Vargas v San Francisco Assoc. Ltd.
2018 NY Slip Op 32884(U)
November 2, 2018
Supreme Court, New York County
Docket Number: 160997/2013
Judge: Lucy Billings

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46
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CHARLES VARGAS, Index No. 160997/2013

Plaintiff

- against - DECISION AND ORDER

SAN FRANCISCO ASSOCIATES LIMITED PARTNERSHIP, WAVECREST MANAGEMENT TEAM LTD., and CENTRAL DEVELOPMENT CORP.,

Defendants

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LUCY BILLINGS, J.S.C.:

I. UNDISPUTED FACTS

Plaintiff suffered personal injuries August 29, 2013, when a marble slab step on the sole interior staircase in defendant San Francisco Associates Limited Partnership's residential apartment building at 29 East 104th Street, New York County, collapsed underneath him. Plaintiff, a tenant in San Francisco Associates' building, was descending the staircase between the second and third floors.

Before plaintiff's injury, three consultants inspected the premises, including the staircase, and reported on the condition of the staircase. On July 11, 2012, KOW Building Consultants reported to Lott Community Development, which owns San Francisco Associates, that the staircase, including its marble treads, was in "v. poor" condition and recommended replacement of the staircase. Aff. of Jesse Michael James Roehling Ex. 12(a), at 2. Christopher Cirillo, Lott Community Development's Executive

Director and President, in his deposition, acknowledged reviewing this report and then writing to the New York City Department of Housing Preservation and Development (HPD), on San Francisco Associates' behalf, that replacement of the interior staircase was a priority because the staircase was in poor condition. San Francisco Associates stipulates that Cirillo was its agent during 2012-13.

As further acknowledged by Cirillo, on December 19, 2012, Amie Gross Architects reported to him that the staircase was "rusting and pulling away from the face of adjoining bearing walls," with twisted supporting posts at the intermediate landings between floors: a hazardous condition that "may result in the stair collapsing." Id. Ex. 13, at 2. The architects also recommended that a new staircase be installed.

On January 14, 2013, Alnour Consulting Engineering reported on its inspection, which Cirillo also acknowledged reviewing. The engineering consultants likewise found the staircase "in bad condition," id. Ex. 14, at 1, and "pulling away from the facade" due to "the deflection of the supporting steel frame," id. at 2, and found the supporting posts "out of plumb and disconnected from adjoining stringers," id. at 1, and "deflected significantly," so as to require "replacement in the near future." Id. at 2. In particular, the engineers found the stairs' risers in a condition that was "unsafe for the building occupants" and recommended temporary reinforcement of the risers as well as the supporting posts and adjoining stringers until the

staircase was replaced. Id. at 1. Cirillo also personally observed the conditions described by the consultants, in particular the staircase's cracked marble treads, rusted risers, and rusted vertical posts connecting the treads and risers.

On June 28, 2013, San Francisco Associates hired defendant Central Development Corp. to renovate the premises, including replacement of the staircase. As of August 20, 2013, however, nine days before plaintiff's injury, Central Development Corp. had not completed any replacement of the staircase and only had performed 50% of the contracted lead abatement work on the staircase.

II. PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff moves for summary judgment on San Francisco Associates' liability for his injuries from the collapse of the stair, its tread, and its riser underneath him, claiming that San Francisco Associates' negligence caused the collapse. C.P.L.R. § 3212(b) and (e).

A. Applicable Standards

To obtain summary judgment, plaintiff must make a prima facie showing of entitlement to judgment as a matter of law, through admissible evidence eliminating all material issues of fact. C.P.L.R. § 3212(b); Friends of Thayer Lake LLC v. Brown, 27 N.Y.3d 1039, 1043 (2016); Nomura Asset Capital Corp. v. Cadwalader, Wickersham & Taft LLP, 26 N.Y.3d 40, 49 (2015); Voss v. Netherlands Ins. Co., 22 N.Y.3d 728, 734 (2014); Vega v. Restani Constr. Corp., 18 N.Y.3d 499, 503 (2012). If plaintiff

satisfies this standard, the burden shifts to San Francisco Associates to rebut that prima facie showing, by producing evidence, in admissible form, sufficient to require a trial of material factual issues. De Lourdes Torres v. Jones, 26 N.Y.3d 742, 763 (2016); Nomura Asset Capital Corp. v. Cadwalader Wickersham & Taft LLP, 26 N.Y.3d at 49; Morales v. D & A Food Serv., 10 N.Y.3d 911, 913 (2008); Hyman v. Queens County Bancorp, Inc., 3 N.Y.3d 743, 744 (2004). In evaluating the evidence for purposes of plaintiff's motion, the court construes the evidence in the light most favorable to San Francisco Associates. De Lourdes Torres v. Jones, 26 N.Y.3d at 763; Vega v. Restani Constr. Corp., 18 N.Y.3d at 503; Cahill v. Triborough Bridge & Tunnel Auth., 4 N.Y.3d 35, 37 (2004).

