

Davis v Genesis Y15 Owners LLC
2021 NY Slip Op 31866(U)
June 3, 2021
Supreme Court, New York County
Docket Number: 153658/2018
Judge: Arlene P. Bluth
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 14

Justice

-----X

INDEX NO. 153658/2018

DEMONE DAVIS,

MOTION DATE 06/02/2021

Plaintiff,

MOTION SEQ. NO. 001

- v -

GENESIS Y15 OWNERS LLC, GENESIS COMPANIES,
LLC, WINN WB MANAGEMENT COMPANY LLC

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 51, 52, 53, 54, 55, 56, 57, 58, 59, 62, 63

were read on this motion to/for PARTIAL SUMMARY JUDGMENT.

The motion by plaintiff for partial summary judgment against defendants is denied.

Background

Plaintiff contends that she lived in an apartment owned by the Genesis defendants and managed by defendant Winn WB Management Company LLC (“Winn”). She argues that she noticed bedbugs in her apartment after observing bites on her body. Plaintiff maintains that she told Winn and an exterminator was sent to the apartment three weeks later. After the exterminator’s visit, plaintiff says that she found bedbugs in her living room and in her son’s bedroom. Plaintiff insists she was told it would be another two weeks before the exterminator could return.

Plaintiff alleges that the exterminator came two more times and while there was some improvement, they began to return in November 2016. She claims she saw bedbugs throughout

the building and in the hallways. Plaintiff now moves for partial summary judgment as to liability on her claims. She insists defendants are negligent because they were aware of bedbugs in the building but did not utilize reasonable methods to eradicate the problem. Plaintiff contends that there were bedbugs in other apartments and defendants' failure to properly address the problem resulted in a bedbug infestation that lasted over a year.

Plaintiff also seeks summary judgment on her Real Property Law § 235-b claim that defendants breached the implied warranty of habitability. She also points to the parties' lease as a basis for a breach of contract claim based on the theory that defendants agreed to provide a safe place to live.

In opposition, defendants contend that there is no evidence to supports plaintiff's theory that there was a bedbug infestation throughout the building. They argue that they took corrective steps to eradicate the problem after hearing complaints from residents. Defendants also observe that there is no proof about the origin of the bedbugs. They claim that the expert affidavit offered by plaintiff is merely speculative and does not compel the Court to grant the instant motion. Defendants also argue that the injuries suffered by plaintiff (the cellulitis) were not caused by bedbug bites.

In reply, plaintiff maintains that defendants have not shown that they employed proper methods to eradicate bedbugs in the apartment. She maintains that her expert proved that defendants did not use commonly accepted practices for finding and eradicating bedbugs in the building. Plaintiff observes that defendants did not submit their own expert affidavit to refute plaintiff's expert.

Discussion

To be entitled to the remedy of summary judgment, the moving party “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such a prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id.*). When deciding a summary judgment motion, the court views the alleged facts in the light most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492, 955 NYS2d 589 [1st Dept 2012]).

Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court’s task in deciding a summary judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d’Amiante Du Quebec, Ltee*, 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], *affd* 99 NY2d 647, 760 NYS2d 96 [2003]).

The Court denies the motion. As an initial matter, the Court observes that the exterminator’s records cast doubt on the extent of the bedbug problem. The inspection on September 13, 2016 (NYSCEF Doc. No. 54) and the inspection on September 21, 2016 (NYSCEF Doc. No. 55) found no bedbugs in plaintiff’s apartment. That later inspections located bedbugs does not compel the Court to grant the instant motion. On these papers, there is

no conclusive evidence about the origin or the extent of the bedbugs in the building; accordingly, the Court is unable to find that defendants breached their duty to plaintiff to keep the apartment in good condition.

Moreover, the fact is that defendants sent an exterminator to plaintiff's apartment on numerous occasions. Of course, the appropriate response to receiving a complaint about bedbugs is to send in an exterminator. The affidavit from plaintiff's expert (NYSCEF Doc. No. 45) does not compel a different outcome. Complaints about the methods employed by the exterminator and the building to address the problem can be raised to the jury but they cannot form the basis for awarding defendants summary judgment in the instant case. And, as defendants point out, this expert leaps to the conclusion that there was serious bedbug infestation throughout the entire building without definitive proof.

With respect to the issue of the extent of the bedbug infestation, the Court is unable to find as a matter of law that it was so rampant that defendants should be held liable. That a couple of other apartments made complaints to HPD is not dispositive. As stated above, this is a situation where plaintiff made complaints about bedbugs and defendants sent an exterminator to address the problem. This is not a case where the landlord did nothing to address the problem (*cf. Zayas v Franklin Plaza*, 23 Misc 3d 1104(A) [Civ Ct, NY County 2009] [finding the landlord negligent where it refused to address a bedbug issue]).

That plaintiff does not like the way the exterminator handled the issue or that her expert may have utilized a different strategy does not mean the Court should grant plaintiff summary judgment. Clearly, it is for the factfinder to consider the evidence and assess whether defendants satisfied their duty to plaintiff. The mere presence of bedbugs does not automatically entitle plaintiff to win the instant motion especially where defendants took steps to address the problem.

Accordingly, it is hereby

ORDERED that the motion by plaintiff for partial summary judgment is denied.

6/3/2021

DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE