SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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RICHARD LYMAN,

Plaintiff,

-against-

CABLEVISION OF OSSINING LIMITED PARTNERSHIP, THE WOODS III IN WESTCHESTER HOMEOWNERS ASSOCIATION, INC. and, MANZER'S LANDSCAPE DESIGN & DEVELOPMENT, INC.,

Defendants.[1]

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MOTION DECISION & ORDERS

Index No. 52300/2017

Seq. Nos. 2, 3, & 4

Hubert, J.S.C.

Before the Court are three motions pursuant to CPLR §3212 filed by the above captioned defendants seeking summary judgment against the plaintiff Richard Lyman. Defendant Woods III In Westchester Homeowners Association, Inc. (Woods III, Seq. No. 2) further seeks summary judgment in it's favor as to cross claims they assert against Defendant Manzer's Landscape Design & Development, Inc. (Manzer). Defendant Cablevision of Ossining Limited Partnership (Cable vision, Seq. No. 3). Defendant Manzer (Seq. No. 4) further seeks summary judgment pursuant to CPLR §3212 as to cross claims by all co-defendants against Manzer.

The law suit alleges that the Plaintiff, a field technician for Verizon, was injured as a result of the negligence of the Defendants while responding to a service call at 52 Hemlock Circle, Peekskill N.Y. on November 16, 2017. The service call ultimately required the Plaintiff

[1] Action discontinued against ANNE T. WELDON, SCOTT CLANFAGLIONE, and THE WOODS PHASE 3 CONDOMINIUM ASSOCIATION, INC. Per stipulation of the parties. See E-Court Document Nos. 54, 56, 117 filed 11/14/2018, 12/17/2018 & 10/15/19 respectively.

to go out side of the residence in order to access the Optical Network Terminal box (ONT) attached to the exterior side of the wall of the residence. Access was necessary in order to connect a Verizon optical cable.

To complete the service call, the Plaintiff needed tools and equipment from his service vehicle. Thus he had to traverse numerous times between the shrubs blocking the ONT box to get to his vehicle . On or about the fifth trip between the ONT box, the shrubs, and his vehicle the plaintiff's foot became caught on a Cablevision wire (the Cable) causing him to trip and fall.

The Cable had been installed in the ground between the two shrubs some years ago (possibly 20 years) by Cablevision. At some point in time, the Cable had allegedly become exposed from it's in-ground location and was resting atop the ground soil between two large shrub bushes. The Plaintiff alleges that he tripped and fell as he walked between the two shrubs toward his vehicle. His right foot was caught by the exposed cable, and he was injured as a result. The Plaintiff did not see the exposed wire cable prior to his contact with it but saw it immediately after the fall.

The residence Plaintiff was servicing was part of, and located in, the condominium development known as THE WOODS PHASE 3. Woods III (Defendant) was the name of the Homeowners Association responsible for maintenance of common areas, including the grounds and roadways at the time of the alleged accident (see Wood III Affirmation in Support at ¶¶ 37,34 &35).

The Court has reviewed the motion submissions of the each of the parties including the Notice of Motion, Affirmation(s)/Affidavit(s) in Support, Affidavit(s)/Affirmation(s) in Opposition, Reply Affidavit(s)/Affirmations, and exhibits annexed thereto. After due

consideration, the Court determines as follows.

Motion of Defendant Woods III, Motion Sequence 2

The motion by Woods III for summary judgment and dismissal of Plaintiff's complaint is denied. The Defendant has failed to produce prima facie proof, as a matter of law, sufficient to show no issue of liability against Woods III.

In its motion, Woods III pleads no direct interest in, or possession of the property where the accident is alleged to have occurred. It further pleads that the alleged hazard which caused injury to the Plaintiff was not discoverable by a lay person and was thus a latent condition. Finally, the motion pleads there was lack of actual or constructive notice to Woods III of a hazardous condition.

On the question of no direct interest or possession of the property, the Plaintiff asserts that Woods III "did own, manage, maintain and control grounds, common areas and property known as The Woods Phase 3 Condominium (Amended Complaint, at ¶ ¶ "Fourteenth" and "Fifteenth"). The Woods III Defendant's denial of the plaintiff's claim, however, is based entirely on reference to contractual arrangements between Woods III and Ferrara Management Group, Inc. made on or about September 26, 2013. (Woods III Affirmation in Support ¶ ¶ 27, 34, 35 & 52).