To establish that San Francisco Associates is liable for plaintiff's injuries, plaintiff must demonstrate that San Francisco Associates owed him a duty of reasonable care, that defendant breached that duty, and that this breach proximately caused him injury. E.g., Solomon by Solomon v. City of New York, 66 N.Y.2d 1026, 1027 (1985); Elmaliach v. Bank of China Ltd., 110 A.D.3d 192, 199 (1st Dep't 2013). San Francisco Associates concedes that its building in which plaintiff was injured is a multiple dwelling, where New York Multiple Dwelling Law § 78(1) imposes a duty on the owner to keep the premises "in good repair" and in a reasonably safe condition. This statutory duty between an owner and its tenants or other persons on the premises is non-delegable. Mas v. Two Bridges Assoc., 75 N.Y.2d 680, 687 (1990);

Barkley v. Plaza Realty Invs. Inc., 149 A.D.3d 74, 79 (1st Dep't 2017); Paez v. 1610 St. Nicholas Ave. L.P., 103 A.D.3d 553, 554 (1st Dep't 2013); Carlos v. 395 E. 151st St., LLC, 41 A.D.3d 193, 195 (1st Dep't 2007).

Plaintiff also must demonstrate that San Francisco Associates created the dangerous condition or received prior actual or constructive notice of the dangerous condition that caused his injury. Peralta v. Henriquez, 100 N.Y.2d 139, 145 (2003); Guzman v. Haven Plaza Hous. Dev. Fund Co., 69 N.Y.2d 559, 566 (1987); Ceron v. Yeshiva Univ., 126 A.D.3d 630, 631-32 (1st Dep't 2015); Golden v. Manhasset Condominium, 2 A.D.3d 345, 346-47 (1st Dep't 2003). See Mercer v. City of New York, 88 N.Y.2d 955, 956 (1996). To give defendant constructive notice, the dangerous condition must have been apparent long enough before plaintiff's injury to allow defendant to discover and remedy the condition. Juarez v. Wavecrest Mgt. Team, 88 N.Y.2d 628, 646 (1996); Gordon v. American Museum of Natural History, 67 N.Y.2d 836, 837 (1986); Hayes v. Riverbend Hous. Co., Inc., 40 A.D.3d 500, 500-501 (1st Dep't 2007); Golden v. Manhasset Condominium, 2 A.D.3d at 347.

B. Plaintiff Meets His Burden.

Plaintiff has established that San Francisco Associates owed him a duty to keep the building in which he resided, including its staircase, in a reasonably safe condition. N.Y. Mult. Dwel. Law § 78(1); Mas v. Two Bridges Assoc., 75 N.Y.2d at 687; Barkley v. Plaza Realty Invs. Inc., 149 A.D.3d at 79; Paez v. 1610 St.

Nicholas Ave. L.P., 103 A.D.3d at 554; Carlos v. 395 E. 151st St., LLC, 41 A.D.3d at 195. The inspection reports by KOW Building Consultants, Amie Gross Architects, and Alnour Consulting Engineering presented by plaintiff establish that the staircase in San Francisco Associates' building was in an unsafe condition before his injury. KOW Building Consultants reported that the staircase and in particular its marble treads were in "v[ery] poor condition." Roehling Aff. Ex. 12(a), at 2. Amie Gross Architects reported that the staircase was pulling away from its bearing walls, and its supporting posts were twisted, creating a condition so hazardous as to cause its collapse. Alnour Consulting Engineering echoed those reports, finding the staircase "in bad condition," id. Ex. 14, at 1, and "pulling away from the facade." Id. at 2. The supporting steel frame and supporting posts were "out of plumb," id. at 1, and significantly deflected, with the posts disconnected from the adjoining stringers. All three consultants consistently recommended replacement of the staircase due to these structural infirmities, the engineers specifying that the replacement was required "in the near future," id. at 2, and reinforcements were required in the meantime. The engineers also focussed on the stairs' risers that were "unsafe for the building occupants" and recommended temporary reinforcement of the risers until the staircase was replaced. Id. at 1.

San Francisco Associates' agent, the Executive Director and President of its owner, further acknowledged on San Francisco

Associates' behalf before plaintiff's injury that the staircase was in poor condition and needed replacement. He personally observed infirmities in the marble treads, risers, and their connecting posts, which gave way under plaintiff between the second and third floors.

