

Jones v Melrose Site D-1 Houses, Inc.

2015 NY Slip Op 31734(U)

August 20, 2015

Supreme Court, Bronx County

Docket Number: 307296/09

Judge: Norma Ruiz

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NEW YORK SUPREME COURT-COUNTY OF BRONX
PART IA-22

DOROTHY JONES,

Plaintiff,

-against

MELROSE SITE D-1 HOUSES, INC., MELROSE SITE
D-1 REALTY ASSOCIATES and RIVERSIDE
MANAGEMENT CORPORATION,

Defendants.

**MEMORANDUM
DECISION/ORDER**
Index No.: 307296/09

MELROSE SITE D-1 HOUSES, INC., MELROSE SITE
D-1 REALTY ASSOCIATES and RIVERSIDE
MANAGEMENT CORPORATION,

Third-Party Plaintiffs,

-against-

UNITED CEREBRAL PALSY ASSOCIATIONS OF
NEW YORK STATE, INC.,

Third-Party Defendant.

MELROSE SITE D-1 HOUSES, INC., MELROSE SITE
D-1 REALTY ASSOCIATES and RIVERSIDE
MANAGEMENT CORPORATION,

Second Third-Party Defendants,

-against-

UNITED CEREBRAL PALSY OF NEW YORK CITY,

Second Third-Party Defendant.

HON. NORMA RUIZ

Second Third-Party defendant, United Cerebral Palsy of New York City ("UCPNYC"),
moves for an order, pursuant to CPLR§3212, granting UCPNYC summary judgment on the issue of

liability, dismissing the second third-party complaint. The motion is decided as hereinafter indicated.

As a preliminary matter, no answer had been served on behalf of defendant Melrose Site D-1 Realty Associates to plaintiff's complaint. By written stipulation, dated July 15, 2015, all parties herein agreed that the verified answer to the amended verified complaint, dated May 6, 2011, served by Cartafalsa, Slattery, Turpin & Lenoff, on behalf of Melrose site D-1 Houses, Inc. and Riverside Management Corporation, would be deeded to include an appearance and answer for defendant Melrose Site D-12 Realty Associates.

This is an action by plaintiff to recover monetary damages for personal injuries allegedly sustained by her on November 10, 2007, as a result of her slipping and falling in the hallway of the 4th floor of the building located at 245 East 149th Street, Bronx, New York ("the Building"). More specifically, plaintiff alleges that she fell on a brownish liquid in the hallway which was about 12-13 inches in diameter.

The facts, as culled from the pleadings and deposition transcripts, are as follows:

Defendants/second third-party plaintiffs, Melrose Site D-1 Houses, Inc., Melrose Site D-1 Realty Associates and Riverside Management Corporation ("Melrose"), are the owners/managers of the Building. The building has 11 floors with 9 apartments on each floor. There are commercial businesses on the ground level. In 2007, Melrose leased space on the 4th floor in the Building to UCPNYC. The space leased to UCPNYC consisted of apartments used by UCPNYC for its operation as a residential care facility, all opening onto a hallway on the 4th floor. Some of the apartments were used by UCPNYC as office space and some as residential apartments, with the facilities for male and females residents being located on opposite sides of a 5 foot hallway. The apartments were connected by a

common hallway and to get from one section of the UCPNYC residential facility to another, one had to cross the common hallway. The 4th floor also had a garbage chute in a small room off the common hallway.

Pursuant to the terms of the lease, Melrose was responsible for the maintenance of the common areas on the 4th floor and UCPNYC was responsible for the maintenance within the space it actually rented. It is undisputed that the hallway on the 4th floor was a common area. It was not the responsibility of UCPNYC to wax or clean (spills or otherwise) on the 4th floor and UCPNYC never did and work in the hallway.

On November 10, 2007, plaintiff, a registered nurse, and employed by UCPNYC as such, arrived at the Building at 8:30 A.M., proceeding to the 4th floor office of UCPNYC. At that time, plaintiff did not notice whether the hallway was wet in any way. At 9:00 A.M., plaintiff left the 4th floor UCPNYC office and went to the 4th floor UCPNYC female residents' apartment. While proceeding down the hallway, plaintiff notice a spill in the hallway which she had not notice earlier. The spill was brownish in color, about 12-13 inches in diameter, and was located directly in front of the door to the male residents' apartment across the hall from the door to the female residents' apartment. Plaintiff did not know who created the spill, did not attempt to clean it up, but intended to let one of the UCPNYC staff workers know it was there to let them cover it up or call building maintenance.

Plaintiff then entered the female residents' apartment on the 4th floor and spent 20 or 25 minutes checking on the residents. She encountered other UCPNYC staff workers in the apartment, but does not remember if she mentioned the spill. Plaintiff did not have an opportunity to contact building maintenance about the spill. After plaintiff left the female residents' apartment, with the intention to go

across the hallway to enter the male residents' apartment. On the way across the hallway she slipped and fell on the spill, which was directly outside the door to the male residents' apartment. After her fall, plaintiff saw a UCPNYC staff member from the male residents' apartment walking back from the garbage chute off the hallway. Plaintiff did not know what the worker was throwing out in the garbage. The liquid that caused plaintiff to fall smelled like pine or some type of detergent. In 2007, the inside of the apartments rented by UCPNYC were regularly cleaned by UCPNYC's staff, which used cleaning products, including something like Pine-Sol.

UCPNYC's motion is predicated on the ground that, pursuant to the terms of the lease agreement, it had no duty to clean and or maintain the 4th floor hallway of the Building, and consequently, it is not liable for plaintiff's accident. While UCPNYC demonstrated that it did not have a duty to clean and maintain the hallway of the 4th floor where plaintiff's accident occurred, it did not establish that it did not cause or create the spill which resulted in plaintiff's accident. *See, McGinley v. Mystic West Realty Corp.*, 117 A.D.3d 504 (1st Dept. 2014)(defendant made showing of lack of statutory duty *and* that it did not cause or create alleged hazardous condition). Unlike *McGinley*, where defendant therein submitted an affidavit that it never placed the alleged leaking garbage bags in front of the premises, UCPNYC did not submit assert, let alone submit, any evidence that it did not cause of create the alleged hazardous condition.

UCPNYC's motion for summary judgment is denied.

The foregoing constitutes the Decision and Order of the Court.

Dated: 8/20/15



NORMA RUIZ, J.S.C.

NORMA RUIZ