Haberstroh v Rudd Realty Mgmt. Corp.
2013 NY Slip Op 32061(U)
September 3, 2013
Supreme Court, New York County
Docket Number: 104083/11
Judge: Saliann Scarpulla

[* 1]

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Sabrina Scarpulla PART 19

Index Number : 104083/2011
HABERSTROH, RUTH
vs
RUDD REALTY MANAGEMENT
Sequence Number : 006
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

decided per the memorandum decision dated 9/3/13
which disposes of motion sequence(s) no. 007 + 008

FILED
SEP 05 2013
NEW YORK
COUNTY CLERK'S OFFICE

FILED
RECEIVED SEP 05 2013
SEP 05 2013 NEW YORK
COUNTY CLERK'S OFFICE
IAS MOTION SUPPORT OFFICE
NYS SUPREME COURT-CIVIL

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

Dated: 9/3/13

Sabrina Scarpulla J.S.C.

1. CHECK ONE: ..... ☐ CASE DISPOSED ☐ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

[* 2]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 19

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RUTH HABERSTROH,

Plaintiff,

Index No. 104083/11

-against-

RUDD REALTY MANAGEMENT CORPORATION, CHARLES H. GREENTHAL MANAGEMENT CORPORATION, CHARLES H. GREENTHAL PROPERTY SALES INC., THE CHARLES H. GREENTHAL GROUP, INC. and CENTENNIAL ELEVATOR INDUSTRIES, INC.,

DECISION AND ORDER

Defendants.

----------X

HON. SALIANN SCARPULLA, J.:

In this action to recover damages for personal injuries, (1) defendant Rudd Realty Management Corporation ("Rudd") moves for summary judgment dismissing the complaint, or, in the alternative, for summary judgment on its cross claim for common-law indemnification against defendant Centennial Elevator Industries, Inc. ("Centennial")(mot. seq. no. 006); (2) Centennial moves for summary judgment dismissing the complaint and all cross claims against it (mot. seq. no. 007); and (3) defendant Charles H. Greenthal Management Corporation ("Greenthal") cross moves for summary judgment dismissing the complaint and all cross claims asserted against it

[1] Defendants The Charles H. Greenthal Group, Inc. and Centennial Elevator Industries, Inc. have not appeared in this action.

This action was commenced by plaintiff Ruth Haberstroh ("Haberstroh") as a result of an accident that occurred on condominium premises managed by Rudd. According to the complaint, on February 12, 2011, Haberstroh was exiting the west passenger elevator on the tenth floor of the premises when she tripped and fell. Haberstroh attested that after she fell, she noted that the elevator had misleveled, having come to rest below the level of the tenth floor, creating a tripping hazard which Haberstroh claimed was the cause of her fall.

Centennial is an elevator maintenance and service company, which contracted with Rudd to provide periodic inspection and maintenance of the premises' elevators. Greenthal is the managing agent for the sponsor-owned units in the condominium. The other Greenthal entities have not appeared in this action.

Prior to the accident, Rudd and Centennial entered into a "Full Preventative Maintenance Contract" ("contract") for the premises' three elevators, including the west elevator where the accident occurred. The contract required Centennial to "examine, clean, lubricate and adjust" the various enumerated components of the elevators, including "when in the opinion of [Centennial] conditions warrant repair or replace[ment]" of the various components. Centennial also promised to "respond to emergency service calls to perform minor adjustments only, twenty-four hours per day, seven days a week at no additional charge."

As pertinent to the instant action, the contract provided that:

> [Centennial] does not at any time assume possession or control of the equipment covered under the terms of this agreement and when not working on said equipment does not accept responsibility for leveling of cars at landings, erratic operation of car doors, shaft doors, and their locking assemblies or for any situation that may occur that cannot be revealed by the ordinary inspection methods offered with this service. The Owner [Rudd], by execution of this contract, agrees to monitor the operation of the elevator equipment daily and report by telephone or in writing of any unsafe condition or improper operation of the equipment which might cause injury to a passenger. If such is detected, the Owner agrees to immediately discontinue the elevator from operation upon notification to [Centennial].

According to the building doorman, Robert Lizardi ("Lizardi"), he never observed any misleveling problems with the subject elevator, and never received any complaints relating to leveling issues with the subject elevator prior to Haberstroh's fall. Further, the building superintendent Nildro Sanchez ("Sanchez") maintained that he never observed the subject elevator misleveling, and never received any complaints about the elevator misleveling. In addition, Centennial mechanic Sik Yip ("Yip") was sent to the premises the evening of Haberstroh's fall, prior to her fall, to address an issue of the elevator "jumping." He determined that the elevator brakes required an adjustment. After adjusting the brakes, he rode the elevator several times and confirmed that the elevator was functioning properly. He did not observe any misleveling. Finally, upon inspection of the subject elevator the day after the accident, Centennial did not observe any malfunction or problem with the elevator.

