

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
JACQUELINE STEIN,

Plaintiff,

-against-

1394 HOUSING CORP. and DUE RESTAURANT  
RESTAURANT, INC.,

Defendants.  
-----X

1394 HOUSING CORP..

Third-Party Plaintiff,

-against-


TOWER NATIONAL INSURANCE COMPANY,

Third-Party Defendant.  
-----X

COUNSELORS:

PLEASE TAKE NOTICE, that annexed is a true copy of an Order duly entered in the  
office of the Clerk of the within named Court on April 19, 2011.

Dated: New York, New York  
May 6, 2011

  
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Our File No.: 5665

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT. **JEFFREY K. OING**  
J.S.C.

PART 48

Index Number : 109133/2008

STEIN, JACQUELINE

vs

1394 HOUSING

Sequence Number : 003

SUMMARY JUDGMENT

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

Cross-Motion:  Yes  No


Upon the foregoing papers, It is ordered that this motion *is decided in accordance with the annexed memorandum decision and order of the Court.*

**FILED**

APR 19 2011

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 4/18/11



JEFFREY K. OING J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

5665

-----x  
JACQUELINE STEIN,

Plaintiff,

-against-

1394 HOUSING CORP. and DUE  
RESTAURANT, INC.,

Defendants.

Index No.: 109133/08

Mtn Seq. No. 003

DECISION AND ORDER

-----x  
1394 HOUSING CORP.,

Third-Party Plaintiff,

-against-

TOWER NATIONAL INSURANCE COMPANY,

Third-Party Defendant.

Third-Party Action

Index No.: 590248/09

**FILED**

APR 19 2011

NEW YORK  
COUNTY CLERK'S OFFICE

-----x  
JEFFREY K. OING, J.:

Defendant/third-party plaintiff, 1394 Housing Corp. ("1394 Housing"), moves, pursuant to CPLR 3212, for an order granting it summary judgment: 1) on its third-party complaint against third-party defendant, Tower National Insurance Company ("Tower Insurance") and declaring that Tower Insurance must defend and indemnify 1394 Housing as to the claims asserted against 1394 Housing in the underlying personal injury action; 2) dismissing defendant Due Restaurant, Inc.'s ("Due Restaurant") cross-claims against 1394 Housing; and 3) on its cross-claims against Due Restaurant seeking defense and indemnification.

1394 Housing separately cross-moves, pursuant to CPLR 3212, for an order granting it summary judgment dismissing the complaint against it.

Tower Insurance, cross-moves, pursuant to CPLR 3212, for an order dismissing the third-party complaint against it.

Plaintiff cross-moves, pursuant to CPLR 3212, for an order granting her partial summary judgment against 1394 Housing.

**Plaintiff's Cross-motion**

Plaintiff commenced this action in July 2008 for injuries she sustained from a trip and fall that occurred on March 21, 2008 on a sidewalk outside the premises located at 1396 Third Avenue in Manhattan (the "premises"). Plaintiff alleges that she tripped and fell because the sidewalk was raised. During the relevant time period, 1394 Housing was the owner of the premises and Due Restaurant was the commercial tenant of the ground floor space abutting the sidewalk where the accident occurred.

Plaintiff cross-moves for "partial summary judgment against defendant owner [1394 Housing] that [1394] Housing is the abutting landowner, and is therefore responsible, pursuant to [NYC Admin. Code § 7-210] for keeping the sidewalk 'in a reasonably safe condition'" (Roth Affirm., ¶ 1).

NYC Admin. Code § 7-210 (the "Sidewalk Law") provides as follows:

It shall be the duty of the owner of real property abutting any sidewalk ... to maintain such sidewalk in a reasonably safe condition.

Notwithstanding any other provision of law, the owner of real property abutting any sidewalk ... 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, repave, repair or replace defective sidewalk flags and the negligent failure to remove snow, ice, dirt or other material from the sidewalk.

Under the Sidewalk Law, a landlord may not delegate its duty to maintain the sidewalk (Cook v Consolidated Edison of NY, Inc., 51 AD3d 447 [1<sup>st</sup> Dept 2008]; Morel v City of New York, 192 AD2d 428 [1<sup>st</sup> Dept 1993]). Under these circumstances, and in the absence of any evidentiary proof that 1394 Housing was not the owner of the property abutting the sidewalk where the accident occurred or that the sidewalk did not abut its property, plaintiff's cross-motion for partial summary judgment declaring that 1394 Housing is responsible for maintaining and repairing the sidewalk pursuant to section 7-210 is granted.

