Serino v Eleven Twelve Corp.
2017 NY Slip Op 30030(U)
January 4, 2017
Supreme Court, New York County
Docket Number: 154041/13
Judge: Joan A. Madden
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY, IAS PART 11

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ALBERT SERINO,

Index No.: 154041/13

Plaintiff,

-against-

ELEVEN TWELVE CORP., BROWN HARRIS STEVENS, ELLEN CHIANG REALTY GROUP, LLC, and ELLEN CHIANG,

Defendants.

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JOAN A. MADDEN, J.:

In this personal injury action, defendants Eleven Twelve Corporation ("Eleven Corp") and Brown Harris Stevens ("Brown Harris") (together "the building defendants") move for summary judgment dismissing the complaint and all cross claims asserted against them (motion seq. no. 002). Defendants Ellen Chiang Realty Group, LLC and Ellen Chiang ("Chiang")(together "the Chiang defendants") separately move for summary judgment dismissing the complaint and all cross claims asserted against them (motion seq. no. 003).[1] Plaintiff opposes both motions.

Background

Plaintiff alleges he was injured during the course of his employment as a firefighter on July 6, 2012, at approximately 1:45 pm, at a cooperative apartment building located at 1112 Park Avenue, New York, NY ("The Building"), when he was tripped from behind by a fire hose line being used to fight the fire in Chiang's 14th floor apartment ("the Apartment").

At his deposition, plaintiff testified that he arrived at the Building ten minutes before the

[1]Motion sequence nos. 002 and 003 are consolidated for disposition.

incident (Plaintiff Dep, at 11). After the superintendent of the Building directed plaintiff to the service elevator and advised him that the fire was on the 14th floor, plaintiff took the elevator to the 12th floor (which was the floor below the fire since there was no floor designated 13 in the Building), climbed the stairs, passing the floor with the fire and going to the floor designated 15 "to inspect the apartment upstairs for [fire] extension" (Id, at 13). After he and two other firefighters inspected the 15th floor apartment they descended from the 15th floor to the 14th floor.

Plaintiff was injured on the stairs "just after the half landing ... from 15 to 14" (Id, at 23). According to plaintiff, the accident occurred when he was tripped from behind by a "flaked out hose line," (i.e. the stretched out hose line). After the hose tripped him, plaintiff "fell backwards with fully extended arms (behind him)" onto the stairs (Id, at 27). His hands were the first part of his body to hit the stairs and then he turned sideways to the left and tumbled down the stairs and ended up on the 14th floor landing (Id, at 31). When asked to describe the condition of the stairway in terms of visibility at the time that he tripped, plaintiff testified "Blackout, zero visibility" (Id, at 26). According to plaintiff, at the time he fell he was reaching for a handrail, which he testified was on the right side of the stairway going up (Id, at 27-28)

When shown a photograph of a trash can and recycle bins near the stairs, plaintiff testified that "these were things in our way going up and down" (Id, at 81). When asked whether he had seen these objects on the accident date, plaintiff responded "I felt them. I didn't really see. We were navigating with our hands" (Id). Plaintiff further testified that in the area where he fell there were "boxes (or recycle bins)...so I could not even stay on the wall, so I had to come off the wall. That's when I got caught in the horseshoe of the flaked out hose line on the half landing" (Id, at 97). Plaintiff further testified that although he had difficulty seeing, "I knew the hose line

was there. I just didn't know they were going to advance it" (Id, at 99).

Plaintiff testified that he provided the information transcribed in a member injury report regarding the incident which is part of the record (Id, at 67). The report states, *inter alia*, that plaintiff was injured:

> while descending a smoke filled attack stairwell from the floor (15th) to the fire floor (14th). The building was using this same stairwell to store its garbage containers for each individual floor. The placement of these garbage containers obstructed proper use of the stairwell handrails forcing firefighter Serino (i.e. plaintiff) to descend down the center of the stairwell, away from the safety of the handrails. While firefighter Serino was descending between floors 14 and 15, being forced to use the center of the stairwell, he also had to walk by a flaked out hoseline that went up to the half landing between floors 14 and 15. As firefighter Serino began to walk pas[t] the charged hoseline of the first due engine companies began their attack on the fire, pulling on the hoseline and causing firefighter Serino to be tripped from behind. During firefighter Serino's fall he attempted to reach for the handrails on the stairwell to prevent his fall.