According to the Woods III's affirmation, the contract specifically states that the Homeowner's Association (HOA) was responsible for maintenance of the common areas (including "the grounds"). Ferrara was employed by the Woods III Property Management Agreement, but only as a surrogate. For example, the agreement required not less than once a week inspection of the property by Ferrara with weekly reports to HOA of property condition.

Wood III also entered into a contract on March 18, 2013 (which was later extended to May 13, 2019) with co-Defendants Manzer's. Part of that agreement states that Manzer's would perform all ground maintenance, clean-up, landscaping and snow remediation. (Woods III Affirmation in Support ¶ ¶ 56, 57). However, according to the Affirmation, "Manzer's is required [under the contract] to report to the Homeowners Association any conditions that seem dangerous" (Woods III Affirmation in Support ¶ 60).

Thus while the contracts assign tasks of maintenance to Ferrara and Manzer's, they require "once a week inspection of the property with weekly reports to HOA of property condition," as well as "report[s] to the Homeowners Association [of] any conditions that seem dangerous." Presumably, the inspection and reports to HOA, by the contractees, of "property condition" and "conditions that seem dangerous" were included in the contracts so that Woods III and the HOA could decide what steps to take to remediate the conditions and protect the interests of the homeowners. Woods III's claim, that it had no direct interest in, or possession of the property where the accident is alleged to have occurred, and thus no liability, is contradicted by it's own contractual agreements (and admissions) showing an express retention of property control.

While an out of possession property owner may be found not liable for injuries that occur on it's property, proof that the property owner retains control over the premises *by contract or course of conduct* (emphasis added) voids that immunity. *Crosby v. Southport, LLC* ,169 A.D.3d 637, 639, 94 N.Y.S.3d 109 (2d Dep't 2019). Woods III"s own affirmation and admissions as to it's contractual agreements with Ferrara and Manzers undercut its claim of no interest or

possession[2]

On the question of whether the defect (the Cable) alleged to have caused the Plaintiff's injury may, as a matter of law, be termed "latent;" the answer is no. A defective or hazardous condition is latent if ". . . [the] defect could not have been discovered by a layman, even by inspection." *Rapino v. City of New York*, 299 AD2d 470, 471, 750 N.Y.S.2d 319 (2d Dep't 2002). A "lay" visual inspection of the Cable by virtually anyone (including Ferrara, Manzer's or the HOA) would have yielded a conclusion that it was a cable. The Cable's presence on top of the soil, even as positioned between the shrubs, would have shown it to be displaced from it's normal buried state and was a potential hazard.

The remaining question regards notice to the Defendant Woods III of the alleged hazardous condition that caused Plaintiff's fall. Photographs were marked as exhibit R in the Plaintiff's deposition. They show the area in which the Plaintiff was working and where it is alleged he fell. The photographs were taken shortly after he fell.

The exhibit R photos show the so-called Optical Network Terminal box (ONT) the Plaintiff was servicing. It is attached to the exterior side-wall of the building (presumably the residence) just below a utility meter and just above various pipes and cable wires which appear to go into the building as well as into the ground beneath the taller of the two shrubs. Some of the cables are black in color and some are white or dark gray.

The taller shrub is about five feet in height and is positioned immediately in front of the ONT box with little space between the shrub branches and the wall of the building. The second

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[2] The Court notes that most homeowner associations, in developments such as The Woods Phase 3 Condominium, are composed of the resident/owners therein. From the Court's review of the submissions on the motion this point does not appear to have been addressed.

shrub is relatively low (compared to the taller shrub) and is farther away from the wall of the building. To the left of the lower shrub is a fence about four feet in height which extends perpendicularly from the building wall, effectively enclosing the work area. A soil bed can be seen around the base of the two shrubs.

Based on the photographs (exhibit R in the Plaintiff's deposition), in order to access the ONT work area, the Plaintiff would have to have walked between the shrubs; a fairly tight passage way. To leave the work area and return to his vehicle the Plaintiff would have to go back the way he came. According to the Plaintiff's EBT testimony he walked five or six times over the area where the cable lay exposed before tripping and falling.