#### **1394 Housing's Cross-motion**

Despite the fact that 1394 Housing has a nondelegable duty to maintain the sidewalk, the Sidewalk Law does not impose strict liability on the landowner (Martinez v Khaimov, 74 AD3d 1031 [2<sup>nd</sup> Dept 2010]). 1394 Housing's liability for plaintiff's accident will arise only if it can be established that 1394 Housing created the condition, or had actual or constructive notice of the condition (Early v Hilton Hotels Corporation, 73 AD3d 559 [1<sup>st</sup> Dept 2010]). Further, a landlord is free to contract with its tenant to allocate the risk of liability to third parties by the procurement of liability insurance for their mutual benefit (Morel v City of New York, 192 AD2d 428, supra).

In support of its cross-motion to dismiss, 1394 Housing proffers the affidavit and EBT testimony of its Treasurer, Jerrietta Hollinger. Ms. Hollinger claims that from the inception of 1394 Housing's ownership of the premises on July 11, 1980 through the date it was served with process in this action, she "never observed or noticed any mis-leveling of any flagstones on the sidewalk abutting the Premises where plaintiff Stein alleges to have fallen on March 21, 2008" (Hollinger Aff., 7/12/10, ¶ 10). Further, 1394 Housing never received complaints concerning any dangerous condition on the sidewalk adjacent to the premises (Id., ¶ 11). And, Due Restaurant never advised anyone at 1394 Housing at any time prior to plaintiff's accident that there was a mis-leveling of any flagstones on the sidewalk adjacent to the premises (Id., ¶ 12). Lastly, Ms. Hollinger stated that she did not recall any repairs made to the sidewalk in question prior to the date on which plaintiff claims to have tripped and fallen, or before the date 1394 Housing was served with her summons and complaint (Id., ¶ 13).

Plaintiff points out, however, that the EBT testimony of Due Restaurant's manager, Ernesto Cavalli, conflicts with Ms. Hollinger's affidavit and EBT testimony. In that regard, Mr. Cavalli provided the following relevant EBT testimony:

Q. I'm going to look at Plaintiff's Exhibit C. Okay. The sidewalk with the yellow around it, do you see that in the left side of the photograph as you're looking at it?

\* \* \*

A. Yes.

Q. Do you know who painted that?

A. I did.

\* \* \*

Q. And what was the purpose of painting that?

A. Because I felt that the - the roots of the tree were - were - getting very active and - and raising it to a level that I thought, maybe I better paint it and before I call the guy to fix it, so that nobody would - I don't know - out of good -

\* \* \*

Q. Okay. So you identified this as a tripping hazard and you painted it to create a warning so people could see it better? Is that fair to say?

A. Yeah, it's fair to say.

Q. And do you know how long it was - it remained like this (indicating) until you had it repaired?

A. Not exactly, the only thing I can tell you is that I painted it and right away - I wasn't even finished painting - I was trying to locate a - a sidewalk grinder in order to - to - so - not even grinder. I learned there weren't grinders later - somebody to - that would tackle this matter and - and I found one.

Q. Make it flush, that's what you mean -

A. Yes, make - make it -

Q. - like, level it out?

A. Yes, exactly.

\* \* \*

Q. What season did you buy that? What season did you paint this (indicating), do you think? Winter, spring, summer, fall?



A. In the spring.

Q. Beginning of spring, end of the spring, when?

\* \* \*

A. Now, then I would have to say early spring.

\* \* \*

Q. Do you recall what year you painted that (indicating)?

A. I can only recall the year because you - you tell me - you refresh my memory with March 21, 2008, because the - all the - oh, they sued that - the woman that fell but I -

Q. Right.

A. - may - maybe - I know - I think it was 2008.

Q. Is it possible that it might have been there for the year before?

A. No. I wouldn't leave it there for a year. When I painted it, I made sure that I call somebody to fix it.

Q. And, approximately, how much time between the time you painted it and the time it got fixed? Well, how much - how long would you say that was?

