

February 3, 2020

Traub Lieberman Partner Lisa M. Rolle and Associate Vito John Marzano Secure Summary Judgment for Contractual Indemnification in a Personal Injury Action

Related Attorneys: Lisa M. Rolle

On December 12, 2019, Traub Lieberman's partner Lisa M. Rolle and associate Vito John Marzano secured summary judgment on its cross claim for contractual indemnification in the New York State Supreme Court, County of Kings. This matter stems from an alleged trip and fall on a sidewalk located in Queens, New York. Plaintiff commenced suit against the property owner and its tenant. Traub Lieberman appeared on behalf of the property owner and cross-claimed for, among other things, contractual indemnification.

Upon the completion of discovery, Traub Lieberman moved for summary judgment against the tenant for its cross claim for indemnity, pointing to the indemnification and insurance procurement provisions contained in the rider to the commercial lease agreement. In opposition, the tenant argued that New York General Obligations Law §7-321 rendered the indemnification provision in the lease agreement unenforceable because it would indemnify the landlord for its own negligence. Relying on authority that, among other things, concerned instances where the tenant sustained injury as a result of the landlord's negligence, the tenant further contended that using the insurance procurement provision to enforce the indemnification provision would frustrate §7-321.

Traub Lieberman distinguished the tenant's authority by pointing out that that line of cases concerned instances where the landlord's negligence caused damage to the tenant's property. In the instant matter, to the extent that the landlord is liable, the injury is to a third-party (i.e. Plaintiff). Section 7-321 does not render a provision that requires a party in a commercial lease agreement that requires a commercial tenant to indemnify a commercial landlord for injuries sustained by a third-party when coupled with an insurance procurement provision. In support, Traub Lieberman cited several binding decisions from the Appellate Division that upheld analogous indemnification and insurance procurement provisions in commercial lease agreements for loss to a third-party. One such case, Traub Lieberman noted, was factually indistinguishable from the instant matter regarding both the alleged incident and the lease provisions. Because the Appellate Division held that the provisions in that matter were enforceable, the lease agreement required the tenant to defend and indemnify the landlord for Plaintiff's injuries in the instant matter.

At oral arguments, the Court agreed that the authority relied upon by Traub Lieberman was controlling. It granted the landlord's cross claim for contractual indemnification against the tenant as a matter of law. Accordingly, the Court entered a written order finding that the tenant must indemnify the landlord in action, and owes all costs and fees incurred by the landlord with defending this action.