As numerous courts have held, ". . . a defendant property owner who moves for summary judgment has the initial burden of making a prima facie showing that it neither created the condition that caused the accident nor had actual or constructive notice of it's existence." *Shehata v. City of New York*, 128 A.D.3d 944, 946, 10 N.Y.S.3d 265 (2d Dep't 2015), citations omitted. The Woods III Defendants allege they have met those burdens entirely.

They claim not to have created the condition and claim further that they had no actual or constructive notice of exposed cable wires on the property. According to the Woods III's affirmation at ¶¶ 46, 47, lack of notice was because "Ferrara was not made aware of any complaints regarding exposed wires on the Subject Property." But Woods III's concedes it required *inspection* of the property by Ferrara, followed by *report* to HOA by Ferrara of property condition.. This begs the question as to who was tasked with informing or complaining to HOA about property conditions. Ferrara? Mrs. Cianfaglione? Homeowners? Any or all of the above?

Woods III's affirmation claims no reports of any hazards by Mrs. Cianfaglione as

evidence of an absence of notice.. It must be recalled however that she was the homeowner who's service call summoned the Plaintiff to the site.

According to Wood III's affirmation, "[Mrs. Cianfaglione] was . . . not aware of anyone prior to the Plaintiff having any difficulties walking where the alleged accident occurred, nor is [was] she aware of any defective condition at the subject property." Affirmation at ¶¶ 48, 49.

It's unclear to the Court why Mrs. Cianfaglione, a condominium owner at Woods 3, would ever be ". . . aware of anyone . . . having difficulties walking where the alleged accident occurred, or . . . aware of any defective condition at the subject property [in the area of the accident]," much less wherefrom a duty for Mrs. Cianfaglione to inspect and report would arise. She did not work for Ferrara, She did not work for Manza's. What reason would she have to walk in and around the ONT (Plaintiff's work area)? It was a confined space occupied by a utility meter, telephone and electrical boxes, air conditioning condenser, cable terminals and ground box, pipes and cable wires. It was neither a pathway for access by residents, their guests or members of the public to the inside of the residences, nor a pathway around the exterior. Short of inspecting the shrubs, or walking into the plaintiff's work area (to install her own cable wires or read the utility meter), it would be highly unlikely that Mrs. Cianfaglione would go there to see if anything was amiss, much less report it to Ferrara, Manza's or the HOA.

Based on the photographs (exhibit R in the Plaintiff's deposition), on any given day it was an area that would be visited or occupied almost exclusively by utility workers, gardeners, air conditioning servicers, plumbers, electricians, telephone workers, cable television technicians, and Verizon service providers, none of whom were property owners at Woods Phase 3 or otherwise contractually tasked with inspecting the grounds for hazardous conditions (with the

exception of Manzer's and Ferrara, Wood III's employees). While the space between the two shrubs in question are not wide, the cable alleged to be the cause of Plaintiff's injury can be seen in the photographs marked as exhibit R in the Plaintiff's deposition and exhibit B in the deposition of Stefan Gallwitz. Thus it can be reasonably concluded that the cable (which is alleged to have snagged the Plaintiff's foot, tripping him) was "visible and apparent," a predicate to constructive notice. *Villano v. Strathmore Terrace Home owners Assn., Inc.*, 76 AD3d 1061, 1062, 908 N.Y.S.2d 124 (2d Dep't 2010)(the issue of whether a dangerous condition is open and obvious is fact specific and usually a question for a jury).

Constructive notice also requires that the hazardous condition must have existed long enough to permit the Defendant to discover and remedy it. Stefan Gallwitz, a Cablevision Director of Operations for Field Service, deposed on or about February 26, 2018, gave testimony regarding what he saw while inspecting the accident area in January 2018 and what the contents of photographs he viewed depicted. He testified that cable wire he saw at the scene, and in the pictures, included the cable alleged to have caused the accident (Deposition exhibits B, C, & J).

