Pierre-Brunot v Skinson Realty Corp.
2019 NY Slip Op 33876(U)
December 20, 2019
Supreme Court, Queens County
Docket Number: 710790/2017
Judge: Cheree A. Buggs

Short Form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

Present: **HONORABLE CHEREÉ A. BUGGS** IAS PART 30
Justice

MONA PIERRE-BRUNOT,

Plaintiff,

-against-

SKINSON REALTY CORP. and
BOWNE STREET LAUNDROMAT INC.,

Defendants.

SKINSON REALTY CORP.,

Third- Party Plaintiff,

-against-

JERRY DELLIGATTI and MARIA DELLIGATTI,

Third-Party Defendants.

Index No. 710790/2017

Motion
Date: July 31, 2019

Motion Cal. No.: 43

Motion Sequence No.: 1

The following e-file papers numbered 19-47 submitted and considered on this motion by defendant SKINSON REALTY CORP. ("Skinson") seeking partial summary judgment pursuant to Civil Practice Law and Rules (hereinafter referred to as "CPLR") 3212 dismissing all claims and cross-claims asserted against it and the cross- motion by defendant BOWNE STREET LAUNDRY, INC. ("Bowne") and third-party defendants JERRY DELLIGATTI and MARIA DELLIGATTI (collectively "Delligattis") pursuant to CPLR 3212 dismissing plaintiff's complaint, the third-party complaint and all cross claims asserted against them and awarding Bowne and the Delligattis costs, disbursements and attorney's fees.

	Papers Numbered
Notice of Motion- Affirmation in Support	EF 19-35
Cross-motion- Affidavits- Exhibits.....	EF 36-40
Memo of Law in Reply.....	EF 41
Affirmation in Opp- Exhibit.....	EF 42-43

Memo of Law in Reply..... EF 44
Reply to Plaintiff's Opp..... EF 45
Reply Aff to Defendant's Opp..... EF 46-57

On January 28, 2015, plaintiff sustained personal injuries when she allegedly slipped and fell on ice covered by snow on the sidewalk adjacent to the premises located at 142-41 Franklin Avenue in Flushing, New York. The property was owned by Skinson, leased by the Delligattis, and occupied by Bowne. Plaintiff subsequently commenced the within action against Skinson and Bowne, alleging that defendants were negligent in the ownership and maintenance of the premises. In their respective answers, Skinson and Bowne asserted cross claims for common-law indemnification and contribution against each other. Thereafter, Skinson commenced a third-party action against the Delligattis seeking common-law indemnification, contribution, contractual indemnification, and damages for breach of contract. In their answer to the third-party complaint, the Delligattis asserted a counterclaim against Skinson for common-law indemnification, contribution, and contractual indemnification.

Generally, an out-of-possession owner or lessor is not liable for injuries that occur on its premises unless it has retained control over the premises or is contractually obligated to repair unsafe conditions (*see Scott v Bergstol*, 11 AD3d 525 [2d Dept 2004]). Administrative Code of the City of New York § 7-210, however, imposes upon property owners a nondelegable duty to maintain the sidewalk abutting the premises in a reasonably safe condition, regardless of whether they are out-of-possession landlords (*see Cook v Consolidated Edison Co. of NY, Inc.*, 51 AD3d 447 [1st Dept 2008]). That duty includes the duty to remove snow and ice from the abutting sidewalk (Administrative Code § 7-210[b]; *see Metzker v City of New York*, 139 AD3d 828 [2d Dept 2016]). Contrary to Skinson's contention, the mere existence of a lease provision placing a duty on a commercial tenant to maintain the premises does not affect a landowner's statutory duty (*see James v Blackmon*, 58 AD3d 808 [2nd Dept 2011]; *Reyderman v Meyer Berfond Trust #1*, 90 AD3d 633 [2nd Dept 2011]). While the statutory duty is nondelegable, Administrative Code § 7-210 does not impose strict liability upon the property owner, and the owner may be held liable for injuries arising out of the failure to remove snow and ice on the abutting sidewalk only if the owner created the dangerous condition or had actual or constructive notice of it for a sufficient length of time to discover and remedy it (*see Kabir v Budhu*, 143 AD3d 772 [2d Dept 2016]; *Khaimova v City of New York*, 95 AD3d 1280, 1281 [2d Dept 2012]; *Harakidas v City of New York*, 86 AD3d 624, 627 [2d Dept 2011]). Moreover, the language of Administrative Code § 7-210 mirrors the duties and obligations of property owners with regard to sidewalks set forth in Administrative Code § 16-123, which plaintiff alleged was violated here (*see Vucetovic v Epsom Downs, Inc.*, 10 NY3d 517, 521 [2008]). Pursuant to Administrative Code § 16-123(a), owners of abutting properties have four hours from the time the precipitation ceases, excluding the hours between 9:00 p.m. and 7:00 a.m., to clear snow and ice from the sidewalk.