San Francisco Associates maintains that none of the inspection reports required it to perform immediate repairs or demonstrated that the staircase posed an immediate threat to occupants' safety or was in imminent danger of collapsing. This position, however, misapprehends plaintiff's burden. Plaintiff need not show that the staircase posed an immediate or imminent danger, but must show only that the staircase was not in a reasonably safe condition, which he establishes by presenting the three inspection reports that describe, with supporting explanatory details, the staircase in poor condition and in need of replacement. N.Y. Mult. Dwel. Law § 78(1); Peralta v. Henriquez, 100 N.Y.2d at 144; Mas v. Two Bridges Assoc., 75 N.Y.2d at 687; Liberman v. Cayre Synergy 73rd LLC, 108 A.D.3d 426, 426-27 (1st Dep't 2013); Paez v. 1610 St. Nicholas Ave. L.P., 103 A.D.3d at 554.

Plaintiff also has established that, well before his injury, San Francisco Associates received actual notice of the unsafe condition of the staircase in the building where he resided. On September 27, 2012, nearly a year before plaintiff's injury, Cirillo acknowledged in writing to a governmental agency that the staircase in the building was in poor condition and needed to be

replaced. Cirillo further testified that, long before plaintiff's injury, he reviewed all three inspection reports detailing the poor condition of the staircase and why it required replacement. Roehling Aff. Ex. 11, at 96. Having established the unsafe condition of the staircase and San Francisco Associates' actual notice of the unsafe condition repeatedly, over thirteen, over eleven, over eight, and once again over seven months before plaintiff's injury, which was directly attributable to the staircase's unsafe structural infirmities, plaintiff is entitled to partial summary judgment. C.P.L.R. § 3212(b) and (e). Liberman v. Cayre Synergy 73rd LLC, 108 A.D.3d at 426-27. See Golden v. Manhasset Condominium, 2 A.D.3d at 347; Tushaj v. Elm Mgt. Assoc., 293 A.D.2d 44, 48 (1st Dep't 2002).

C. San Francisco Associates' Rebuttal

San Francisco Associates does not deny its actual notice of the unsafe condition of the staircase before plaintiff's injury, maintaining simply that it did not receive notice that the staircase posed an imminent danger requiring immediate repairs. This position regarding notice also misapprehends the standard, as plaintiffs need establish only that San Francisco Associates received actual or constructive notice that the staircase was not in a reasonably safe condition, which plaintiff has shown. Peralta v. Henriquez, 100 N.Y.2d at 144; Guzman v. Haven Plaza Hous. Dev. Fund Co., 69 N.Y.2d at 566; Ceron v. Yeshiva Univ., 126 A.D.3d at 631-32; Golden v. Manhasset Condominium, 2 A.D.3d at 346-47. See Mercer v. City of New York, 88 N.Y.2d at 956.

San Francisco Associates further maintains that it lacked notice that the specific step plaintiff fell through was weak or broken. All three inspection reports, however, described the entire staircase in poor condition and recommended replacement of the entire staircase. None of the reports limited its conclusions regarding the poor condition of the staircase to specific steps or sections, nor recommended that only parts of the staircase be replaced. The projected collapse was not projected to occur a year later any more than a day later.

Since plaintiff has established that San Francisco Associates was charged with notice that the entire staircase was in a poor, unsafe condition and needed replacement, he need not establish that San Francisco Associates received notice that the specific step that collapsed under plaintiff was in a poor, unsafe condition. Moreover, the final, perhaps most comprehensive report regarding the staircase, still over seven months before the stair collapsed under plaintiff, did focus specifically on the part of the stairs that gave way under him. The engineering consultants found the stairs' risers "with extensive rust," in a condition that was "unsafe for the building occupants and it shall be temporary [sic] addressed by welding or overlapping the defective steel with new sheet metal." Roehling Aff. Ex. 14, at 1 (emphasis added). Cirillo himself observed this condition, as well as the cracked marble treads. Despite the engineers' mandate, San Francisco Associates failed to address the risers' condition even with the specified, simple,

temporary measures. Even if San Francisco Associates believed that the staircase was safe, its belief is irrelevant in the face of notice otherwise, was unjustifiable, and in fact proved untrue and unjustified when the stair collapsed.