\* \* \*

A. Two, three weeks.

(1394 Housing's Cross-motion, Ex. E, Cavalli EBT, pp. 20-25). As for Mr. Cavalli informing 1394 Housing about the mis-leveled flagstone, he provided the following pertinent EBT testimony:

Q. Did you ever report this to the landlord before this happened? Did you say "Hey, you know, the sidewalk's raised", or, you know, "Who is supposed to fix it?" "Are you supposed to fix it or am I supposed to fix it?"

A. I asked for information.

Q. That was before - before you did anything?

A. Before I did anything.

\* \* \*

Q. Now, when you spoke to the landlord - that was Ms. Hollinger who testified here earlier?

A. That's correct.

Q. When you spoke with her, did you guys go down and did you show her what you were talking about?

A. I don't recall at that particular time. But I recall that when she like - when she passes by, and most of the times and - and I think I - I showed her that and - and she gave me a pamphlet with the numbers of the City, who to call, and so on and so on.

\* \* \*

Q. Oh, she was - so - so you kind of met her outside when she was walking past, and showed her the slab, and then she said, "Let me get you some numbers"?

A. I don't remember that. I just remember that I mentioned something to her that I needed some indication, or how can I fix this thing, and she says, "I'll help you out and I'll do a printout for you", and she brought me the printout -

\* \* \*

Q. ... I just want to get the order of events. You're not sure if you guys looked at it together or not? Is that true? Or you think at some point you both looked at it before - and - and I'm just trying to be clear because if - if you want something and somebody says "Hey, you got - you know, who is going to fix it?" unless you both looked at it, how would you know whose responsibility it was? You wouldn't just - you know, since you are both in the same building, almost.

A. I - I think - I think that - I think that - she told me that it was our responsibility of

the restaurant, I think, in order to take care of the sidewalk.

Q. Okay.

A. And - and so I asked her more questions. I said, "Can you help me out?"

Q. So when you had that conversation, were you guys outside in front of your restaurant, or were you upstairs, or something else?

A. I think I went upstairs.

\* \* \*

Q. Did you ask her if she has seen the - the slab that -

A. No.

Q. - the tree pushed up?

A. No.

Q. Did you tell her what it was that you needed to fix?

A. Yes.

\* \* \*

A. The way it went down is that - I was under the impression that it was our responsibility but I said, "Let me go up. I'll go up and - and talk to her." And she says, "Ernesto, I'll - I'll give you a printout" - "Because I have to fix the sidewalk outside. Can you help me out with that? And do you know who does it?" She said, "I'll have a printout for you and call up the City", and she gave me a printout of - on the computer from - from the City. I don't know if it was 311 or the depart - department -

\* \* \*

Q. So, in between the time that you painted it and the time that you had it fixed - okay. In between that time, had you had any reports of anybody else tripping on it?

A. No.

Q. Now, before you painted it, okay? Let - let me back up a second. Did you come to paint it after you were made aware that somebody had tripped?

A. No, sir.

\* \* \*

Q. Okay. So - so what - what I'm trying to understand is that, at the time you painted it, you had no idea if anybody had tripped before you painted it?

A. That's correct. I had no idea or anything. I -

Q. Okay.

A. - I did it only because I felt that I should do something to - to prevent something like that.

\* \* \*

Q. Could you have painted it after March 21, 2008?

A. I can't say that. I - I don't remember that.

(Id. pp. 42-51).

Regarding the area of the sidewalk painted yellow, Ms.

Hollinger provided the following EBT testimony in relevant part:

Q. Is there yellow surrounding the edge of a sidewalk flag in that picture?

A. Yes.

Q. Do you recall that sometime prior to March 2008 that the sidewalk had looked like that?

A. I do not recall.

Q. Do you recall ever seeing the sidewalk looking like that in all the times you ever walked past there?

A. At some point, I'm sure I must have.

- Q. I'll show you a better picture of that location, Plaintiff's Exhibit G. So please take a look at that (indicating).
- A. Okay.
- Q. Do you recognize that (indicating) sidewalk?
- A. Yes.
- Q. And at some point in time, did you see the sidewalk looking like that in front of 1396 Third Avenue?
- A. I'm sure I must have since I go by there, yes.
- Q. Do you have an independent recollection of seeing that (indicating)?
- A. Yes.