In this matter, while it is undisputed that the tenant was obligated under the lease to perform snow and ice removal at the leased premises, Skinson failed to establish its prima facie entitlement to judgment as a matter of law because it did not present any evidence that it lacked actual or constructive notice of the snow and ice in the area where plaintiff allegedly slipped and fell. As such,

that branch of Skinson's motion for summary judgment dismissing the complaint and all cross claims and counterclaims against it is denied.

That branch of the cross motion by Bowne and the Delligattis for summary judgment dismissing plaintiff's complaint against Bowne is also denied. "In the absence of a statute or ordinance imposing tort liability on the lessee, it can be held liable only if it, or someone on its behalf, undertook snow and ice removal efforts which made the naturally-occurring conditions more hazardous" (*Schron v Jean's Fine Wine & Spirits, Inc.*, 114 AD3d 659, 660-661 [2d Dept 2014]; *see Bleich v Metropolitan Mgt., LLC*, 132 AD3d 933 [2d Dept 2015]; *Forlenza v Miglio*, 130 AD3d 567 [2015]; *Ferguson v Shu Ham Lam*, 74 AD3d 870 [2010]; *Robles v City of New York*, 56 AD3d 647 [2008]; *Bruzzo v County of Nassau*, 50 AD3d 720 [2008]). Here, there is no statute or ordinance that imposes tort liability on Bowne, as the occupant of the premises, for the failure to maintain the sidewalk abutting the subject premises. Owners, not tenants, have a nondelegable duty to maintain abutting sidewalks in a reasonably safe condition (Administrative Code § 7-210). However, Bowne and the Delligattis failed to establish their prima facie entitlement to judgment as a matter of law dismissing the complaint against Bowne by demonstrating that Bowne was free from negligence. The evidence submitted on the cross motion failed to eliminate triable issues of fact as to whether Bowne undertook snow removal efforts on the date of plaintiff's accident to clear the area of the sidewalk where plaintiff allegedly slipped and fell or whether any snow and ice removal efforts undertaken by it created or exacerbated the icy condition that allegedly caused plaintiff to fall (*see Branciforte v 2248 Thirty First St., LLC*, 171 AD3d 1003 [2d Dept 2019]; *Ramjohn v Yahoo Green, LLC*, 149 AD3d 992 [2d Dept 2017]; *Forlenza v Miglio*, 130 AD3d 567 [2d Dept 2015]). It is undisputed that, pursuant to the lease, the tenant was responsible for snow and ice removal at the premises. In addition, plaintiff's deposition testimony reveals that a layer of ice from a previous storm was present underneath the snow.

In view of the foregoing, the branch of Skinson's motion, which was, in effect, for conditional summary judgment on its cross claims for common-law indemnification and contribution against Bowne and its third-party claims for common-law and contractual indemnification and contribution against the Delligattis and those branches of the cross motion by Bowne and the Delligattis for summary judgment dismissing the cross claims and third-party claims for contribution and common-law and contractual indemnification against them must be denied as issues of fact remain as to the precise degree of fault, if any, of the parties in the happening of plaintiff's accident (*see Dow v Hermes Realty, LLC*, 155 AD3d 824 [2d Dept 2017]).

For the same reason, that branch of Skinson's motion seeking recovery of attorney's fees is also denied. Therefore it is,

ORDERED, that Skinson's motion is denied in its entirety; and it is further,

ORDERED, that Bowne and the Delligattis' cross-motion is denied in its entirety.

There foregoing constitutes the decision and Order of this Court.

Dated: December 20, 2019

Hon. Chereé A. Buggs, JSC