Plaintiff testified that the report had some information that was different from what he told the lieutenant who filled out the report, specifically "about saying about a handrail on the wall and that I was coming down which wasn't right," and that the report indicates there were handrails "when in fact there was only one handrail." (Id, at 67).

Evan Santiago ("Santiago") testified on behalf of the building defendants. Santiago testified that he was employed by Eleven Corp for the past fifteen years, first as a porter and then as a handyman (Santiago dep, at 6). At the time of the accident, he was a porter and the superintendent was Donald Sinkowitz, who is no longer employed at the Building (Id, at 7). According to Santiago, the fire began in apartment 14A which is owned by Chiang and that the fire was confined to her apartment (Id, at 10-11). He testified that garbage cans are stored on the

landing of each floor, but nothing else was permitted, and if he observed something else between floors he would tell the tenant to remove it since it was a "fire hazard" to keep anything on the stairs (Id, at 12-13). He also identified mail buckets in photographs of the stairway area, although he denied it was common practice for tenants to keep mail buckets outside their apartments in the stairwell (Id, at 17-18). He also was shown a photograph of a dry cleaning rack stored outside a tenant's apartment near the stairwell and, when asked what he would do if he observed the rack as shown the photo, he testified that he would have told the tenant to bring it inside but the tenants were not always compliant (Id, at 30-31). He further testified that he did not specifically advise Chiang to take steps or precautions to remove items outside her apartment door (Id, at 31).

When showed a photograph depicting trash cans and recycle bins stored near the stairwell, he testified that the tenants do not use the stairwell to exit the Building but used another one, and that three garbage cans are stored on the landings for each of the three apartments on each floor and are provided by the Building (Id, at 14, 20). Santiago testified that he did not assist fire personnel on the accident date, but that he did direct them to the stairwell to use and brought them by elevator to the 14th and 15th floors (id, at 22-23). He also testified that he never performed any electrical work in Chiang's apartment, did not install the air conditioner, and did not receive any complaint about the air conditioner sparking (Id, at 27-28). According to Santiago, after the fire he saw nothing on the landings because the firefighters threw everything out the windows, and that he cleaned the garbage cans and maybe one or two postal receptacles thrown by them to the courtyard (Id, at 32-33).

Chiang was also deposed. Chiang testified that she had lived in the Apartment for 17

years before the fire started, and that the air conditioner in the master bedroom where the fire started was in the Apartment before she moved in and that it worked well (Chiang Dep at 6, 15). She testified that the air conditioner was serviced yearly, and that before the fire she never had any problems with the air conditioner, and she had never seen a spark (Id, at 15). She had seven other air conditioners and had never had any problems with any of them (Id, at 22). According to Chiang on the day of the fire she heard a "dah, dah, dah" noise coming from the area of her air conditioner, and turned to see her bedroom curtains on fire (Id, at 15-16). The fire spread "very quickly, within a minute" (Id, at 8). She called for help and then fled the Apartment (Id, at 16). When asked about whether there were garbage cans stored outside her apartment, Chiang testified that there were three, and that "one was a single and the other ones were on top of the others." She further testified that they were on the "landing, it's not near the stairwell, it's outside my...back door" (Id, at 10). According to Chiang, she would put her garbage in the cans outside her door and an employee of the Building would remove them (Id). She never used the stairwell and never noticed anything being stored there (Id, at 11). She also testified that she was never told that she should not put anything on the stairwell, and that she did not store anything there (Id, at 20-21).

In this action, plaintiff asserts claims for common law negligence and under General Municipal Law ("GML") § 205-a, based on allegations that the presence of garbage cans and other items in the stairwell violated the New York City Maintenance Code, Fire Code and Building Code and that these violations was a proximate cause of plaintiff's injuries.

The building defendants move for summary judgment arguing that the common law negligence claims must be dismissed against them as they have established that (1) the sole cause

of the plaintiff's accident was being tripped by the flaked out fire hose being pulled by other firefighters attending to the fire in the Apartment, (2) they did not install or repair the air conditioning and were not responsible for its maintenance, (3) they lacked notice of any condition on the stairs that caused plaintiff to fall.

As for the claims under GML §205-a, the building defendants argue that while the provision creates a cause of action for firefighters injured by the violation of a statute, regulation, or ordinance, none of the grounds raised by plaintiff's expert in his expert disclosure are sufficient to show such a violation or that such violation proximately caused, directly or indirectly, plaintiff's injuries. Instead, they assert that the findings of plaintiff's expert are "so remote, attenuated and far-fetched as not be related directly or indirectly to plaintiff's accident."

The Chiang defendants also move for summary judgment, asserting that the undisputed facts establish that they are not liable as a matter of law since 1) plaintiff is barred from seeking relief on his negligence claim since he was responding to a fire in the course of his duty as a firefighter, and 2) plaintiff cannot make out a prima facie case under GML § 205-a because they are not guilty of any violation cited and no alleged violation is reasonably related to plaintiff's injuries.

In support of their motion, the Chiang defendants rely on Chiang's affidavit in which she states, *inter alia*, that "[t]he air conditioner, including the power supply cord, did not in any way appear to be damaged, work out or otherwise in poor condition prior to the date of the fire. Likewise, I never observed any sparking from the air conditioner which would indicate any malfunctioning in any way immediately prior to the fire" (Chiang Aff. ¶ 4). She further states that "[a]t no point did I store any items, boxes, bicycles or rubbish in the stairway of the

Building. Indeed, I never even used the stairway to access other floors, and I was not aware that any items were being stored in the stairway" (Id ¶ 7).

In opposition, plaintiff argues that GML §205-a, which creates a cause of action for firefighters who suffer line-of- duty injuries directly or indirectly caused by a defendant's violation of relevant statutes, regulations and ordinances, applies here based on the code violations cited by his expert arising from leaving objects in the stairwell, which also violated the Building's own House Rules. Moreover, plaintiff argues that the provision is broadly construed so a firefighter need only show a "reasonable connection" between the violation and his injuries. As to the building defendants' arguments regarding lack of notice of a condition on the stairway, plaintiff points to Santiago's testimony that he was aware that tenants used the stairway to store materials and that garbage cans were routinely stored on the landing of each floor. Plaintiff also argues that the defective air conditioner violated various code provisions recited by his expert.

In support of his argument that there were violations of various building codes and fire codes, plaintiff submits the expert disclosure and the affidavit of his expert John Tinghitella ("Tinghitella"), a certified fire investigator. Tinghitella states that he inspected the air conditioning and cord and also reviewed various materials in the litigation file, including plaintiff's verified bill of particulars, deposition transcripts and photographs. Tinghitella further states that while descending stairs in heavy smoke conditions, firefighters are taught to hold onto the handrails or to feel against the wall if there are not handrails and plaintiff in this case was unable to do so "because of the accumulation of items at the landings and stairs, including dry cleaning racks, with dry cleaning, boxes, mail cartons, water bottles, and trash and recycling receptacles" (Tinghitella Aff. ¶ 5). He further states that plaintiff "was forced to the center of

the stairs to avoid these materials and was unable to hold the handrail. This caused him to fall when the hose made contact with him" (Id). He opines that plaintiff's "accident occurred as a result of several violations and these violations were a direct cause of the accident. In a darkened stairwell cluttered with debris including dry cleaning racks with clothes, cardboard boxes, mail cartons, water bottles, garbage cans, recycling bins and even a bicycle (Id ¶ 6).

He further states that plaintiff was injured because of violations of:

> 1) the New York City Housing Maintenance Code, 2006: §§ 27-2006 and 27-2007 regarding, respectively, the duties of a tenant to comply with the provisions of the Housing and Maintenance Code and prohibiting tenants and other persons from placing encumbrances restricting means of egress; §27-2022(a) and (c)(1) prohibiting the accumulation of waste matter in any part of the premises; §27-2053 requiring adequate provision of janitorial services, and § 28-142.1 and 28.142.2, requiring the maintenance of the building in a safe condition; § 25-221, requiring that stairs and passageways used as a means of egress be kept free and clear of encumbrances.
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> 2) New York City Fire Code 2008: §§ 1027.1, 1027.2, 1027.4.1 requiring the maintenance of means of egress in accordance with the Construction Code and Building Code; requiring means of egress to be maintained free of obstructions and impediments; prohibiting the storage of furnishings or combustible materials in hallway.
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> 3) New York City Building Code 2008: §28-301.1 regarding the owner's responsibility to maintain the building and all structures and service equipment in a safe condition; §1001.3, requiring that the means of egress be maintained in accordance with the New York City Fire Code , §1003.3.2, requiring that mounted objects not overhang a post or pylon by more than four inches over walking surfaces; § 1003.3.3, requiring that horizontal projections shall not project more than four inches over walking area § 1003.3.4, providing that objects not limit usable width of accessible routes as required by § 1104.
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> 4) New York City Building Code 1968: §§ 27-368, 27-369 and 27-370, which require the provision of a means of egress; that corridors be kept accessible and unobstructed and free of combustible materials; and that exit passageways be free from obstructions at all times.

Tinghitella also states "as a result of the above violations, defendants caused allowed, permitted and/or placed obstruction/impediments in the subject stairwell [and] defendants failed to maintain the electrical system, socket, air conditioner and cord in a safe condition within [the Apartment]" (Id ¶'s 7,8). He opines that "[t]herefore, within a reasonable degree of fire safety protocols, procedures, code and statutory compliance certainty, the owner/and or owners of [the Building] and [the Apartment] failed to properly maintain [the Building], air conditioning unit, and stairwells thereby resulting in [plaintiff's] accident and injury (Id ¶ 9).

In reply, the building defendants argue that Tinghitella's affidavit is conclusory and speculative and therefore insufficient to raise a triable issue of fact. Specifically, they note that Tinghitella did not physically inspect the stairs or landings, but instead relies solely on discovery materials. Moreover, they argue that the record shows that the accident was caused by the pulling of the flaked out fire hose which tripped plaintiff, that plaintiff admitted that there was no items such as bicycles, or garbage cans on the steps where he tripped, and plaintiff incorrectly attempts to equate steps with landings at the Building. They also argue that there is no evidence that the garbage cans or recycling bins or any other items stored outside the doors of the apartments interfered with plaintiff's ability to fight the fire.

In reply, the Chiang defendants assert that Tinghitella's statements as to the air conditioning including that the electrical wiring and socket were not well maintained are without foundation, and that in any event, there is no evidence that Chiang failed to use reasonable care in maintaining the air conditioner. As for the garbage receptacles placed on the 14th floor landing, the Chiang defendants argue that such receptacles are clearly not connected to plaintiff's

injuries, since plaintiff testified he was unable to reach the handrail because of obstructions on half landing or stairs and not because of these receptacles on the landings near the apartment doors, which were placed by building management in any event.

Discussion

It is well established that "[t]he proponent of summary judgment must establish its defense or cause of action sufficiently to warrant a court's directing judgment in its favor as a matter of law." Ryan v. Trustees of Columbia Univ. in the City of N.Y., Inc., 96 AD3d 551, 553 (1st Dept. 2012) (internal quotation marks and citation omitted). "Thus, the movant bears the burden to dispel any question of fact that would preclude summary judgment." Id. "Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution." Giuffrida v. Citibank Corp., 100 NY2d 72, 81 (2003). "Mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" to raise a triable issue of fact. Zuckerman v. City of New York, 49 NY2d 557, 562 (1980).

The court will first address the claims pursuant to General Municipal Law § 205-a, which " provides protection to a firefighter injured as a result of a building code violation that enlarges the hazard of his task by diminishing fire safety or prevention." Cotter v. Pal & Lee, Inc., 86 AD3d 463, 465 (1st Dept), lv denied 17 NY3d 716 (2011)(internal citation and quotations omitted); see also Lustenring v. 98-100 Realty, LLC, 1 AD3d 574 (2d Dept 2003), lv dismissed in part and denied in part, 2 NY3d 791 (2004). "To fall within the protective scope of the statute ... a plaintiff seeking recovery under General Municipal Law § 205-a must identify the statute or ordinance with which the defendant failed to comply, describe the manner in which the

firefighter was injured, and set forth those facts from which it may be inferred that the defendant's negligence directly or indirectly caused the harm to the firefighter." Zanghi v Niagara Frontier Transp. Commn., 85 NY2d 423, 441 (1995). "While a plaintiff need only establish a practical or reasonable connection between the statutory or regulatory violation and the claimed injury ... the causation element will not be found where the connection is too speculative to support General Municipal Law § 205-a liability." Cotter v. Pal & Lee, Inc., 86 AD3d at 466 (internal citations and quotations omitted).