(1394 Housing's Cross-motion, Hollinger EBT, Ex. F, pp. 44-45). Indeed, Ms. Hollinger admitted that she was a regular pedestrian in front of Due Restaurant for the three years prior to March 2008 (Id. p. 25).

Based on the discrepancies between the EBT testimony of Mr. Cavalli and Ms. Hollinger, and between Ms. Hollinger's EBT testimony and her affidavit, 1394 Housing fails to show that there are no triable issues of fact as to whether it had actual or constructive notice of the mis-leveled flagstone.

Accordingly, 1394 Housing's cross-motion for summary judgment dismissing the complaint is denied.

**Tower Insurance's Cross-motion and 1394 Housing's Motion**

On April 19, 1991, 1394 Housing entered into a proprietary lease for the premises with Marissa Delgais (Hollinger Aff., 4/8/10, Ex. B). On October 1, 2002, the Estate of Marissa Delgais subleased the ground floor and basement of the premises

("store lease") to Due Restaurant (Hollinger Aff., 4/8/10, Ex. C). On April 20, 2004, the Estate of Marissa Delgais transferred its interest in the proprietary lease of the ground floor and basement space of 1394 Housing's premises to non-party Inspiration Third Realty Corp. ("Inspiration") (Hollinger Aff., 4/8/10, Ex. D). Subsequently, 1394 Housing entered into a proprietary lease with Inspiration (Hollinger Aff., 4/8/10, Ex. E).

Paragraph 4 of the store lease provides the following:

Owner shall maintain and repair the public portions of the building, both exterior and interior ... Tenant shall, throughout the term of this lease, take good care of the demised premises and the fixtures and appurtenances therein, and the sidewalks adjacent thereto, and at its sole cost and expenses, make all non-structural repairs thereto as and when needed to preserve them in good working order and condition, reasonable wear and tear, obsolescence and damage from the elements, fire or other casualty, excepted.

(Hollinger Aff., 4/8/10, Ex. C). Paragraph 8 of the store lease, entitled "Tenant's Liability Insurance, Property Loss, Damage, Indemnity" provides the following:

Owner or its agents shall not be liable for any damage to property of Tenant or of others entrusted to employees of the building, nor for loss of or damage to any property of Tenant by theft or otherwise, nor for any injury or damage to persons or property resulting from any cause of whatsoever nature, unless caused by or due to the negligence of Owner, its agents, servants or employees ... Tenant agrees, at Tenant's sole cost and expense, to maintain general public liability insurance in standard form in favor of Owner and Tenant against claims for bodily injury or death or property damage occurring in or upon the demised premises, effective from the date Tenant enters into possession and during the term of this lease. Such insurance shall be in an amount and with carriers acceptable to the Owner. Such policy or policies shall be delivered to the Owner. On Tenant's default in obtaining or delivering any such policy or policies or failure to

pay the charges therefor, Owner may secure or pay the charges for any such policy or policies and charge the Tenant as additional rent therefor. Tenant shall indemnify and save harmless Owner against and from all liabilities, obligations, damages, penalties, claims, costs and expenses for which Owner shall not be reimbursed by insurance, including reasonable attorneys fees, paid, suffered or incurred as a result of any breach by Tenant, Tenant's agent, contractors, employees, invitees, or licensees, of any covenant on condition of this lease, or the carelessness, negligence or improper conduct of the Tenant, Tenant's agents, contractors, employees, invitees or licensees.

(Hollinger Aff., 4/8/10, Ex. C).

Tower Insurance issued a commercial lines policy to Due Restaurant naming 1394 Housing as an additional insured ("Tower policy") (Moving Papers, Ex. J). Tower Insurance issued a disclaimer letter, dated September 25, 2008, denying 1394 Housing coverage for plaintiff's claims (Moving Papers, Ex. G). According to its letter, Tower Insurance disclaimed coverage on several bases including the Endorsement to the Commercial General Liability Coverage Part, found in policy form CG 00 01 63 09 99, which provides as follows in relevant part:

A. Paragraph 1. Insuring Agreement of Section I - Coverage A - Bodily Injury And Property Damage Liability is replaced by the following:

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies ... However, we will have no duty to defend the insured against any "suit" seeking damages which this insurance does not apply.