When asked to identify the suspected wire depicted in exhibit B, Mr. Gallwitz identified it as an RG6 cable wire, and noted that a portion of the wire's sheath in the middle of it was missing. This was not, he stated, a normal condition for such wire, nor would desheathing be something purposely done for any particular purpose (deposition P. 19).

While at the accident area in January, Gallwitz physically touched the cable wire He noted that both the outer covering and the wire were brittle (deposition P. 97-98), a condition that would have resulted from being previously buried and exposed to moisture over time (deposition PP. 97-101).

Mr. Gallwitz further testified that in the past he had been at job sites where cable wire, buried under ground, had become "unearthed" and "above ground level" (deposition P. 22). In such circumstances the wire would need to be reburied or removed if unsafe because "somebody could trip over it" (deposition P. 22-23). In such circomstances, notice to Cablevision of unearthed cables usually came from calls. The call could originate from ". . . a builder, a customer; anybody really . . . someone . . . walking down the street" (deposition P. 24-25).

Based on Cablevision records, Mr. Gallwitz testified that prior to the accident date of November 16, 2016, a Cablevision service employee visited the 52 Hemlock location on two occasions: June 16, 2012 and September 27, 2014. The first visit was for the purpose of disconnecting a subscriber's service and the second visit was for the purpose of installing service to a subscriber. Both visits were in response to calls made to Cablevision Customer Service by the respective subscribers.

Mr. Gallwitz, also stated that there were no records in either instance that showed whether the employee visited the area on the side of 52 Hemlock where the unearthed cable responsible for the accident resided. He opined that the service employees likely did not go to the side where the unearthed cable responsible for the accident rested because typically the installation or disconnection would have taken place at the front of 52 Hemlock at the "pedestal" not at the side (Affirmation at ¶24). In any event, no unearthment of the Cable at the accident cite was reported to Cablevision.

While the precise time of the Cable's unearthment could not be determined, the question of it's presence in the "flower bed, where . . . the guy tripped" (deposition P. 95) was observed and acknowledged at the scene by Mr Gallwitz. He commented that the wire may have originally

been there (in the flower bed) or that it may have broken off of the "ground box"(deposition PP. 94-95).

In any event when viewed in totality, the testimonies of the witnesses Gallwitz and the Plaintiff, coupled with the photographs and other evidence set forth compel the conclusion that triable issues of fact remain ". . . as to whether the visible and apparent [hazardous] condition existed for a sufficient length of time . . . to have [been] discovered and remedied.." *Bravo v. 564 Seneca Ave. Corp.*, 83 A.D.3d 633, 634-35, 922 N.Y.S.2d 88 (2d Dep't 2011). Thus constructive notice cannot be ruled out as a matter of law. Accordingly, so much of Wood III's motion that seeks summary judgment against the Plaintiff is denied for failure to meet its prima facie burden and consideration of the plaintiff's opposition is not necessary. *Id.*

Cross-Claim Against Manzer's Landscape Design & Development, Inc.

The second part of Wood III's motion for summary judgment regards Wood III's cross-claim against Manzer's which alleges: (1) breach of contract by co-Defendant Manzer's; and (2) indemnity owed to Woods III by Manzer's for past and future costs incurred by Wood's III as a result of the lawsuit filed against Woods III by the Plaintiff. The motion by Woods III for summary judgment and indemnification is denied.

The co-Defendant Woods III has failed to produce prima facie proof, as a matter of law, sufficient to show entitlement to judgment against Manzer's for breach of contract, and indemnification. Woods III's submissions fail to eliminate all triable issues of fact as to the meaning, scope, reach and applicability of the Indemnification and Insurance Requirement Agreement dated August 11, 2014, as well as the Landscape, Maintenance and Snow Remediation Contract dated March 18, 2013 and extended to May 13, 2019. Accordingly, so

much of Wood III's motion that seeks summary judgment against the co-Defendant Manzer is denied for failure to meet its prima facie burden and consideration of the plaintiff's opposition is not necessary.

Motion of Defendant Cablevision, Motion Sequence 3

The motion by Cablevision for summary judgment against Plaintiff is granted. In opposition to the Defendant's prime facie showing of entitlement to judgment, the Plaintiff failed to produce sufficient proof in admissible form showing issues of fact as to the Defendant Cablevision's actual or constructive notice of a hazardous condition caused by one of it's installed cable's.[3]

The Plaintiff argues Cablevision, as the moving party, failed to meet its initial burden of demonstrating it did not create a hazardous condition by failing to properly bury the RG6 cable at 52 Hemlock. Stefan Gallwitz, Cablevision Director of Operations for Field Service, gave testiomony at his deposition (February 26, 2018) acknowledging RG6 Cablevision cable was in fact installed and buried at 52 Hemlock approximately 20 years earlier. He stated that the installation would have been performed by an outsourced third party contractor. However, because it was important that the installation establish and maintain (and not otherwise break) proper optical connection, Cablevision would assign their own employee to inspect the third party installation and direct reinstallation, if necessary (Affirmation in Support at ¶¶ 21, 22 & 26).

Gallwitz's conclusion as to when the Cable was buried is based on the fact that 20 years

[3] The facts as recited in the first 6 paragraphs of this decision and order are applicable to the instant motion (seq. 3) and will not be repeated generally. Facts peculiar to this motion (seq. 3) will be when relevant and material to the Court's determination.

earlier Cablevision had switched entirely to RG11 cable and had stopped using RG6 cable (Cablevision Affirmation in Support at ¶ 23). Gallwitz testified that the third party cable installer would likely have been one of three contractors but the precise third party contractor could not be identified from Cablevision' records.

In response to Plaintiff's claim that Cablevision has failed to meet its initial burden of demonstrating that it did not create a dangerous condition to properly bury the Cable, Cablevision asserts that because an independent contractor installed the Cable, Cablevision cannot be held liable for any negligence by the independent contractor.

As a general matter it is well established ". . . that an employer who hires an independent contractor is not liable for the independent contractor's negligent acts." *Rosenberg v. Equitable Life Assur. Socy. of U.S.*, 79 N.Y.2d 663, 668, 584 N.Y.S.2d 765 (1992). Absent proof of the existence of a recognized exception to the afore-stated rule, Cablevision cannot be held liable for negligence on the part of their independent contractors engaged in cable installation. *Id.*

It is true that the question of how deeply buried the Cable was at the time of installation is unanswered, and how it became unearthed is unknown (Cablevision Affirmation in Support at ¶ 29). Nevertheless, it's brittle condition at the time of inspection by Gallwitz post accident was (according to Gallwitz) a condition that would have resulted from being buried and exposed to moisture underground over time (Gallwitz deposition PP. 97-101),[4] Given Gallwitz's position as

[4] It should be noted that two of the cases cited by Cablevision in its Reply Affirmation, *Pallota v. City of New York*, 121 A.D.3d 656,657 (2d Dep't 2014); and *Chianani v. Board of Educ. of City of N.Y.*, 87 N.Y. 2d 370 (1995), *do not* (emphasis added) stand for the proposition that by simply employing an independent installation contractor Cablevision is absolved of liability. A third case cited by Cablevision does state that a ". . . contractor *may* (emphasis added) be liable for an affirmative act of negligence which results in the creation of a dangerous condition [injuring plaintiff] . . ." *McGee v. City of New York*, 161 A.D.3d 1062 (2d Dep't 2018).

Director of Operations for Field Service, and his experience, his testimony is admissible evidence the Cable was buried.

Plaintiff argues that without proof as to how deep the Cable was buried, the Court must assume that there was negligent instillation of the Cable. Such an inference, however, without admissible proof, is speculative.

Thus, the Defendant argues, it cannot be said, that there is any admissible evidence which shows that the installation of the RG6 Cable at 52 Hemlock by Cablevision's independent contractor created a hazardous condition for which Cablevision may be held accountable. See, *Steel v. City of New York*, 271 A.D.2d 435, 436, 705 N.Y.S.2d 641 (2d Dep't 2000)(the laying of underground cable is not "inherently dangerous" work for which the contract employer may be held liable).

It may well be argued that unearthment of the Cable created a hazardous condition. However, there is no admissible evidence in the record (or permissible inference therefrom) that Cablevision unearthed the Cable at some later point in time or that some aspect of the installation caused it to become unearthed at a later point and that Cablevision knew (or should have known) this. If there was something inherent in the installation of the Cable that would later cause unearthment, what was it? What could it possibly have been? The answer lies nowhere in the submissions of the Plaintiff or the record before the Court.

