

Robinson v Vasquez
2022 NY Slip Op 33093(U)
September 14, 2022
Supreme Court, Kings County
Docket Number: Index No. 520559/2020
Judge: Debra Silber
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : PART 9**

_____X

DESHAWN ROBINSON,

Plaintiff(s),

- against -

**MARISOL VASQUEZ, as Administrator of the Estate
Of Francisco Amado Vasquez, deceased, and
MARISOL VASQUEZ, individually,**

Defendant(s).

_____X

DECISION/ORDER

**Index No. 520559/2020
Motion Seq. No. 3**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of defendant Vasquez's motion to dismiss the complaint

Papers	NYSCEF Doc.
Notice of Motion, Affirmation and Exhibits Annexed.....	<u>34-41</u>
Affirmation in Opposition and Exhibits Annexed.....	<u>42-43</u>
Reply Affirmation.....	_____

Upon the foregoing cited papers, the Decision/Order on this application is as follows:

In Motion Sequence #3, defendant Marisol Vasquez moves to dismiss the complaint pursuant to CPLR 3211(a)(7), for plaintiff's alleged failure to state a cause of action.

Pursuant to a so-ordered stipulation signed by the parties on or about July 14, 2021, but not so-ordered until November 30, 2021 and entered December 2, 2021, movant, by counsel, agreed to answer the complaint within 30 days of plaintiff's filing the Supplemental Summons and Amended Complaint [Doc 27]. The answer is dated August 17, 2021, [Doc 32] as is this motion.

The amended complaint states that plaintiff was walking past the premises located at 479 Hancock Street, Brooklyn, NY, on October 1, 2020, when he was "struck

by falling debris due to a negligent condition of the aforementioned premises” and sustained injuries. He seeks damages for his injuries.

Movant claims, in her notice of motion, that she “is not an owner or occupant of the subject premises and owed no duty to the plaintiff.” She supports her motion with an affirmation of counsel, an affidavit, a copy of a deed from 2006 which transferred the property to her decedent, Francisco Vasquez, and copies of the pleadings from two lawsuits wherein defendant Barbara Harley is a plaintiff.

Counsel’s affirmation states that his client, Marisol Vasquez, is the surviving sister of the decedent. He states that the decedent purchased the house from his brother in 2006, and at that time, Barbara Harley was the sole occupant of the premises. His brother, Jose Vasquez, had only owned the property for a year when he sold it to decedent. Counsel claims the decedent tried to evict her from the premises, but was unsuccessful. Apparently she brought a lawsuit against the decedent and his brother, the attached pleading [Doc 39] claiming an ownership interest. He states that this earlier action [Ind. 5141/2009] was abandoned when Francisco passed away on September 14, 2009, and when Marisol Vasquez was appointed Administrator of his Estate by the Kings County Surrogate’s Court [File 2014-3269]¹ (the file number in the affirmation is incorrect), and the Estate brought an eviction action against her in Housing Court, Barbara Harley brought the second action against his estate [Doc 40, Supreme Kings Ind. 1000/2015, adverse possession, marked “disposed”]. At the same time, he claims there was a foreclosure action pending against the decedent. Finally, he avers that there has been some sort of settlement with Barbara Harley, and therefore, this complaint should be dismissed as against Marisol Vasquez.

¹ [Web Surrogate \(nycourts.gov\)](http://Web Surrogate (nycourts.gov)) is a public website.

To be clear, counsel concludes “just because the Estate may or may not be liable for the alleged injuries sustained by the Plaintiff, does not extend that liability to the Administrator of the Estate or the deceased’s relatives.” The court notes that the petition for Letters states that the decedent died a resident of the State of Florida, and he left a wife and two children, and that the Administrator is thus not a distributee of the estate. The Letters were issued in New York as he left two properties in New York. The court also notes that this property has already been sold by the estate, in August of 2021, which was after the date of the plaintiff’s accident, by a deed executed by movant as Administrator, and it was not sold to Barbara Harley. There was also a subsequent transfer earlier this year, according to the City of New York’s public internet website known as ACRIS.

In opposition to the motion, plaintiff’s counsel states that plaintiff sustained debilitating injuries, including a fractured ankle, a collapsed lung, and fractures to his ribs, clavicle and humerus, when a part of the building’s façade fell on him. He avers that the action was properly brought against the Administrator of the estate in her representative capacity.

In sum, at the time of the plaintiff’s accident, decedent had passed away and Marisol Vasquez had already been appointed Administrator of his Estate. The property was still owned by the Estate, and it was Ms. Vasquez’ fiduciary duty as Administrator to protect the Estate and maintain the premises, including by maintaining fire and liability insurance on the premises, until it could be sold. It is not known if the bank which had the mortgage had obtained insurance during the foreclosure proceeding which counsel mentioned, but counsel for Ms. Vasquez does not seem to be an attorney retained by an insurance company.

Accordingly, it is **ORDERED** that the motion is denied with regard to defendant Marisol Vasquez, as Administrator of the Estate of Francisco Amado Vasquez, and is granted with regard to Marisol Vasquez, individually. The complaint must be dismissed as against her as an individual. She was not an owner of the property at the time of the plaintiff's accident, and is not an heir or a beneficiary of the Estate.

This constitutes the decision and order of the court.

Dated: September 14, 2022

ENTER:



Hon. Debra Silber, J.S.C.