\* \* \*

b. This insurance applies to "bodily injury" and "property damage" only if:

(1) The "bodily injury" or "property damage" is caused by an occurrence" that takes place in the "coverage territory".

In addition, the Endorsement to the Additional Insured - Managers or Lessors of Premises under policy from CG 9 20 02 09 06, modified the insurance provided under the Commercial General Liability Coverage Part and provides as follows in relevant part:

WHO IS INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

\* \* \*

3. Liability for "bodily injury" or "property damage" that is not sustained within that part of the premises leased to you.

4. Liability for "bodily injury" or "property damage" arising from a duty imposed on the additional insured by statute, ordinance or law.

The coverage provided under this endorsement is excess over any primary insurance available to the additional insured.

(Moving Papers, Exs. G and J; Cross-motion, Ex. G-1).

There is no dispute that 1394 Housing is an additional insured under the Tower policy (Moving Papers, Ex. J, SC HA 00 12 97). 1394 Housing points out that the Tower policy includes an endorsement entitled "Limitation of Coverage to Designated Premises or Project" under policy form CG 21 44 07 98, which provides the following in relevant part:

This insurance applies only to "bodily injury", "property damage", "personal and advertising injury" and medical expenses arising out of:



1. The ownership, maintenance or use of the premises shown in the Schedule and operations necessary or incidental to those premises.

(Moving Papers, Ex. J). 1394 Housing also points out that plaintiff's trip and fall accident occurred on the sidewalk in front of Due Restaurant at 1396 3<sup>rd</sup> Avenue in Manhattan (Verveniotis Affirm., 4/15/10, ¶¶ 21-24). As such, 1394 Housing argues that plaintiff's accident took place at the premises covered under the Tower policy. This Court agrees.

The record demonstrates that plaintiff's trip and fall accident occurred on the sidewalk outside Due Restaurant. As such, the sidewalk outside Due Restaurant would necessarily be used for access in and out of the restaurant, and thus, by implication, be considered part of the "use of the premises" or "operations necessary or incidental to those premises" (ZKZ Associates LP v CNA Insurance Company, 89 NY2d 990 [1997]). Moreover, Due Restaurant had a sidewalk license issued by the City of New York granting Due Restaurant permission to setup tables and serve food on the sidewalk outside the restaurant (Cavalli EBT, p. 62). Furthermore, putting aside 1394 Housing and Due Restaurant's dispute of whether the defect with the sidewalk required structural or non-structural repair, the lease agreement between 1394 Housing and Due Restaurant contemplated Due Restaurant taking "good care of the ... sidewalks adjacent" to the premises (Hollinger Aff., 4/8/10, Ex. C, ¶ 4).

As for Tower Insurance's argument that the additional insured endorsement excludes coverage for claims arising from a duty imposed on the additional insured by statute, it is also

unavailing. As discussed supra, the Sidewalk Law does not impose strict liability upon landowners (Martinez v Khaimov, 74 AD3d 1031 supra). Further, a landlord is free to contract with its tenant to allocate the risk of liability by the procurement of liability insurance for their mutual benefit (Morel v City of New York, 192 AD2d 428, supra).

Turning to the issue of whether the Tower policy is excess over any separate policy 1394 Housing holds, 1394 Housing refers to Kassis v The Ohio Casualty Insurance Company, 12 NY3d 595 [2009] and Pecker Iron Works of New York, Inc. v Traveler's Insurance Company, 99 NY2d 391 [2003], for the well established principle that the term "additional insured" is understood to mean an entity entitled to the same protection as the named insured. In Pecker Iron Works, the case involved the same issue of whether the additional insured was entitled to excess or primary coverage. The Court of Appeals found that the additional insured in that case was entitled to primary coverage despite a policy provision that the additional insureds coverage would only be excess. In that case, however, the insurance policy at issue also provided that coverage would be excess unless the insured "had agreed in a written contract for this insurance to apply on a primary basis or contributory basis" (Pecker Iron Works, 99 NY2d 391, supra). Indeed, the Court of Appeals found as follows:

Pursuant to the policy provision at issue, Travelers agreed to provide primary insurance to any party with whom Upfront had contracted in writing for insurance to apply on a primary basis. When Upfront agreed to it, the policy provision was satisfied.