Finally, San Francisco Associates attempts to shift responsibility to defendant Central Development Corp.'s scraping work, claiming a factual issue whether that work occurred before plaintiff's injury and caused the collapse of the stair that injured him. Because San Francisco Associates' duty under Multiple Dwelling Law § 78(1) to keep its building in a reasonably safe condition is non-delegable, San Francisco Associates remains liable for any unsafe condition within the premises regardless of any work it may have delegated to Central Development Corp. Mas v. Two Bridges Assoc., 75 N.Y.2d at 687; Barkley v. Plaza Realty Invs. Inc., 149 A.D.3d at 79; Paez v. 1610 St. Nicholas Ave. L.P., 103 A.D.3d at 554; Carlos v. 395 E. 151st St., LLC, 41 A.D.3d at 195. Moreover, San Francisco Associates does not dispute that Central Development Corp. performed its scraping work after Cirillo reviewed the three inspection reports, showing both that the stairs were in a dangerous condition and that San Francisco Associates knew about the stairs' dangerous condition before Central Development Corp. performed any work on the staircase.

D. San Francisco Associates' Opposition Under C.P.L.R. § 3212(f)

C.P.L.R. § 3212(f) permits the court to deny summary judgment when "facts essential to justify opposition may exist

but cannot then be stated," and disclosure is necessary to reveal those facts. Figueroa v. City of New York, 126 A.D.3d 438, 439 (1st Dep't 2015). See Nascimento v. Bridgehampton Constr. Corp., 86 A.D.3d 189, 192 (1st Dep't 2011); Harlem Real Estate LLC v. New York City Economic Dev. Corp., 82 A.D.3d 562, 563 (1st Dep't 2011); Kent v. 534 East 11th Street, 80 A.D.3d 106, 114 (1st Dep't 2010); Griffin v. Pennoyer, 49 A.D.3d 341, 341 (1st Dep't 2008). San Francisco Associates claims plaintiff's motion is premature because San Francisco Associates wants to depose an HPD inspector or engineer regarding the condition of the staircase and the cause of the stair's collapse under plaintiff. Pursuant to C.P.L.R. § 3212(f), San Francisco Associates must show that this further deposition may lead to evidence necessary to oppose plaintiff's motion and that this evidence is exclusively within the deposition witness' knowledge and control. C.P.L.R. § 3212(f); Santana v. Danco Inc., 115 A.D.3d 560, 560 (1st Dep't 2014); Harlem Real Estate LLC v. New York City Economic Dev. Corp., 82 A.D.3d at 563; Kent v. 534 East 11th Street, 80 A.D.3d at 114. San Francisco Associates must support such a contention with more than "mere hope or conjecture." Barnes-Joseph v. Smith, 73 A.D.3d 494, 495 (1st Dep't 2010). See Kent v. 534 East 11th Street, 80 A.D.3d at 114; MAP Mar. Ltd. v. China Constr. Bank Corp., 70 A.D.3d 404, 405 (1st Dep't 2010).

San Francisco Associates maintains that further depositions of one or more nonparties involved in the building renovation project may reveal that the condition of the staircase was not an

imminent threat to the tenants' safety, that Central Development Corp. performed work on the staircase before plaintiff's injury, and that this work weakened the staircase. Even drawing all inferences from such evidence in San Francisco Associates' favor, even if the staircase was not an imminent threat to the tenants' safety, and Central Development Corp. performed work on the staircase that weakened its steps before plaintiff's injury, plaintiff still is entitled to partial summary judgment. As fully discussed above, the three inspection reports already available to San Francisco Associates demonstrated that the staircase was in an unsafe condition and prone to collapsing before Central Development Corp.'s work. Even if collapse was not imminent, over 13 months elapsed between the first report and the collapse of a single stair, and San Francisco Associates is liable for an unreasonably dangerous condition even if the danger is not imminent.

In sum, San Francisco Associates breached its duty to plaintiff by failing to repair the staircase, regardless of whether the tenants were in imminent danger or whether Central Development Corp.'s work contributed to the stair's collapse. San Francisco Associates thus fails to show how further depositions or any other disclosure will lead to evidence defeating plaintiff's motion for partial summary judgment. C.P.L.R. § 3212(f); Santana v. Danco Inc., 115 A.D.3d at 560; Harlem Real Estate LLC v. New York City Economic Dev. Corp., 82 A.D.3d at 563; Kent v. 534 East 11th Street, 80 A.D.3d at 114.

Therefore the lack of such disclosure provides no basis to deny partial summary judgment.

III. CONCLUSION

Consequently, for all the reasons explained above, the court grants plaintiff's motion for summary judgment on defendant San Francisco Associates Limited Partnership's liability for plaintiff's injuries attributable to the collapse of step on the staircase under plaintiff August 29, 2013. C.P.L.R. § 3212(b) and (e). This decision constitutes the court's order and judgment on this defendant's liability to plaintiff.

DATED: November 2, 2018

LUCY BILLINGS, J.S.C.

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J.S.C.