Segarra v Sedgwick 8 LLC
2017 NY Slip Op 32637(U)
November 17, 2017
Supreme Court, Bronx County
Docket Number: 301550/2012
Judge: Doris M. Gonzalez
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX
---X
MIRIAM SEGARRA,

Plaintiff,

Index No. 301550/2012

v.

DECISION AND ORDER

SEDGWICK 8 LLC, ROSEWELL GARDENS ASSOCIATION and METROPOLITAN PROPERTY SERVICES,

Defendants.
---X

GONZALEZ, D.:

Upon: i) the Motion for Summary Judgment, dated April 5, 2016, by Tiffany S. Fendley, Esq., attorney for the defendants, for an Order; a) pursuant to CPLR Rule 3212, granting summary judgment in favor of Sedgwick 8 LLC, Rosewell Gardens Association, and Metropolitan Property Services; b) dismissing all claims against Sedgwick 8 LLC, Rosewell Gardens Association, and Metropolitan Property Services; and c) granting such other and further relief as this Court may deem just and proper; ii) the Affirmation in Opposition, dated June 22, 2016, by Allen C. Goodman, Esq., attorney for the plaintiff; and iii) the Affirmation in Reply, dated July 28, 2016, by Tiffany S. Fendley, Esq.

PROCEDURAL HISTORY

The action was commenced by the filing of a Summons and Verified Complaint on February 17, 2012. Issue was joined by service of an Answer by defendants, on or about April 5, 2012.

The Note of Issue and Certificate of Readiness was filed and served on or about January 16, 2016. This Motion for Summary Judgment is timely.

FACTUAL BACKGROUND

This is an action to recover damages for personal injuries allegedly sustained by the plaintiff that occurred on or about August 27, 2011, inside the building located at 2300 Sedgwick Avenue, in the County of Bronx, City and State of New York. It is alleged that the ceiling inside the bathroom of apartment 4L collapsed and fell on the plaintiff.

The defendant Rosewell Gardens Association ("Rosewell") owned the premises in question and the defendant Metropolitan Property Services ("Metropolitan") managed the premises in question.

The defendants, both as owner and manager, argue they are entitled to summary judgment because there was no notice of the leak of the ceiling in the bathroom following the repairs made by the super. In addition, the defendants argue that the plaintiff cannot show that the defendants caused or created the condition that caused the plaintiff's accident.

The plaintiff opposes the motion and contends that the defendants had notice of the leak in the ceiling and failed to properly repair the leak prior to the date of the accident. The plaintiff further contends that the repairs made prior to the occurrence by the super caused and/or created the condition that lead to the plaintiff's accident.

DISCUSSION OF LAW

The proponent of a motion for summary judgment must tender sufficient evidence to the absence of any material issue of fact and the right to judgment as a matter of law. *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 (1986); *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 (1985).

It is a well-settled 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. (*Basso v Miller*, 40 NY2d 233, 241, 352 NE2d 868, 386 NYS2d 564 [1976]; *Zuk v Great Atl. & Pac. Tea Co., Inc.*, 21 AD3d 275, 799 NYS2d 504 [2005]). To subject a property owner to liability 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 (*Piacquadio v Recine Realty Corp.*, 84 NY2d 967, 969, 646 NE2d 795, 622 NYS2d 493 [1994]; *Alexander v New York City Tr.*, 34 AD3d 312, 313, 824 NYS2d 262 [2006]).

The plaintiff testified at her examination before trial that she complained to the superintendent about a leak in the ceiling of her bathroom inside her apartment one week prior to the accident. The plaintiff testified that the superintendent came to her apartment three days prior to the accident and advised her that the leak was coming from the apartment above hers. Repairs were made to stop the leak. No further complaints regarding the ceiling were made after the repairs were made.

Maryann Buren testified at her examination before trial that she was employed by Metropolitan, the managing agent. Ms. Buren testified that Rosewell owned the premises and hired Metropolitan to manage the premises. Ms. Buren testified that a tenant can make a complaint to the super and the super would make repairs. She was not aware of any complaints made by the plaintiff regarding the ceiling in her bathroom prior to the accident.

The defendants argue that the super repaired the leak and the ceiling no longer leaked nor were any complaints made by the plaintiff after the repairs were made. The defendants argue that any repairs made did not cause or create the condition that caused the plaintiff's injuries on the date of her accident.

Based on the record before the Court, the plaintiff has submitted evidence in admissible form warranting a denial of the defendants' motion for summary judgment. It is unclear whether

the super used reasonable care in performing the repairs in question and/or whether the repairs performed by the super contributed to the condition that caused plaintiff's injuries on the date in question.

Accordingly, based on the record before the Court, the applicable law, and due deliberation; it is hereby

ORDERED, that the defendants' motion for summary judgment on liability is DENIED in its entirety.

This constitutes the Decision and Order of the Court.

Dated: November 17, 2017
Bronx, New York

ENTER:

HON. DORIS M. GONZALEZ, J.S.C.