Having determined that Cablevision may not be held liable on the question of negligent

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However in the instant matter, unlike *McGee, supra*, it is not the independent contractor who seeks summary judgment against its employer the City of New York. The independent contractor in the instant case has not been identified,is not being sued and does not (and cannot) seek summary judgment against Cablevision.

installment, the question that remains is whether Cablevision, at some point, had actual or constructive notice of a hazardous condition caused by the unearthed cable. Presumably, the Plaintiff is arguing that Cablevision had a duty to keep the areas of the property occupied by it's cables safe and hazard free.

As stated previously, Mr. Gallwitz, at his deposition, testified that in the past he had been at job sites where cable wire, buried under ground, had become "unearthed" and "above ground level" (deposition P. 22). In such circumstances the wire would need to be reburied or removed if unsafe because "somebody could trip over it" (deposition P. 22-23). The plaintiff argues that Cablvision's knowledge of other job sites where buried cable had become unearthed is sufficient notice that the mere existence of buried cable at 52 Hemlock is a hazardous condition. But as previously cited, underground cable is not "inherently dangerous." *Steel v. City of New York, supra.* What, then, would be Cablevisions duty? Daily inspection? Weekly inspection?

Notice to Cablevision of Cable hazard usually came from calls to their customer service department, not from periodic or unsolicited inspection by Cablevision. The call could originate from ". . . a builder, a customer; anybody really . . . someone . . . walking down the street" (Gallwitz deposition P. 24-25).

While the precise time or date of it's unearthment could not be determined, the question of it's presence in the "flower bed, where . . . the guy tripped" (deposition P. 95) was observed and acknowledged by Mr Gallwitz. He commented that the wire may have originally been there (in the flower bed) or that it may have broken off of the "ground box"(deposition PP. 94-95).

He further testified, however, that neither the unearthment of the Cable nor the decay of the Cable above or under ground would have, by themselves, triggered a defect signal to

Cablevision which would have generated an inspection of the site (Cablevision Affirmation in Support at ¶ 28).

There is no evidence in the record before the Court that Cablevision had a contractual agreement, or engaged in a course of conduct, whereby it would routinely inspect it's cables or was obligated to do so. Cablevision is not alleged by any litigant to have had a possessory or ownership duty, right, interest or obligation to inspect the property at certain intervals for hazards caused by its cables.

From the record before the Court, notification to Cablevision of a cable problem would come from calls or other notifications from subscribers or from Woods III property management (Ferrara, Manzer's or HOA). Such calls or other notifications of an exposed cable, if it occurred, would certainly rise to the level of actual notice to Cablevision, and they would have to respond. Short of evidentiary proof of a call, complaint or correspondence to Cablevision Customer Service, actual notice cannot be assumed.[5] See, *Klee v. Cablevision Sys. Corp.*, 77 A.D.3d 794, 795, 909 N.Y.S.2d 539 (2d Dep't 2010)(cable that had to be buried, but was stretched by the defendants across plaintiff's lawn for four to six months, was a tripping hazard which the defendants failed to remedy despite notice [seven complaints] of the condition). Absent actual notice, what was the mechanism in the instant matter whereby Cablevision would have

[5] As previously stated in the Court's decision in Motion Sequence No. 2, based on Cablevision records, the witness (Mr. Gallwitz) testified that prior to the accident date of November 16, 2016, a Cablevision service employee visited the 52 Hemlock location on two occasions: June 16, 2012 and September 27, 2014. The first visit was for the purpose of disconnecting a subscriber's service and the second visit was for the purpose of installing service to a subscriber. Both visits were in response to calls made to Cablevision Customer Service by the respective subscribers. There was no record of a general inspection of the area around 52 Hemlock (or anywhere else) including the accident site at anytime prior to the accident.

discovered the hazardous condition and remedied it?

