

Fernandez v Tao Downtown

2023 NY Slip Op 33377(U)

August 25, 2023

Supreme Court, Queens County

Docket Number: Index No. 704752/2019

Judge: Leonard Livote

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present: Honorable Leonard Livote

IAS Part 33

Supreme Court Justice

-----X
LUIS RAMOS FERNANDEZ,
Plaintiff,

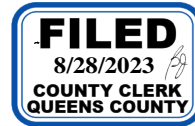
Index No.: 704752/2019

-against-

Motion Date: 4/4/2023

TAO DOWNTOWN, ASIA ONE SIX, LLC
MARKET CORNER REALTY ASSOCIATES,
LLC SAHARA DREAMS, LLC, BD
STANHOPE LLC, STERLING GLOBAL
DEVELOPMENT and DREAM HOTEL
GROUP, LLC

Seq. #7



Defendants.

-----X
MARKET CORNER REALTY ASSOCIATES, LLC

Third Party Plaintiff

FIRST THIRD PARTY

-against-

SAHARA DREAMS, LLC

Third Party Defendant

-----X
SAHARA DREAMS, LLC

SECOND THIRD PARTY

Second Third Party Plaintiff

-against-

ALLSTAR SECURITY CONSULTING, INC.

Second Third Party Defendant

-----X

The following papers numbered below read on this motion by Defendant, First Third Party Defendant and Second Third Party Plaintiff, Sahara Dreams LLC and Dream Hotel Group LLC for an Order: pursuant to CPLR §3212 awarding Sahara Dreams, LLC and Dream Hotel Group, LLC (the “Sahara Defendants”) summary judgment on their cross-claim for contractual indemnity against Co-Defendant Market Corner Realty Associates, LLC and an order that Defendant Market Corner Realty Associates LLC reimburse the Sahara Defendants for all costs, including attorney’s fees associated with defending the lawsuit.

**PAPERS
NUMBERED**

Notice of Motion, Affirmation, Affidavits and Exhibits.....	163-179
Cross Motion, Affirmation, Affidavits and Exhibits.....	
Answering Affirmations, Affidavits And Exhibits.....	184, 186-191
Reply Affirmations, Affidavits And Exhibits.....	197
Other	

Upon the foregoing papers, the motion is determined as follows:

The within summary judgment motion concerns a cross claim of contractual indemnity by the Sahara Defendants against co-Defendant Market Corner Realty Associates.

FACTS:

Plaintiff brings the within action for personal injuries sustained in a slip and fall accident. Defendant Market Corner Realty Associates LLC is the owner of 363 West 16th Street, New York . Plaintiff was making a delivery to Tao Restaurant (Tao) on May 22, 2018. Tao Restaurant is a tenant of Defendant Market Corner Realty Associates, Inc. Plaintiff alleges, inter alia, that he was caused to slip and fall on garbage, oil or grease on the delivery rampway located at 363 West 16th Street, New York, NY. It is further alleged that Tao would place its garbage bags on the driveway/ramp area and the bags would sometimes break.

The subject rampway was owned and maintained by the Dream Downtown Hotel a/k/a Sahara Dreams LLC and Dream Hotel Group, LLC, who had a contract with Allstar Security and Consulting Inc. Allstar has posted security

guards to monitor the loading dock ramp for debris or spills and report same to Dream Downtown Hotel. Additionally, Dream Downtown Hotel had a contract with Sterling Global Development LLC to provide cleaning services including power washing the loading dock ramp on a daily basis.

There is an easement in effect in May 2018 (including the date of the Plaintiff's accident) which is on file with the NYC Department of Finance Office of the City Register concerning the driveway/loading dock that exists between the Sahara Defendants property and the property owned by Defendant Market Corner. Despite the fact that Sahara Dreams technically owns the driveway/loading dock in question, Defendant Market Corner has an easement permitting them to use the property for their own benefit and the benefit of its lessees.

When this accident occurred on May 22, 2018, Market Corner Realty Associates, LLC owned the property at 88-102 Ninth Avenue (next to the property at 346 West 17th Street). This property was leased to Maritime Hotel (corporate name Hudson River Inn, LLC) and Tao Restaurant (owned by BD Stanhope, LLC). Defendant Market Corner qualifies as the "Grantee" in the subject easement agreement. The property next to Market Corner Realty Associates, 346 West 17th Street, was owned by 346 West 17th Street, LLC and leased to Sahara Dreams, LLC for a term of 105 years. The Sahara Defendants qualify as the "Grantor" in the easement agreement.

The Sahara defendants now move for summary judgment on their cross claim against the Market Corner defendants for contractual indemnification, including attorneys' fees, based on the indemnity and insurance procurement clause in the easement agreement.

"The right to contractual indemnification depends upon the specific language of the contract. The promise to indemnify should not be found unless it can be clearly implied from the language and purpose of the entire agreement and the surrounding circumstances" (*George v Marshalls of MA, Inc.*, 61 AD3d 925, 930 [2d Dept 2009] [citation omitted]). "Generally, 'contracts will not be construed to indemnify a person against his [or her] own negligence unless such intention is expressed in unequivocal terms'" (*Cortes v Town of Brookhaven*, 78 AD3d 642, 644 [2d Dept 2010], quoting *Kurek v Port Chester Hous. Auth.*, 18 NY2d 450, 456 [1966]). Contractual provisions purporting to indemnify a party against its own negligence are "carefully scrutinized" by the courts. (*Levine v Shell Oil Co.*, 28 NY2d 205, 211 [1971]).

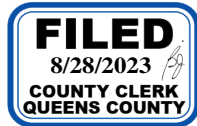
In the instant case, the language of the easement agreement clearly indicates that the parties intended that grantee, the Market Corner defendants, be

responsible for all claims arising out of the Market Corner defendants' or their authorized user's use of the easement area regardless of fault, and accordingly, the Market Corner defendants are obligated pursuant to the contract to indemnify the Sahara defendants (*see Yeung v Mkt. Corner Realty Assoc., LLC*, 2020 WL 8366327 [N.Y. Sup Ct, Queens County 2020]). Because the plaintiff fell in the easement area, movants are entitled to contractual indemnification. Accordingly, the Sahara defendants' motion for summary judgment on their cross-claim for contractual indemnity against Co-Defendant Market Corner Realty Associates, LLC is granted and, it is,

ORDERED, that Defendant Market Corner Realty Associates LLC shall reimburse the Sahara Defendants for all costs, including attorney's fees associated with defending the lawsuit.

This constitutes the Order of the Court.

Dated: August 25, 2023



A handwritten signature in black ink, appearing to be "Leonard Livote".

Leonard Livote, J.S.C.