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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 58

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SILVANA PEKTAS,

Plaintiff,

-against-

LARSTRAND CORPORATION, 922 MADISON LLC, LAWRENCE FRIEDLAND and MELVIN FRIEDLAND

Defendants.

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**DECISION/ORDER**
**Index No. 154302/2014**

HON. DAVID B. COHEN, J.:

Silvana Pektas ("plaintiff") worked as an employee for non-party Manrico USA ("Manrico"). Manrico leased a commercial space from defendant Lawrence Friedland located at 922 Madison Avenue, New York New York (the "Premises") on August 13, 2006 and later amended on August 31, 2006. The Premises are managed by defendant Larstrand Corporation.[1] On December 29, 2012, plaintiff was heading down a staircase that leads to a basement showroom when she slipped and fell and was injured. The staircase is 10 to 12 steps followed by a landing and an additional 3 steps after the landing. Plaintiff alleges that she fell on the third to bottom step of the top portion of the steps.

In support of this motion, the remaining defendants submit the deposition of plaintiff. In her deposition, plaintiff states that she slipped on some water that was on the third step. Plaintiff conceded that she never saw the water and only knew about it from one of her co-workers who came to her after hearing the fall. Plaintiff did not recall being wet after the fall. Plaintiff testified that it was a little bit dark downstairs but that she was more or less able to see where she was going and that the conditions going down the steps were usually okay. Plaintiff stated that even though there was lighting downstairs the lights were not on because the "owner" didn't really like us to spend too much light down there."

[1] By stipulation dated July 15, 2015, the action was discontinued as to defendants 922 Madison LLC and Melvin Friedland.

Defendant also submitted the deposition and separate affidavit of Marc LaPointe the Director of Architecture for defendant Larstrand. LaPointe testified that his job function is to act as the property managing agent and that Larstrand was the property manager of the Premises. He stated that Manrico performed a total re-gut to the Premises "down to structural element on the ground floor and in the basement . . . installing all new finishes mechanical and electrical systems." Manrico also installed the staircase where the accident took place and would be responsible for any issues with replacing/changing lights. Manrico did submit the plans and specification to defendants prior to the work being performed but that no violations existed with respect to the staircase. Pursuant to the lease, LaPointe was permitted to go to the Premises and did so on "an as needed basis." LaPointe also testified that before the accident defendants never received any complaint regarding leaks over the steps.

In his affidavit LaPointe stated that Larstrand Corporation's function is collect rents, negotiate leases and perform managerial duties on behalf of Friedland and that Larstrand has no ownership in the Premises nor any role in the maintenance of the Premises. All maintenance obligations were specifically placed on Manrico. LaPointe further stated that Lawrence Friedland, is an "out-of-possession" landlord who does not have day-to-day involvement with operations at the Premises and in fact, does not have access to the Premises or any contractual obligation to maintain the Premises or make any non-structural repairs.

Summary judgment is a drastic remedy that should not be granted where there exists a triable issue of fact (*Intergrated Logistics Consultants v. Fidata Corp.*, 131 AD2d 338 [1st Dept 1987]; *Ratner v. Elovitz,* 198 AD2d 184 [1st Dept 1993]). On a summary judgment motion, the court must view all evidence in a light most favorable to the non-moving party (*Rodriguez v. Parkchester South Condominium Inc.*, 178 AD2d 231 [1st Dept 1991]). The moving party must show that as a matter of law it is entitled to judgment [*Alvarez v. Prospect Hosp.*, 68 NY2d 320 324 [1986]). The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). After the moving party has demonstrated its *prima facie* entitlement to summary judgment, the

party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring a trial (*Zuckerman v. City of New York,* 49 NY2d 557 [1980]).

Defendants have established that Friedland was an out-of-possession landlord of the Premises that did not have any contractual maintenance obligations and was not responsible for non-structural repairs. Defendants have also established that Larstrand does not have any ownership interest in the Premises and did not have any maintenance obligations. The obligation for the expenses and the maintenance of the electrical system and supply was Manrico, as were general non-structural repairs to the premises. "A landlord is generally not liable for negligence with respect to the condition of property after the transfer of possession and control to a tenant unless the landlord is either contractually obligated to make repairs and/or maintain the premises or has a contractual right to reenter, inspect and make needed repairs at the tenant's expense and liability is based on a significant structural or design defect that is contrary to a specific statutory safety provision" (*Quing Sui Li v 37-65 LLC*, 114 AD3d 538, 539 [1st Dept 2014] *citing Johnson v. Urena Serv. Ctr.,* 227 AD2d 325 [1st Dept.1996], *lv. denied* 88 NY2d 814 [1996]).

Plaintiff argues that defendants retained the right to reentry under certain conditions and thus, a question of fact is raised as to who whether defendants had notice of the condition or retained control over the Premises. Specifically, pursuant to Article 13 of the lease and Paragraph 82(j) of the rider to lease, defendants retained the right of reentry for the purpose of inspection or making repairs under certain conditions. However, this retention is of no consequence as "there is no triable issue of fact as to whether the allegedly defective condition involved a significant structural or design defect contrary to a specific statutory safety provision (*Babich v R.G.T. Rest. Corp.*, 75 AD3d 439, 440 [1st Dept 2010] *see also Devlin v Blaggards III Rest. Corp.*, 80 AD3d 497 [1st Dept 2011]; *Malloy v Friedland*, 77 AD3d 583 [1st Dept 2010]). Here, plaintiff does not even know for certain what caused her fall. Based upon what she heard her co-workers say, she believes it was a water condition, which she never noticed before and for which there had never been a prior complaint. Even if plaintiff is correct that she fell due to the water being present, such allegation is not connected to a structural defect. In fact, in her deposition, plaintiff does not allege any structural defect at all.

Similarly, plaintiff argues that since the plans and specifications were submitted by Manrico to defendants for approval, this raises an issue of whether defendants had notice of the alleged hazard and whether defendants retained sufficient control over the leased premises to be held responsible for the prevention or remediation of such hazard (*Wright v Olympia & York Companies (U.S.A.) Inc.*, 273 AD2d 24 [1st Dept 2000]). However, although in the complaint plaintiff alleges a structural defect, her deposition makes no such reference and in fact claims the hazard was water on steps and lighting that was not turned on because Manrico did not like the lights on. For the above reasons, the remaining defendants, as a matter of law, cannot be found liable for plaintiff's injuries that occurred in the Premises due to water and this matter is dismissed.

This constitutes the decision and order of the Court.

**DATE:** 11/29/2016

**COHEN, DAVID B., JSC**