Constructive notice arises from the duty that the law places upon property owners (or persons in possession or control of the real property) to maintain the property in a reasonably safe condition. See, *Pilgrim v. Avenue D Realty Company*, 173 A.D.3d 788, 789, 99 N.Y.S.3d 688 (2d Dep't 2019). Cablevision is not a property owner, person or entity in possession or control of the real property known as Woods III, or the real property known as 52 Hemlock where the accident occurred. Constructive notice cannot be shown given the facts and circumstances of this case that fail to show Cablevision's possession or control of the area where the accident occurred.

Accordingly, Defendant Cablevision's motion for summary judgment against the Plaintiff is granted. So much of the complaint that seeks judgment against Cablevision for negligence is dismissed.

Motion of Defendant Manzer's, Motion Sequence 4

For the reasons set forth in the Plaintiff's Affirmation in Response to Defendant Manzer's Landscape Design & Development, Inc.'s Motion for Summary Judgement, judgment in the Defendant's favor and against the Plaintiff is granted as unopposed and on the merits as to so much of the Defendant's motion that seeks dismissal of the Plaintiff's complaint against the Defendant Manzer's.

Cross-Claim Against Woods III.

As to so much of the co-Defendant Manzer's motion that seeks summary judgment dismissing all cross-claims by all co-defendants, the motion is denied. The second part of Manzer's motion for summary judgment (Seq. No. 4) regards Wood III's cross-claim against

Manzer's which alleges: (1) breach of contract by co-Defendant Manzer's; and (2) indemnity owed to Woods III by Manzer's for past and future costs incurred by Wood's III as a result of the lawsuit filed against Woods III by the Plaintiff. The motion by Manzer's for summary judgment dismissing Woods III's cross-claim is denied.

Given its decision under the summary judgment motion of Woods III (Seq. No. 2) the Court has already ruled as to co-Defendant Woods III's failure to produce prima facie proof sufficient to show entitlement to judgment as a matter of law against Manzer's.and has denied summary judgment on the motion by Wood's III (Seq. No. 2) against Manzer's.

Nevertheless, on the summary judgment motion by Co-defendant Manzer's against Woods III, Manzer's submissions fail to eliminate all triable issues of fact as to the meaning, scope, reach and applicability of the Indemnification and Insurance Requirement Agreement dated August 11, 2014, as well as the Landscape, Maintenance and Snow Remediation Contract dated March 18, 2013 and extended to May 13, 2019. Accordingly, so much of Manzer's motion that seeks summary judgment against the co-Defendant Woods III is denied for failure to meet its prima facie burden. Consideration of the co-defendant Wood III's opposition is not necessary.

All other pleadings for summary judgment against cross-motions by co-Defendant Cablevision are denied as not properly pleaded in the record before the Court.

Accordingly, it is hereby

ORDERED that the motion (Seq. No. 2) for summary judgment by Defendant Woods III against the Plaintiff Lyman is denied, and the motion (Seq. No. 2) for summary judgment by Defendant Woods III against co-Defendant Manzer's is denied, and it is further

ORDERED that the motion (Seq. No. 3) for summary judgment by Defendant

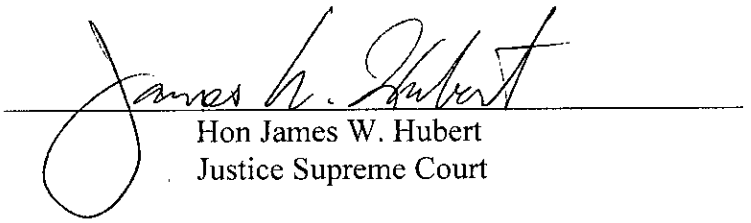
Cablevision against the Plaintiff Lyman is granted, and it is further

ORDERED that the motion (Seq. No. 4) for summary judgment by Defendant Manzer's against the Plaintiff Lyman is granted, and the motion (Seq. No. 4) for summary judgment by Defendant Manzer's against co-Defendant Woods II is denied, and it is further

ORDERED that the parties shall appear at the Settlement Conference Part, Courtroom 1600 at 9:15 a.m. on Tuesday, February 11, 2020 for pre-trial conference.

The foregoing constitutes the decision and orders of the Court.

Date: White Plains, New York
January 24, 2020



Hon James W. Hubert
Justice Supreme Court