A Notice of Violation dated December 4, 2012 was issued by the City of New York to Con Ed in connection with Permit 225, indicating that Con Ed had failed to properly backfill an excavation. A second Notice of Violation dated December 12, 2102 was issued to Con Ed in connection with Permit 225, indicating that a 4' x4' area of sidewalk was long overdue for final restoration. Ms. Campoverde testified that the violation was for the front of 12-68 150th Street which "was overdue for final" (Tr 54) and that the permit had expired on November 8, 2012. A third Notice of Violation was issued to Con Ed on July 13, 2013, with respect to Permit 225.

Ms. Campoverde identified a street opening DOT Permit No. Q012014035037 for the location in front of 12-68 150th Street, that was valid from February 4, 2014 to March 5, 2014. An Emergency Control System ticket was generated by Con Ed in connection with this permit, which makes references to Permit 037 and Permit 225. The ticket indicates that the job was completed on November 2, 2012.

Ms. Campoverde identified an opening ticket for excavation at the location of the accident, generated by Con Ed on March 11, 2014, for the purpose of "gas' (Tr 33). The size of of said opening was 5'x5', with a depth of 4". According to Ms. Campoverde this ticket indicates that the sidewalk was opened at zero feet from the curb. She stated that the opening was backfilled with the excavated material on March 11, 2014, and that paving was required.

She identified a permit issued to Con Ed on April 9, 2014, which was valid from April 15, 2014 to May 14, 2014, for final restoration only. According to Con Ed's records, the paving was performed by a contractor, Peduto Construction Corp., on April 23, 2014.

The documentary evidence submitted at Ms. Campoverde's deposition demonstrates that Con Ed made a street cut at the location of the plaintiff's accident, and on March 11, 2014, that it was backfilled with asphalt on the same day.

The defendant property owner, 12-68 150th Street LLC, has not submitted deposition testimony or affidavits from a person with personal knowledge of the facts.

Legal Standards

"Generally, liability for injuries sustained as a result of a dangerous condition on a public sidewalk is placed on the municipality, and not on the owner of the abutting land" (*James v Blackmon*, 58 AD3d 808, 808 [2d Dept 2009]). However, liability may be imposed on the abutting landowner when the abutting landowner affirmatively created the dangerous condition, made negligent repairs that caused the condition, created the dangerous condition through a special use of the sidewalk, or violated a statute or ordinance imposing liability on the abutting landowner for failing to maintain the sidewalk (*see Metzker v City of New York*, AD3d , 2016 NY Slip Op 03724, 2016 N.Y. App. Div. LEXIS 3577 [2d Dept 2016]; *Crawford v City of New York*, 98 AD3d 935, 936 [2d Dept 2012]).

"Administrative Code of the City of New York § 7-210, which became effective September 14, 2003, shifted tort liability for injuries arising from a defective sidewalk from the City of New York to the abutting property owner" (*Pevzner v 1397 E. 2nd, LLC*, 96 AD3d 921, 922 [2d Dept 2012]; *see Metzker v City of New York, supra*; *Vucetovic v Epsom Downs, Inc.*, 10 NY3d 517 [2008]; *Stoloyvitskaya v Dennis Boardwalk, LLC*, 101 AD3d 1106 [2d Dept 2012]; *Fusco v City of New York*, 71 AD3d 1083, 1084 [2d Dept 2010]). "[T]he language of section 7-210 mirrors the duties and obligations of property owners with regard to sidewalks set forth in Administrative Code sections 19-152 and 16-123" (*Vucetovic v Epsom Downs, Inc.*, 10 NY3d at 521 [internal quotation marks omitted]; *see Stoloyvitskaya v Dennis Boardwalk, LLC*, 101 AD3d at 1107; *Harakidas v City of New York*, 86 AD3d 624, 626 [2d Dept 2011]).

Administrative Code section 7-210(a) states that "[i]t shall be the duty of the owner of the real property abutting any sidewalk . . . to maintain such sidewalk in an reasonably safe condition." Administrative Code section 7-210(b) states that: "Not withstanding any other provision of law, the owner of real property abutting any sidewalk, including but not limited to, the quadrant for corner property shall be liable for any injury to property or personal injury, including death, proximately caused by the failure of such owner to maintain such sidewalk in a reasonably safe condition. Failure to maintain such sidewalk in a reasonably safe condition shall include, but not be limited to, the negligent failure to install, construct, reconstruct, reave, repair or replace defective sidewalk flags and the negligent failure to remove snow, ice, dirt or

other material from the sidewalk."

In a trip and fall case, a defendant moving for summary judgment has the initial burden of making a *prima facie* showing that it neither created the hazardous condition nor had actual or constructive notice of its existence for a sufficient length of time to discover and remedy it (*see Maloney v Farris*, 117 AD3d 916 [2d Dept 2014]; *Jackson v Jamaica First Parking, LLC*, 91 AD3d 602, 602-603[2d Dept 2012]; *Tsekhanovskaya v Starrett City, Inc*., 90 AD3d 909, 910 [2d Dept 2011]; *Arzola v Boston Props. Ltd. Partnership*, 63 AD3d 655, 656 [2d Dept 2009]). A movant cannot satisfy its initial burden by pointing to gaps in the plaintiff's case (*see Campbell v New York City Tr. Auth.*, 109 AD3d 455, 456 [2d Dept 2013]; *Martinez v Khaimov*, 74 AD3d 1031, 1033 [2d Dept 2010]).

