

Guzman v 308 Equities, LLC

2024 NY Slip Op 32246(U)

July 1, 2024

Supreme Court, New York County

Docket Number: Index No. 154977/2020

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARY V. ROSADO PART 33M

Justice

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INDEX NO. 154977/2020

HENRY GUZMAN,

MOTION DATE 04/20/2024

Plaintiff,

MOTION SEQ. NO. 003

- v -

308 EQUITIES, LLC, TRIBECA GIFT SHOP INC, CDECRE
ARTWORK EAT LLC, 304-306 CANAL STREET
LLC, VORNADO REALTY TRUST

DECISION + ORDER ON
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 43, 44, 45, 46, 47,
48, 49, 50, 51, 52, 70, 82, 84, 88, 89, 91

were read on this motion to/for

JUDGMENT - SUMMARY

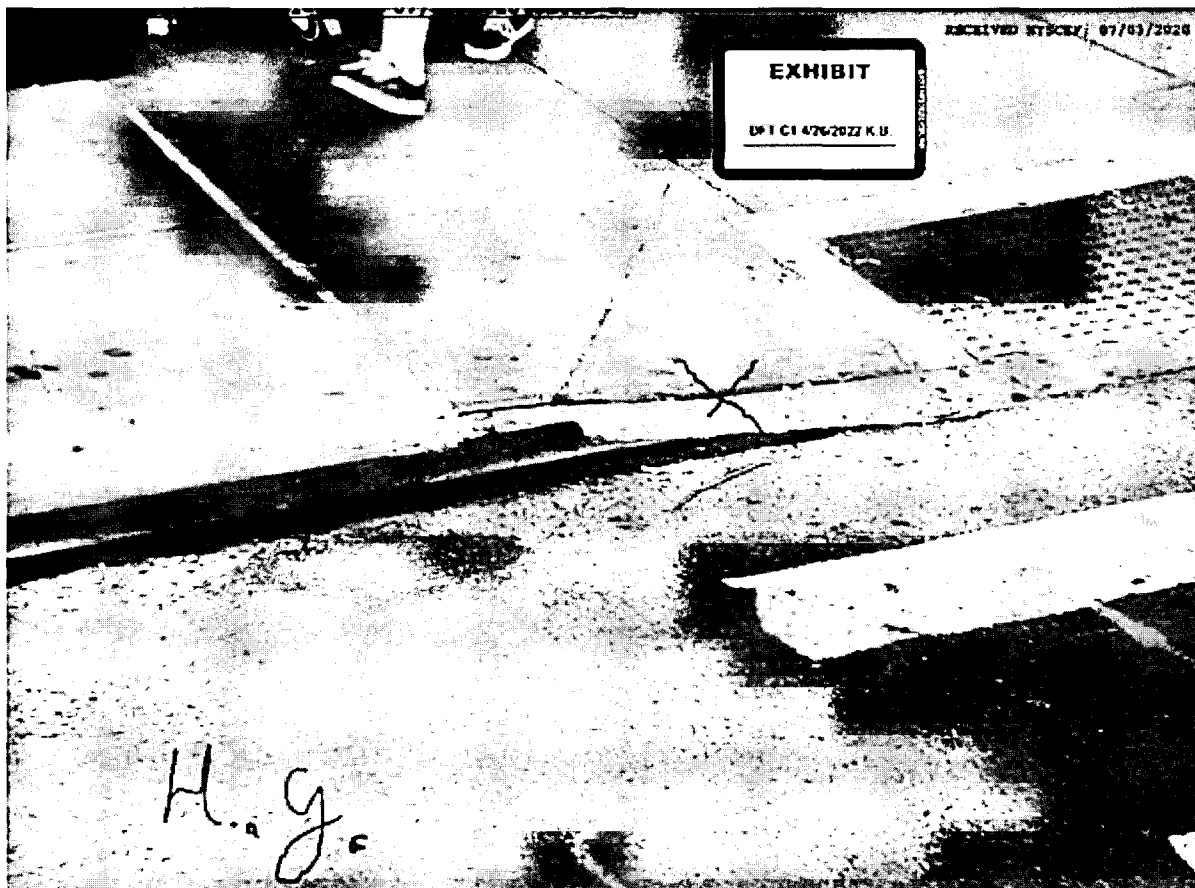
Upon the foregoing documents, Defendant Tribeca Gift Shop Inc.'s ('Tribeca Gift Shop)
motion for summary judgment dismissing all claims and cross claims asserted against it is granted.

