

Rodriguez v Daly IV Hous. Dev. Fund Co., Inc.
2018 NY Slip Op 30492(U)
March 21, 2018
Supreme Court, New York County
Docket Number: 156247/2014
Judge: Kelly A. O'Neill Levy
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 19

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GINA RODRIGUEZ,

Plaintiff,

INDEX NO. 156247/2014

MOTION DATE 6/14/2017

MOTION SEQ. NO. 001

- v -

DALY IV HOUSING DEVELOPMENT FUND COMPANY, INC.,
CDC CONSTRUCTION CORPORATION OF NEW YORK, LEON
SEGOVIA CONSTRUCTION INC., SHAWN CONSTRUCTION,
INC., CDC MANAGEMENT CORPORATION, DALY IV
ASSOCIATES L.P., DALY IV LLC

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 67, 68

were read on this application to/for SUMMARY JUDGMENT

HON. KELLY O'NEILL LEVY:

This is a personal injury action arising from a slip and fall accident.

Defendant Leon Segovia Construction Inc. (hereinafter, Segovia) moves, pursuant to CPLR § 3212, for summary judgment in its favor as to liability on plaintiff Gina Rodriguez's claim of negligence and for dismissal of plaintiff's complaint and all cross-claims asserted against it. Defendants Daly IV Housing Development Fund Company, Inc. (hereinafter, Daly), CDC Construction Corporation of New York (hereinafter, CDC), Shawn Construction, Inc., CDC Management Corporation, Daly IV Associates L.P., and Daly IV LLC (hereinafter, "opposing defendants"), and plaintiff Gina Rodriguez oppose.

BACKGROUND

On the date of the accident, April 20, 2014, plaintiff was visiting her aunt who resided at 966 E. 181st Street in the Bronx (hereinafter, “the building”) [Plaintiff tr. (ex. C to the Thompson aff.) at 21]. Plaintiff called an ambulance to take her sick aunt to the hospital (*id.* at 21-22). She intended to follow the ambulance to the hospital with her own car (*id.* at 22-23). Approximately ten minutes after making the call, plaintiff left the apartment and descended the stairs to the building’s main floor (*id.*). The stairs led to a door leading to a vestibule consisting of a small area with three doors (*id.* at 26-27). One door opened to the main entrance of the building and the other two doors, which were located on each side of the vestibule lobby, led to separate staircases (*id.* at 27-29). Before plaintiff opened the door to the vestibule lobby on the main floor, her foot slipped on dust from construction debris and she fell face-forward hitting her head against the vestibule door, sustaining injuries (*id.* at 24-26).

Daly is the parent company of Daly IV Associates L.P., the beneficial owner of the building [Deposition of Tony Skevas, Vice President of Construction of CDC Construction Corporation of New York (ex. D to the Thompson aff.) at 57-58]. Daly IV LLC is the general partner of Daly IV Associates L.P. (*id.* at 58). Daly contracted with CDC as a general contractor for the rehabilitation of seven sites, one of which is the building (*id.* at 11-12, 20). In January 2014, rehabilitation work for the building began (*id.* at 12-13). The work in the units included finishing and replacing tiles, finishing floors, repainting the walls, and replacing bathroom fixtures and kitchen cabinets (*id.* at 13). The work in the public areas included replacing the floor tiles, painting new entries, cleaning the walls, and working on the roof (*id.*). The work in the lobby included replacement of handrails but did not include flooring replacement on the stairwell steps (*id.* at 13-14, 20).

Segovia is a subcontractor of CDC (*id.* at 21). Segovia was responsible for placing new porcelain tiles on top of existing tiles in the lobby, installing four feet of sheet rock, wainscoting, replacing the base between the floor and the wall, and installing vinyl tiles on top of existing ones (*id.*). Segovia was not responsible for replacing the handrails in public areas (*id.* at 21-22). Segovia estimated that its work at the building took approximately one month [Deposition of Arnoth Leon, Owner of Leon Segovia Construction Inc. (ex. F to the Thompson aff.) at 29-31].