"To constitute constructive notice, a defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit [the defendants] to discover and remedy it" (*Gordon v American Museum of Natural History*, 67 NY2d 836, 837 [1986]; *see Gauzza v GBR Two Crosfield Ave. Ltd. Liab. Co.,* 133 AD3d 710 [2d Dept 2015]; *McMahon v Gold*, 78 AD3d 908 [2d Dept 2010]). In demonstrating that it lacked constructive notice of a visible and apparent defect, "the defendant must offer some evidence as to when the area in question was last cleaned or inspected relative to the time when the plaintiff" slipped and fell (*Birnbaum v New York Racing Assn., Inc.*, 57 AD3d 598, 598-599 [2d Dept 2008]; *see Bergin v Golshani*, 130 AD3d 767, 768 [2d Dept 2015]; *Weinberg v 2345 Ocean Assoc., LLC*, 108 AD3d 524, 525 [2d Dept 2013]).

Defendant Preferred Floors motion for an order granting summary judgment dismissing the complaint and all cross claims

Preferred Floors has established, *prima facie*, that it did not create the condition or make special use of the sidewalk (*see Zorin v City of New York*, 137 AD3d 1116, 1117-1118 [2d Dept 2016]; *Collado v Cruz*, 81 AD3d 542 [1st Dept 2011]). As Preferred Floors is the tenant and not the owner of the subject premises, it had no duty to repair the abutting sidewalk pursuant to Administrative Code section 7-210. In addition, the evidence presented by Preferred Floors establishes that it never had a written lease, and that it was only responsible for its own building maintenance, performed snow removal, and occasionally cleaned the sidewalk. As there is no evidence that the abutting sidewalk was part of the leased premises, that Preferred Floors had any special use of the sidewalk or that it assumed any responsibility to make structural repairs to the sidewalk, whether it had actual or constructive notice of the alleged condition is irrelevant, as it owed no duty to the plaintiff to repair the abutting sidewalk.

In opposition, plaintiff has failed to raise a triable issue of fact as to this defendant. Mr. Kibble alleged in his complaint and testified at his deposition that he tripped and fell due to a defect in the sidewalk. He does not claim that the accident was due to the presence of snow or debris on the sidewalk. Therefore, as Preferred Floors owed no duty to the plaintiff to maintain the sidewalk, its motion for summary judgment dismissing the complaint and all cross claims

against it, is granted (*see Zorin v City of New York*, 137 AD3d at 1117-1118; *Berkowitz v Dayton Constr., Inc*., 2 AD3d 764, 765 [2d Dept 2003]).

Defendants Loschiavo Properties and 12-68 150th Street LLC's motion for summary judgment dismissing the complaint and all cross claims

The property owner, 12-68 150th Street LLC, has a statutory duty to maintain the sidewalk abutting its premises (*see Reyderman v Meyer Berfond Trust #1*, 90 AD3d 633, 634-635 [2d Dept 2011]). However, Section 7-210 does not impose strict liability upon the property owner, and the injured party has the obligation to prove the elements of negligence to demonstrate that an owner is liable (*see Vucetovic v Epsom Downs, Inc.*, 10 NY3d at 521; *Harakidas v City of New York*, 86 AD3d at 626; *Martinez v Khaimov*, 74 AD3d 1031, 1032-1033 [2d Dept 2010]). In support of a motion for summary judgment dismissing a cause of action pursuant to Section 7-210, the property owner has the initial burden of demonstrating, *prima facie*, that it neither created the hazardous condition nor had actual or constructive notice of its existence for a sufficient length of time to discover and remedy it (*see Vucetovic v Epsom Downs, Inc.*, 10 NY3d at 521; *Bergin v Golshani*, 130 AD3d at 768; *Weinberg v 2345 Ocean Assoc., LLC*, 108 AD3d at 525; *Harakidas v City of New York*, 86 AD3d 626-627).

In the case at bar, there is no evidence that the property owner created the asphalt patch plaintiff tripped over. Rather, the evidence presented demonstrates that on March 11, 2014, Con Ed opened the area of the sidewalk where plaintiff's accident occurred, and that Con Ed backfilled the area and covered it with asphalt the same day. Defendant property owner does not dispute that said asphalt was not even with the sidewalk, and asserts that this condition existed for at least 19 days prior to the plaintiff's accident. However, defendant property owner has failed to establish, *prima facie*, that it did not have actual or constructive notice of the alleged hazardous condition.