I. Background

This is an action arising from Plaintiff's alleged fall on Saturday, December 29, 2018 on
the sidewalk abutting 304, 306, and 308 Canal Street, New York, New York (the "Premises")
(NYSCEF Doc. 1 at ¶ 17). The Premises are owned by Defendant 308 Equities, LLC and was
leased to Tribeca Gift Shop (NYSCEF Doc. 51). The lease states that 308 Equities shall maintain
and repair the public portions of the building (id. at ¶ 4). The lease places a duty on Tribeca Gift
Shop to "take good care of the demised premises...and the sidewalks thereto, and at its sole cost
and expense, make all non-structural repairs thereto as and when needed to preserve them in
good working order..." (emphasis added) (id.). The lease also contained an indemnification
provision which stated Tribeca Gift Shop would indemnify 308 Equities against any liabilities as
a result of the negligence to Tribeca Gift Shop (id. at ¶ 8).

Plaintiff was deposed (NYSCEF Doc. 47). At his deposition, he was asked to mark on a photograph the precise location of his fall.

The location of the fall can be seen where the "x" is located on the photograph below:



The 'x' is located on what appears to be a somewhat raised elevation between the curb and the sidewalk. Defendants Tribeca Gift Shop and 308 Equities argue that the location of Plaintiff's fall constitutes a "pedestrian ramp" and is therefore not a part of the sidewalk. These Defendants have submitted an affidavit from Michael Cronin, P.E. (NYSCEF Doc. 55). Mr. Cronin states that the location of Plaintiff's fall was within the pedestrian ramp. Defendants argue that it is the City

of New York's responsibility to maintain the pedestrian ramp and that they cannot be held liable for any defect in the ramp.¹

Plaintiff in opposition provides an affidavit from Dr. C.J. Abraham, P.E., D.F.E (NYSCEF Doc. 81). Dr. Abraham disagrees with Mr. Cronin's conclusions and argues that Plaintiff fell was on the sidewalk, outside of any transition zone from the pedestrian ramp (*id.*).

II. Tribeca Gift Shop's Motion for Summary Judgment

Tribeca Gift Shop has moved for summary judgment on two separate grounds. First, Tribeca Gift Shop argues that as the tenant of the Premises it did not owe a duty to maintain the sidewalk in a reasonably safe condition. Tribeca Gift Shop argues there is no evidence in the record that it was responsible for maintenance or repair of the sidewalk, nor is there any evidence that Tribeca Gift Shop caused the alleged defect. Tribeca further moves on the grounds that Plaintiff's fall occurred on a 'pedestrian ramp.' Tribeca Gift Shop argues that neither the owner nor the tenant of the Premises have any responsibility to maintain a pedestrian ramp.

308 Equities filed partial opposition arguing that if this Court finds there is an issue of fact regarding whether the accident location is part of the sidewalk, then Tribeca Gift Shop is not entitled to summary judgment dismissing 308 Equities crossclaim for contractual indemnification. There would be issues of fact as to whether Tribeca Gift breached duties to make the sidewalk repairs. Plaintiff opposes the motion arguing that the affidavit of Dr. Abraham establishes that Plaintiff's fall occurred on a sidewalk and not a pedestrian ramp.

In reply, Tribeca Gift Shop argues the indemnification clause in the contract states that Tribeca will only indemnify 308 Equities for liabilities arising from Tribeca Gift Shop's negligence. Here, Tribeca Gift Shop argues there is no evidence that it was negligent or caused the

¹ Plaintiff did serve a notice of claim on the City of New York (NYSCEF Doc. 2).

condition which caused Plaintiff to fall, and therefore it is entitled to dismissal of 308 Equities' crossclaim for contractual indemnification.