"[R]ecovery under General Municipal Law § 205-a does not require the same proof of actual or constructive notice as would be required for a common-law negligence claim based upon an unsafe condition on the property " Cusumano v New York, 63 AD3d 5, 9 (2d Dept 2009), rev'd on other grounds 15 NY3d 319 (2010)(internal citations and quotations omitted). Instead, "the statute requires only that the circumstances surrounding the failure to comply with the local law or regulation indicate that it was a result of "neglect, omission, willful or culpable negligence[] on the defendant's part" Id, quoting Lusenskas v Axelrod, 183 AD2d 244 (1st Dept 1992), appeal dismissed 81 NY2d 300 (1993).

With respect to the building defendants, even assuming *arguendo* that they met their initial burden of showing that certain statements in the affidavit of plaintiff's expert were speculative, plaintiff's testimony, including that there were boxes and/or recycling bins in the area where he fell which required him to come off the wall and go to the center of the stairway where he was tripped by the hose, raises triable issues of fact as to whether his injuries were proximately caused by violations of various provisions of New York City's Maintenance, Building, and Fire Codes, cited by plaintiff's expert requiring that stairs and means of egress be

kept clear of obstructions and debris. See Pirraglia v. CCC Realty NY Corp., 35 AD3d 234 (1st Dept 2006)(building code violations governing building maintenance are a proper statutory predicate to liability under GML § 205-a); Lynch v. City of New York, 14 AD3d 347 (1st Dept 2005)(record raised triable issue of fact precluding dismissal of GML § 205-a where there was evidence that firefighter was injured when fell on electrical wire coils and other construction material on the building's stairway).

Nor are the building defendants entitled to summary judgment on the ground that the advancing of the fire hose which tripped plaintiff from behind, as opposed to the alleged violations caused by the obstructions in the area of plaintiff's fall, was the sole cause of plaintiff's injuries. As noted above, in order to recover under GML § 205-a "a plaintiff need only establish a practical or reasonable connection between the statutory or regulatory violation and the claimed injury." " Cotter v. Pal & Lee, Inc., 86 AD3d at 466 (internal citations and quotations omitted). Here, it cannot be said as a matter of law, that there is no reasonable connection between the alleged violation which plaintiff testified resulted in him moving to the center of the stairway, where was tripped by the hose. Accordingly, summary judgment is denied insofar as the court finds there are triable issues of fact as with respect to the violations related to objects on the stairs, and whether such violations have a reasonable or practical connection to plaintiff's injuries.

On the other hand, the record is devoid of evidence that plaintiff's injuries were caused by mounted objects, or horizontal projections, and in particular, dry cleaning racks, as there is no proof connecting testimony as the presence of these racks on certain landings with plaintiff's injuries. In addition, the court finds that the building defendants have met there burden of

showing that they were not responsible for maintaining the air conditioner in the Apartment, and that plaintiff has not controverted this showing. Furthermore, plaintiff has not shown that the building defendants violated any provision related to the maintenance of the air conditioner that would serve as a predicate to liability under GML § 205-a. Specifically, Administrative Code of the City of New York § 28–301.1, on which plaintiff relies, regarding the owner's responsibility to maintain the building and all structures and service equipment in a safe condition, does not provide a basis for tort liability (J-Line Inc. v. Leggett Ave. & Southern Blvd Realty Corp., 134 AD3d 584 (1st Dept 2015) and has been held to not apply in circumstances, like in this case, where there is no alleged structural or design defect. See Kelly v. City of New York , 134 AD3d 676 (2d Dept 2015)(holding that although a violation of Administrative Code of the City of New York § 28–301.1 may serve as a predicate for liability under General Municipal Law § 205–e, the plaintiffs failed to show its applicability since the subject cord did not constitute a specific structural or design defect giving rise to liability under the Administrative Code). As for Building Code § 28-142.1 and 28.142.2,[2] which imposes a similar duty on an owner to safely

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[2] Section 28-142.1 provides as follows: Maintenance requirements. All buildings and all parts thereof and all other structures regulated by this code shall be maintained in a safe condition. All service equipment, means of egress, devices, and safeguards that are required in a building by the provisions of this code or other applicable laws or rules, or that were required by law when the building was erected, altered, or repaired, shall be maintained in good working condition. Whenever persons engaged in building operations have reason to believe in the course of such operations that any building or other structure is dangerous or unsafe, such person shall forthwith report his or her belief in writing to the commissioner, who shall thereupon cause an inspection to be made of such building or other structure; and if such building or other structure is found to be dangerous or unsafe, the commissioner shall cause such action to be taken as he or she may deem necessary.

