

**Martinez v New York City Hous. Auth.**

2013 NY Slip Op 33610(U)

December 18, 2013

Supreme Court, Bronx County

Docket Number: 301425/2012

Judge: Mary Ann Brigantti-Hughes

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This opinion is uncorrected and not selected for official publication.

[\* 1]

PART 15

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

Case Disposed	<input type="checkbox"/>
Settle Order	<input type="checkbox"/>
Schedule Appearance	<input type="checkbox"/>

SARA MARTINEZ,

Index No. 301425/2012

-against-

Hon. MARY ANN BRIGANTTI-  
 HUGHES

NEW YORK CITY HOUSING AUTHORITY

The following papers numbered 1 to 5 Read on this motion, DISMISSAL  
 Noticed on \_\_\_\_\_ and duly submitted on the Motion Calendar of September 18, 2013

	PAPERS NUMBERED	
	1	2
Notice of Motion- Exhibits and Affidavits Annexed		
Answering Affidavit and Exhibits	3	4
Replying Affidavit and Exhibits	5	
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

In an action seeking damages for injuries arising out of an alleged slip/trip and fall accident, the defendant New York City Housing Authority ("NYCHA") moves to dismiss certain theories of liability set forth in the complaint and bill of particulars of the plaintiff Sara Martinez ("Plaintiff"), as they are in violation of General Municipal Law 50-e and Public Housing Law Sec. 157(2).

Specifically, movant seeks dismissal of the claims that NYCHA:

- (1) failed to properly and adequately train maintenance staff;
- (2) failed to have a proper and competent maintenance staff;
- (3) failed to hire a proper and competent contractor;
- (4) retained maintenance personnel who posed a direct threat to safety, health and well-being of the plaintiff by failing and refusing to maintain the premises in a safe condition and proper state of repair; and

Respectfully Referred to: \_\_\_\_\_  
 Dated: \_\_\_\_\_

(3) failed to place warnings, signs, barriers, flares, stop signs, guards, lights, signals, barricades,

or to employ other warning/protective devices to give notice of the alleged dangerous and defective condition.

NYCHA also seeks dismissal of the claims that they violated certain sections of the NYC Admin. Code., including §27-2053; 27-2026; 28-301.1; 27-2005; Multiple Dwelling Law §§83; 309; 78, and 80; Real Property Law §235-b.

On April 17, 2011, Plaintiff allegedly slipped and fell on a flight of stairs between the 2<sup>nd</sup> and 3<sup>rd</sup> floors within the premises located at 2745 Sampson Avenue, Bronx, New York. In her Notice of Claim, Plaintiff alleged that she slipped and fell on liquid on the staircase, and asserted general negligence claims for failure to maintain the property in a safe condition. The Notice of Claim states specifically that it is to recover damages for personal injuries against NYCHA, "its agents, servants and/or employees in the ownership, operation, control, repair, and maintenance of its premises." NYCHA argues that the Notice of Claim contained no specific allegations about the maintenance staff and/or contractor incompetence or improper training. It also contained no allegations that NYCHA failed to place warnings and/or protective devices in the area. At her 50-h hearing, Plaintiff did not allege that her accident was due to a poorly trained maintenance staff or faulty plumbing/drainage system. In her February 1, 2012 summons and complaint, Plaintiff alleged for the first time that NYCHA employees caused/created the allegedly defective condition and failed to post warnings. Plaintiff did not timely assert these allegations in her Notice of Claim or seek leave to file an Amended Notice of Claim.

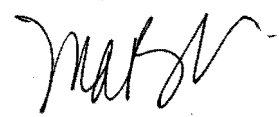
In opposition, Plaintiff argues that her Notice of Claim sought recovery for damages "due to the negligence, recklessness and carelessness of NYCHA, its agents, servants, and/or employees in the ownership, operation, control, repair and maintenance of the premises." Plaintiff testified at the 50-h hearing that water would always enter the premises when it was raining outside. Plaintiff argues that this gave the defendant sufficient notice of her theories of negligence now asserted in her bill of particulars. Moreover, NYCHA cannot demonstrate that it has been prejudiced in its ability to investigate the accident. Finally, the alleged statutory and code violations asserted were in direct response to an interrogatory presented in NYCHA's discovery demands.

Upon review of the submissions and relevant case law, this Court will strike Plaintiff's claims enumerated above as (1), (2), (3), and (4), as the allegations of inadequate hiring or training of personnel go beyond mere amplification of the Notice of Claim, and instead, set forth new, distinct and independent theories of liability (*Melendez v. New York City Housing Authority*, 294 A.D.2d 243 [1<sup>st</sup> Dept. 2002][claims of negligent hiring or training struck where notice of claim alleged slip and fall on liquid/debris on stairs and lack of handrail]; *Lopez v. New York City Housing Authority*, 16 A.D.3d 164 [1<sup>st</sup> Dept. 2005]). Accordingly, the related Code Violations of NYC Admin. Code §27-2053(failure to provide adequate janitorial services), and Multiple Dwelling Law §83(failure to provide a janitor who resides in the subject

premises or within 200 feet of said premises) must also be struck. The remaining claim (enumerated [5], above), and remaining alleged code violations asserted in the verified bill of particulars were “fairly implied” by the Notice of Claim and statutory hearing and were therefore properly asserted (*Melendez, supra.; Alvarado v. New York City Housing Authority*, 302 A.D.2d 264 [1<sup>st</sup> Dept. 2003]).

This constitutes the Decision and Order of this Court.

Dated: 12/18, 2013



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Hon. Mary Ann Brigantti-Hughes, J.S.C.