In support of the motion, defendant property owner failed to submit any deposition testimony or affidavits from an individual with personal knowledge and chose to rely upon the deposition testimony of its property manager. Ventura, the property manager, testified that she did not have actual notice of the asphalt patch the property owner. However, she testified that the property owner, 12-68 150th Street LLC and the Loschiavo Properties, the property manager, maintain an office at the subject abutting premises, and that Mr. Loschiavo, a member of the limited liability company that owns the abutting real property, a member of 12-68 150th Street LLC and the Loschiavo Properties and the owner of Preferred Floors was generally present at said office. The defendant property owner submitted no evidence as to when the abutting sidewalk was last inspected prior to the accident or what it looked like when it was last inspected (*see Weinberg v 2345 Ocean Assoc., LLC*, 108 AD3d at 525; *Hevia v Smithtown Auto Body of Long Is., Ltd.*, 91 AD3d 822 [2d Dept 2012]; *Jackson v Jamaica First Parking, LLC, 91 AD3d 602, supra; Martinez v Khaimov*, 74 AD3d at 1033-1034; *Pryzywalny v New York City Tr. Auth*., 69 AD3d at 599 [2010]). Additionally, the defendant property owner failed to meet its burden as to the issue of actual notice, since it did not submit any proof of its lack of actual

notice (*see Maloney v Farris,* 117 AD3d 916 [2d Dept 2014]; *Booker v City of New York*, 61 AD3d 710, 711 [2d Dept 2009]). Since defendant, 12-68 150th Street LLC, has failed to meet its initial burden as a movant, it is not necessary to review the sufficiency of the plaintiff's opposition papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]).

This court further finds that defendant property owner's reliance upon Section 19-152 of the Administrative Code is misplaced, as there is no evidence that it was directed to repair the sidewalk by the Commissioner of the Department of Transportation, following an inspection of the subject real property. Moreover, there is no evidence that the City of New York created the condition or that Con Ed was an "agent of the City, or a contractor employed by the city during the course of a City capital construction project" at the time it performed the work at the subject sidewalk, within the meaning of the statute, or that the work performed by Con Ed on the subject sidewalk flag, prior to and including the 19 days prior to the plaintiff's accident, constituted a "city capital construction project" within the meaning of the statute.

Defendant property owner asserts that Con Ed derived a special use of the area of the sidewalk where the accident occurred as it installed and maintained a gas valve and gas valve cover beneath the subject sidewalk flag. It is asserted that the property owner did not have exclusive access to, or the ability to exercise control over the condition upon which the plaintiff allegedly tripped and fell, and is not responsible for maintaining the temporary asphalt patch created by Con Ed. However, there is no evidence that the work performed by Con Ed at the subject site was specifically related to a gas valve and gas valve cover beneath the sidewalk, nor has defendant property owner established that it had no duty to remedy the allegedly hazardous condition which was on the sidewalk (*see Metzker v City of New York, supra*).

Based on the foregoing, defendant, 12-68 150th Street LLC's motion for summary judgment dismissing the complaint, is denied for the reasons stated above.

Defendant, Loschiavo Properties, the owner's property manager, has established *prima facie*, that it did not create the allegedly hazardous condition and did not have a special use of the abutting sidewalk. Further, the evidence presented established that the property manager is only responsible for the maintenance of the residential portion of the subject premises. There is no evidence that Loschiavo Properties had any responsibility for making structural repairs to the abutting sidewalk, or that it assumed any such responsibility on behalf of the property owner. Although this defendant presented evidence demonstrating that it had no actual notice of the alleged defect, whether it had constructive notice is irrelevant as it owed no duty to the plaintiff to maintain the subject abutting sidewalk. Plaintiff, in opposition, has failed to raise a triable issue of fact at to this defendant. Therefore, Loschiavo Properties' request for summary judgment dismissing the complaint and all cross claims, is granted.

To the extent that Preferred Floors asserts cross claims against Loschiavo Properties and 12-68 150th Street LLC, based upon common-law indemnification and contribution, these claims must be dismissed as Preferred Floors cannot be held liable for the plaintiff's injuries.

To the extent that Preferred Floors asserts cross claims against Loschiavo Properties and 12-68 150th Street LLC, based upon contractual indemnification and for breach of contract due to the failure to procure insurance, these claims must be dismissed as there is no evidence that these parties entered into any contractual agreement for indemnification or the procurement of insurance. Notably, Preferred Floors does not oppose the co-defendants motion to dismiss its cross claims.

Conclusion

Preferred Floors' motion for summary judgment dismissing the complaint and all cross claims, is granted.

That branch of defendant, 12-68 150th Street LLC's and Loschiavo Properties' motion which seeks for summary judgment dismissing the complaint, is denied as to 12-68 150th Street LLC and is granted as to Loschiavo Properties..

That branch of defendant, Loschiavo Properties and 12-68 150th Street LLC's motion which seeks to dismiss all cross claims against them is granted solely to the extent that cross claims of Preferred Floors are dismissed in their entirety.

Dated: June 23, 2016

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DARRELL L. GAVRIN, J.S.C.