Rudd now moves for summary judgment dismissing the complaint, arguing that (1) it lacked notice of a defective condition in the elevator; (2) the accident may not have

occurred as the result of any defect in the elevator; and (3) pursuant to its contract with Centennial, Centennial is responsible for the condition of the elevator and thus, Rudd owes no duty to Haberstroh. Centennial moves for summary judgment dismissing the complaint and cross claims insofar as asserted against it on the grounds that it had no notice of a defect in the elevator, and the contract did not give rise to a duty owed to Haberstroh. Greenthal cross moves for summary judgment dismissing the complaint and all cross claims asserted against it, arguing that it has no responsibility for the maintenance of the premises.[2]

Discussion

A movant seeking summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law and offer sufficient evidence to eliminate any material issues of fact. *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985). Once a showing has been made, the burden shifts to the opposing party to demonstrate the existence of a triable issue of fact. *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986); *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980).

Owners of property have a duty to "maintain their property in a reasonably safe condition under the existing circumstances." *Waiters v. Northern Trust Co. of New York*, 29 A.D.3d 325, 326 (1st Dept. 2006). "In order to recover damages for a breach of this duty, a party must establish that the [owner] created, or had actual or constructive notice

[2] Greenthal's motion is unopposed.

of the hazardous condition ... ." *Zuk v. Great Atlantic & Pacific Tea Co., Inc.*, 21 A.D.3d 275, 275 (1st Dept. 2005). "To constitute constructive notice, a defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit defendant's employees to discover and remedy it." *Gordon v. American Museum of Natural History*, 67 N.Y.2d 836, 837 (1986); *see also Early v. Hilton Hotels Corp.*, 73 A.D.3d 559 (1st Dept. 2010). Furthermore, an elevator company which agrees to maintain an elevator in safe operating condition may be liable to a passenger for failure to correct conditions of which it has knowledge or failure to use reasonable care to discover and correct a condition which it ought to have found. *Farmer v. Central Elevator, Inc.*, 255 A.D.2d 289, 290 (2nd Dept. 1998).

Here, movants have met their burden of establishing entitlement to summary judgment as a matter of law. In opposition, Haberstroh fails to raise any issue of fact as to whether any of the defendants created or had notice of the allegedly dangerous condition that caused her fall. *See generally Santoni v. Bertelsmann Prop.*, 21 A.D.3d 712 (1st Dept. 2005); *Vaynshteyn v. Cohen*, 266 A.D.2d 280 (2nd Dept. 1999). Evidence was presented that there were no complaints of the elevator misleveling prior to Haberstroh's accident and the superintendent and the doorman both averred that they had never observed the elevator misleveling prior to the subject incident. No other evidence was presented of any previous misleveling problem or indication that the elevator could mislevel. Further, Yip had adjusted the brakes in the subject elevator on the day of the

accident prior to its occurrence, and he concluded that the elevator was in proper working order, with no misleveling. The elevator was inspected the day after the incident, and no problems were discovered.

In addition, the court notes that Centennial would, in any event, be relieved of any potential liability because the contract between Rudd and Centennial specifically removes responsibility for the misleveling of elevators from Centennial. *See Figueroa v. East 168th Street Associates, L.P.*, 71 A.D.3d 456 (1st Dept. 2010). The contract specifically provides that Centennial does "not accept responsibility for leveling of cars at landings." Further, the contract provides that Rudd was obligated to "monitor the operation of the elevator equipment daily and report by telephone or in writing of any unsafe condition or improper operation of the equipment which might cause injury to a passenger."

In accordance with the foregoing, it is hereby

ORDERED that the motion for summary judgment dismissing the complaint and all cross claims against it brought by defendant Rudd Realty Management Corporation (mot. seq. no. 006) is granted, and the complaint and cross claims are dismissed as to Rudd Realty Management Corporation; and it is further

ORDERED that the motion brought by defendant Centennial Elevator Industries, Inc. for summary judgment dismissing the complaint and all cross claims against (mot. seq. no. 007) it is granted, and the complaint and cross claims are dismissed as against defendant Centennial Elevator Industries, Inc.; and it is further

ORDERED that the cross motion brought by defendant Charles H. Greenthal Management Corporation for summary judgment dismissing the complaint and all cross claims against it is granted, and the complaint and cross claims are dismissed as against Charles H. Greenthal Management Corporation; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the decision and order of the Court.

Dated: New York, New York
September 3, 2013

ENTER

Laura Taylor Swain
J.S.C.