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| <b>Thomas v New York City Hous.</b>  |
| 2013 NY Slip Op 33904(U)   |
| January 7, 2013  |
| Supreme Court, Bronx County  |
| Docket Number: 0311416/2011  |
| Judge: Norma Ruiz  |
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| This opinion is uncorrected and not selected for official publication.   |

PART 11

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

*C*

- Case Disposed
- Settle Order
- Schedule Appearance

THOMAS, CALVIN E.

Index No. 0311416/2011

-against-

Hon. ~~LAURA DOUGLAS~~  
HON. Norma Ruiz

Justice.

THE NEW YORK CITY HOUSING

The following papers numbered 1 to 5 Read on this motion, BILL OF PARTICULARS/PRECLUDE  
Noticed on June 19 2012 and duly submitted as No. 22 on the Motion Calendar of 10-1-12

|  | PAPERS NUMBERED |   |
|--|-----------------|---|
| Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed | 1               | 2 |
| Answering Affidavit and Exhibits <i>6 Cross motion</i>                   | 3               | 5 |
| Replying Affidavit and Exhibits  |                 |   |
| _____ Affidavits and Exhibits  |                 |   |
| Pleadings - Exhibit  |                 |   |
| Stipulation(s) - Referee's Report - Minutes                              |                 |   |
| Filed Papers   |                 |   |
| Memoranda of Law   |                 |   |

Upon the foregoing papers this *Motion is decided*  
*in accord with the annexed*  
*decision of the Court.*

Motion is Respectfully Referred to:  
Justice: *Norma Ruiz*  
Dated: *8-7-12*

FEB 04 2013

Dated: 1 07 13

Hon. *LR*  
~~LAURA DOUGLAS, J.S.C.~~  
Norma Ruiz, JSC

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NEW YORK SUPREME COURT ----- COUNTY OF BRONX

PART 22

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

Index No.: 311416/2011

CALVIN E. THOMAS

-against-

Present:  
HON. NORMA RUIZ

NEW YORK CITY HOUSING AUTHORITY

Defendant.

The following papers numbered 1 to 5 Read on this motion Strike Bill of Particulars  
Noticed on 6/19/12 and duly submitted as No. 22 on the Motion Calendar of 10/1/12

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this Motion

| to: | Papers   | Numbered |
|-----|--|----------|
|     | Notice of Motions and Affidavits Annexed.....        | 1- 2     |
|     | Notice of Cross Motion and Answering Affidavits..... | 3-5      |
|     | Replying Affidavits .....                            |          |
|     | Memorandum of Law .....                              |          |

Other:

*Upon the foregoing papers, the foregoing motion(s) [and/or cross-motions(s), as indicated below, are consolidated for disposition] and decided as follows:*

Defendant New York City Housing Authority's motion to strike from the bill of particulars the plaintiff's claims regarding handrail of the subject staircase is granted. Plaintiff's cross motion for an order granting leave to amend the notice of claim is denied.

In this action, the plaintiff seeks damages for injuries he allegedly sustained when he tripped/slipped and fell down the second floor landing of interior stairway "A" of the defendant's building located at 383 E. 143<sup>rd</sup> Street in the Bronx.

In the amended notice of claim, the plaintiff alleges that his accident was

due to the dangerous, defective, broken, hazardous, dimly lit, wet, feces-filled and unsafe condition of said landing. . . [Defendants were also]

negligent in its ownership, design, construction, operation, maintenance, management, repair and control of the premises mentioned, and more specifically the aforementioned landing. [Defendant was] further negligent in allowing, causing, creating and permitting the landing to be, become and remain in a broken, dangerous, defective, unstable, dimly lit, wet, feces-filled and unsafe condition; in causing, allowing and permitted the landing to be carelessly, negligently and dangerously maintained, creating a trap, nuisance and hazard upon the said premises and more particularly upon the landing and in failing to post any notice or warning of the said dangerous and defective condition at said premises and landing" (see amended notice of claim).

Defendant persuasively argues that the claims in the bill of particulars regarding the defendant's alleged negligence in its maintenance of the handrail of the subject staircase constitutes a new theory of liability and as such should be stricken from the bill of particulars.

Plaintiff cross moves for leave to amend his notice of claim to add the claim that the defendant negligently maintained the handrail. He contends that the allegation regarding the handrail is not a new theory of liability. Instead its an expansion of the negligence claims already set forth in the notice of claims. The Court disagrees.

The notice of claim limited the allegations of negligence to the staircase landing. The allegation of a defective handrail was raised for the first time in the plaintiff's bill of particulars. Thus, the Court finds it is a new theory of liability. A proposed amendment that creates a new theory of liability is not within the purview of permissible corrections to a notice of claim (GML § 50-e[6]; *White v New York City Housing Authority*, 288 AD2d 150, 150 [1st Dept 2001]).

Accordingly, the defendant's motion is granted and the plaintiff's cross motion is denied. All claims of negligence regarding the handrails of the subject stair case are hereby stricken from the bill of particulars.

This constitutes the decision and order of the court.

Dated: 1/07/13

Bronx, New York

  
HON. NORMA RUIZ, J.S.C.