III. Discussion

“Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact.” (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]). The moving party’s “burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party.” (*Jacobsen v New York City Health and Hosps. Corp.*, 22 NY3d 824, 833 [2014]). Once this showing is made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial. *See e.g., Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Pemberton v New York City Tr. Auth.*, 304 AD2d 340, 342 [1st Dept 2003]). Mere conclusions of law or fact are insufficient to defeat a motion for summary judgment (*see Banco Popular North Am. v Victory Taxi Mgt., Inc.*, 1 NY3d 381 [2004]).

New York City Administrative Code § 7-210 imposes an affirmative, non-delegable obligation on a premises owner to maintain a sidewalk, and although a landlord can enter into agreements requiring the tenant to maintain the sidewalk, the duty to a plaintiff remains exclusively with the landlord (*Choudhry v Starbucks Corp.*, 213 AD3d 521, 522 [1st Dept 2023] citing *Xiang Fu He v. Troon Mgt., Inc.*, 34 NY3d 167 [2019]; *see also Collado v Cruz*, 81 AD3d 542 [1st Dept 2011]).

Here, Tribeca Gift Shop has met its burden showing it is entitled to summary judgment. Tribeca Gift Shop is the tenant of the Premises and therefore does not owe any duty to Plaintiff pursuant to New York City Administrative Code § 7-210 and binding precedent (*Xiang Fu He*,

supra; see also *Heredia v C.S. Realty Associates LLC*, 217 AD3d 496, 497-98 [1st Dept 2023]).

The lease, although it mentions maintenance of the sidewalk, explicitly excluded non-structural repairs, and in any event, was not so comprehensive and exclusive to have displaced 308 Equities' statutory duty (*Heredia, supra*). Moreover, there is no evidence indicating that Tribeca Gift Shop was responsible for the alleged height differential which purportedly caused Plaintiff to trip. Accordingly, Tribeca Gift Shop is entitled to summary judgment dismissing Plaintiff's Complaint. Because the Court finds that Tribeca Gift Shop did not owe a duty to Plaintiff pursuant to New York City Administrative Code § 7-210, the Court does not need to reach Tribeca Gift Shop's arguments that Plaintiff fell on a pedestrian ramp.

Likewise, Tribeca Gift Shop is entitled to summary judgment dismissing all crossclaims asserted against it. As a preliminary matter, 308 Equities only opposed dismissal of its contractual indemnification claims. Therefore, 308 Equities' other crossclaims are dismissed as abandoned. As it relates to 308 Equities' crossclaim for contractual indemnification, Tribeca Gift Shop only agreed to indemnify 308 Equities for liabilities arising from Tribeca Gift Shop's negligence. However there is no evidence proffered of Tribeca Gift Shop's negligence in creating the allegedly defective condition. Indeed, the lease itself exempts Tribeca Gift Shop from making structural repairs to the sidewalk. The First Department has found in similar circumstances that height differentials, like the one that allegedly caused Plaintiff to fall, constitutes a structural repair (*3650 White Plains Corp. v Mama G. African Kitchen Inc.*, 205 AD3d 468 [1st Dept 2022]; *Diop v Getty Square Realty LLC*, 199 AD3d 410 [1st Dept 2021]; *Negron v Marco Realty Associates, L.P.*, 187 AD3d 511, [1st Dept 2020]). Because Tribeca Gift Shop had no duty to effectuate structural repairs involving height differentials on the sidewalk, which was the alleged cause of Plaintiff's fall, it cannot be found to have been negligent in causing Plaintiff's fall. Therefore, this action does not

fall within the scope of the indemnification clause between Tribeca Gift Shop and 308 Equities, and Tribeca Gift Shop is entitled to dismissal of 308 Equities' crossclaim for contractual indemnification.

Accordingly, it is hereby,

ORDERED that Defendant Tribeca Gift Shop, Inc.'s motion for summary judgment is granted in its entirety; and it is further

ORDERED that all claims and crossclaims against Tribeca Gift Shop, Inc. are hereby dismissed; and it is further

ORDERED that within ten days of entry, counsel for Defendant Tribeca Gift Shop, Inc. shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

7/1/2024
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					REFERENCE