(Pecker Iron Works, 99 NY2d 391).

Here, 1394 Housing does not point to a similar provision in the Tower policy. As such, the Tower policy unambiguously limits 1394 Housing's coverage to excess over any primary insurance 1394 Housing may have in place. While there is still the issue of priority of coverage, that issue can only be determined by a review of the relevant policies at issue (BP Air Conditioning Corp. v One Beacon Insurance Group, 8 NY3d 708 [2007]). Given that no other relevant policies have been submitted, the priority of coverage issue cannot be determined (Id.).

As for those branches of 1394 Housing's motion for summary judgment dismissing Due Restaurant's cross-claims against 1394 Housing, and granting 1394 Housing's cross-claims against Due Restaurant, those branches are denied. As discussed, supra, the issue of whether 1394 Housing was negligent as to the defect with the sidewalk flagstone remains unresolved. Further, under the lease agreement between 1394 Housing and Due Restaurant, 1394 Housing "shall not be liable for ... any injury or damage to persons or property resulting from any cause of whatsoever nature, unless caused by or due to the negligence of Owner, its agents, servants or employees" (Hollinger Aff., 4/8/10, Ex. C) [emphasis added].

Accordingly, it is

ORDERED that 1394 Housing's motion is denied; and it is further


ORDERED that 1394 Housing's cross-motion to dismiss the complaint is denied; and it is further

ORDERED that Tower Insurance's cross-motion to dismiss the third-part complaint is denied; and it is further

ORDERED that plaintiff's cross-motion for a declaration that 1394 Housing has a duty pursuant to NYC Admin. Code § 7-210 is granted.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 4/18/11



HON. JEFFREY K. OING, J.S.C.

**FILED**

APR 19 2011

NEW YORK  
COUNTY CLERK'S OFFICE

AFFIDAVIT OF SERVICE

STATE OF NEW YORK  
COUNTY OF NEW YORK ss.:

I, Diane R. Clemendor, being duly sworn, deposes and says:

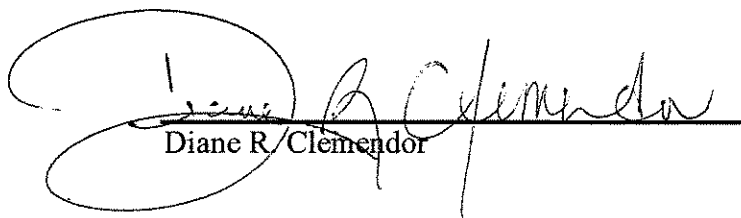
I am over 18 years of age, I am not a party to the action, and I reside in the Kings County in the State of New York.

On, May 6, 2011, I served a true copy of the annexed, Order with Notice of Entry, by mailing the same in a sealed envelope, with postage prepaid thereon, in a post office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee as indicated below:

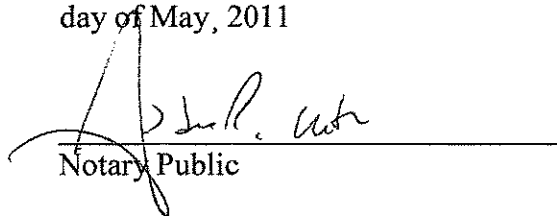
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s/h/a Due Restaurant Inc  
120 Broadway, 30<sup>th</sup> Floor  
New York, NY 10271

  
Diane R. Clemendor

Sworn to before me this 6th  
day of May, 2011

  
Notary Public

Audra R. Roth  
Notary Public, State of NY  
ID# 021189025379  
County of Nassau County  
Commission Expires March 28, 2014

Index #: 109133/2008

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
JACQUELINE STEIN,

Plaintiff,

-against-

1394 HOUSING CORP. and DUE RESTAURANT  
RESTAURANT, INC.,

Defendants.

-----X  
1394 HOUSING CORP..

Third-Party Plaintiff,

-against-

TOWER NATIONAL INSURANCE COMPANY,

Third-Party Defendant

-----X  
**ORDER WITH NOTICE OF ENTRY**  
-----

The below signature attests to the following papers: *ORDER WITH NOTICE OF ENTRY*

By: 

*Audra R. Roth*

**ROTH & ROTH, LLP**  
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