CDC completed daily work logs showing what work was done by which contractor on which dates [Work Logs (ex. J to the Thompson aff.)]. The logs between March 11 and March 30, 2014 are missing and neither Daly nor CDC has provided an explanation for the missing logs (*id.*; Daly tr. at 80-83; [Deposition of Robert Cox, Site Supervisor at CDC Construction Corporation of New York (ex. E to the Thompson aff.) at 40-41]). The logs show that Segovia was working at several of the sites on the days before plaintiff's accident (Work Logs). There were several contractors working at the building in the month before the accident (*id.*). Segovia performed work in the lobby of the building from March 3 to March 10, 2014 (*id.*). Segovia worked on other job sites from April 1 to April 15, 2014 (*id.*). Segovia performed vinyl composition tiling in the public halls of the building, excluding the lobby, from April 16 to April 17, 2014 (*id.*; CDC tr. at 58-62). On those days, Segovia transported the tiles in boxes from the basement to the upper floors without traversing the lobby (Segovia tr. at 59-61). Segovia installed ceramic tiling above existing tiling on the lobby floor and vinyl composition tiling above existing tiling on the above floors (*id.* at 11-12). Every contractor was responsible to clean up its own debris (Daly tr. at 30-31). If there was any debris created by Segovia's work, then it was Segovia's responsibility to clean that debris (*id.* at 31). Segovia asserts that it

finished work in the lobby area approximately three weeks before the accident (Segovia tr. at 85-87).

Plaintiff and opposing defendants argue that there is a material question of fact as to whether Segovia was still working in the lobby of the building at the time of the accident. Opposing defendants also argue that there is photographic evidence that Segovia's work in the lobby was not completed at the time of the accident because the photographs taken after the completion of the work¹ show new tiling and a door in the lobby that was not present in photographs taken immediately after the accident.² Opposing defendants argue that while Segovia was performing work in the lobby, the door to the interior lobby was an old, black door, there were no handrails in place, and there was old, yellow tiling on the floor and that after Segovia finished its work, the door was no longer black, there were handrails in place, and there was no longer yellow tiling on the floor.

DISCUSSION

On a summary judgment motion, the moving party has the burden of offering sufficient evidence to make a prima facie showing that there is no triable material issue of fact. *Jacobsen v. N.Y. City Health & Hosps. Corp.*, 22 N.Y.3d 824, 833 (2014). Once the movant makes that showing, the burden shifts to the non-moving party to establish, through evidentiary proof in admissible form, that material factual issues exist. *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). In determining a motion for summary judgment, the court must view the evidence in the light most favorable to the non-moving party. *Henderson v. City of New York*, 178 A.D.2d 129, 130 (1st Dep't 1997). The court's function on a motion for summary judgment

¹ Photos Taken After Completion of Work (ex. B to the Jaroslawicz aff.)

² Photos Taken Immediately After Incident (ex. A to the Jaroslawicz aff.)

is issue-finding, rather than making credibility determinations or factual findings. *Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499, 505 (2012).

The opposition to the present motion relies on photographic evidence regarding the appearance of an interior door, the appearance of old tiling, and the absence of handrails. CDC's work logs offer generalized accountings of the work done by each contractor on each day. Despite the logs being missing between March 11 and March 30, 2014, they are produced from April 1 up until April 18, 2014, the last day of work prior to the accident. The logs indicate that between April 1 and April 15, 2014, Segovia was assigned to work at other job sites, not the building. The logs indicate that on April 16 and April 17, 2014, Segovia was working at the building, but they specify that Segovia worked on VCT tiling in the public halls, which does not include the lobby where the accident occurred. Opposing defendants' argument that Segovia must not have finished its work at the time of the accident since the color of the door shown in the photographs taken after the accident was different than the color of the door after the completion of the work is unsupported and does not create an issue of fact. Moreover, the main door depicted in some of the photographs is not the vestibule door against which plaintiff hit her head. Also, the appearance of old tiles immediately adjacent to the door saddle depicted in the photographs does not create an issue of fact regarding the completion of Segovia's work because there is no evidence indicating that it was Segovia's responsibility to place new tiles immediately adjacent to the door saddles, which were to be replaced by another subcontractor. Moreover, opposing defendants could have presented evidence, such as work logs, indicating that Segovia continued to work in the building after the time of the accident to demonstrate that Segovia had not completed its work in the lobby of the building on the date of the accident, but opposing defendants failed to present such evidence. Finally, since each subcontractor was responsible for

cleaning up after itself on each day of work, it would have been the responsibility of any subcontractor working in the lobby of the building prior to the accident to clean up after itself, and since the work logs indicate that Segovia was not working in the lobby in the days immediate prior to the accident, it would not have been Segovia's responsibility to clean the lobby on those days. Thus, there is no triable material issue of fact present and Segovia's motion is granted.

CONCLUSION AND ORDER

For the foregoing reasons, it is hereby

ORDERED that defendant Leon Segovia Construction Inc.'s motion, pursuant to CPLR § 3212, for summary judgment in its favor as to liability on plaintiff Gina Rodriguez's claim of negligence and for dismissal of the complaint and cross-claims against it is granted; and it is further

ORDERED that the remainder of the action shall continue.

The Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the court.

3/21/18
DATE

Kelly O'Neill Levy
KELLY O'NEILL LEVY, J.S.C.

**KELLY O'NEILL LEVY
JSC**

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	DO NOT POST	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE