

Andrias, J.P., Sweeny, Moskowitz, Renwick, Freedman, JJ.

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6588 Jacqueline Myers-Skinner,
 Plaintiff,

Index 15138/05
 18528/06

-against-

The City of New York, et al.,
Defendants.

- - - - -

4201 Webster Corp.,
Third-Party-Plaintiff-Respondent,

-against-

ExxonMobil Oil Corporation,
Third-Party-Defendant-Appellant.

McCusker, Anselmi, Rosen & Carvelli, P.C., New York (Alicyn B. Craig of counsel), for appellant.

Francis M. DeCaro, Bronx, for respondent.

Orders, Supreme Court, Bronx County (Larry Schachner, J.), entered August 12, 2011 and April 1, 2011, which, to the extent appealed from as limited by the briefs, denied ExxonMobil's motion for summary judgment dismissing the third-party complaint, unanimously reversed, on the law, without costs, the motion granted, and the third-party complaint dismissed. The Clerk is directed to enter judgment accordingly.

Under the terms of the applicable lease, lessee ExxonMobil

owed lessor 4201 Webster no duty to maintain the sidewalk where plaintiff fell (*cf. Collado v Cruz*, 81 AD3d 542 [2011]), and the record refutes 4201 Webster's argument that it was physically excluded from the property. The sidewalk where plaintiff fell was not under ExxonMobil's control. Any lease obligation to maintain it was not in effect insofar as the parties were still in the preliminary period.

We have considered the remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: JANUARY 19, 2012



CLERK