§ 28-142.2 Owner responsibility. The owner shall be responsible at all times for the safe maintenance of the building and its facilities and all other structures regulated by this code.

maintain a building, such provisions by their terms, cannot be read to impose a duty on the owner to ensure the safety of a tenant's air conditioner. Accordingly, the building defendants are entitled to summary judgment to the extent the court finds that there is no basis for a GML § 205-a claim predicated on any purported violations as to mounted objects, or horizontal projections or any defect in the subject air conditioner.

As for the GML § 205-a claim asserted against the Chiang defendants, the court finds that the Chaing defendants have met their burden of demonstrating that they did not violate any provision of law that had any reasonable connection with plaintiff's injuries, and plaintiff has failed to controvert this showing. Specifically, the Chiang defendants have provided unrefuted evidence that they were not responsible for any obstruction in the area where plaintiff fell, and testimony that the Building provided garbage containers and recycling bins which were located outside Chiang's door on the landing near the back stairwell on the 14th floor does not raise an issue of fact in this regard, particularly as there is no evidence that these items obstructed the stairway or half landing between the 14th and 15th floor where plaintiff fell. Likewise, there is no evidence that Chiang was in violation of any code provision based on her ownership of the air conditioner. Accordingly, Chiang is entitled to summary judgment dismissing the claim against her under the GML § 205-a.

Next, with respect to the negligence claims, the court notes that while the so-called firefighter rule precludes firefighters (and police officers) from recovering "in common-law negligence for line-of-duty injuries resulting from risks associated with the particular dangers inherent in that type of employment.... [s]ince 1996, the rule has been applicable only in actions against a 'police officer's or firefighter's employer or co-employee.'" Wadler v. City of New

York, 14 NY3d 192, 194 (2010), quoting General Obligations Law § 11–106 (1). Here, as this action does not involve an action between plaintiff's employer or a co-employee, there is no bar on plaintiff's asserting common law in common law negligence claims arising out of his duties as a firefighter. That said, however, the negligence claims must be dismissed.

It is well established that "a landowner is under a duty to maintain its property in a reasonably safe condition under the existing circumstances, which include the likelihood of injury to a third party, the potential that such an injury would be of a serious nature, and the burden of avoiding the risk." Smith v. Costco Wholesale Corp., 50 AD3d 499, 500 (1st Dept 2008). "For a property owner to be held liable for a hazardous condition on its premises, a plaintiff must demonstrate that the owner created, or had actual or constructive notice of the dangerous condition which precipitated the injury." Id, citing Piacquadio v. Recine Realty Corp., 84 NY2d 967, 969 (1994). Here, as there is no evidence that building defendants had notice of, or created, any of the alleged obstructions in the area where plaintiff fell, the building defendants are entitled to summary judgment.

As for the Chiang defendants, they are entitled to summary judgment dismissing the negligence claims as well since they owe no duty to plaintiff to keep the common areas over which they have no control free from obstructions (Hoberman v. Kids R Us, Inc., 187 AD2d 187, 190-191 (1st Dept 1993). Moreover, the record is devoid of evidence that the Chiang defendants had notice of the condition causing plaintiff's injuries or caused or created such condition. With respect to the air conditioning, the uncontroverted evidence establishes that the Chiang defendants had no notice of any defects in the air conditioner or its cord prior to the fire, and there are no allegations or proof that they caused the condition.

Accordingly, summary judgment is granted dismissing the negligence claims against the defendants.

Conclusion

In view of the above, it is

ORDERED that the motion for summary judgment by defendants Eleven Twelve Corporation and Brown Harris Stevens is granted to the extent of dismissing the negligence claims asserting against them and that part of the GML §205-a claim predicated on any purported violations as to mounted objects, or horizontal projections or any defect in the subject air conditioner and is otherwise denied; and it is further

ORDERED that the motion for summary judgment by defendants Ellen Chiang Realty Group, LLC and Ellen Chiang is granted, and all claims and cross claims against these defendants are dismissed.

DATED: January 4, 2017

HON. JOAN A. MADDEN
J.S.C.