

Verizon N.Y., Inc. v Hanian

2007 NY Slip Op 30625(U)

April 9, 2007

Supreme Court, New York County

Docket Number: 0110230/2005

Judge: Doris Ling-Cohan

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

PRESENT: *Hon. Doris Ling-Cohan*

PART 36

Index Number : 110230/2005

VERIZON NEW YORK

vs
HANIAN, REY

Sequence Number : 001

SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to 4 were read on this motion to/for Summary judgment

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

1, 2

Answering Affidavits — Exhibits _____

1001

Replying Affidavits _____

3, 4

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion + cross-motion judgment for summary judgment are granted in accordance with the attached memoranda on decision on that motion + cross motion for summary judgment are granted.

FILED

APR 11 2007

NEW YORK
COUNTY CLERK'S OFFICE

HON. DORIS LING-COHAN
J.S.C.

Dated: 4/9/07

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: I.A.S. PART 36

-----X

VERIZON NEW YORK, INC.,

Plaintiff,

Index No.

110230/05

-against-

Motion Seq. No 001

REY HANIAN, d/b/a BENELLE, 45 WEST
37th STREET REALTY CORP., and
ATLANTIC WATER & SEWER, INC.,

Defendants.

-----X

DORIS LING-COHAN, J.:

Defendant 45 West 37th Street Realty Corp. (Realty Corp.) moves for summary judgment in its favor dismissing all claims asserted against it. Defendant Rey Hanian, d/b/a Benelle (Benelle), cross-moves for summary judgment. Plaintiff has failed to submit opposition to the motions.

Benelle is a clothing wholesale business located at 45 West 37th Street, New York, New York (the Subject Premises). On January 25, 2003, Ehsan Reyhanian (Reyhanian), the manager of Benelle, discovered a water leak in the basement of the Subject Premises, and retained Atlantic Water and Sewer, Inc. (Atlantic) to repair and install a new water service line for the Subject Premises. Subsequently, on January 31, 2003, Verizon New York, Inc. (Verizon) found that its telephone cable and conduit in front of the Subject Premises had been damaged. Verizon commenced the instant action to recover for its alleged property

damage against Benelle, Atlantic, and Realty, the owner of the Subject Premises, complaining that its cable and conduit were damaged as a result of the work performed by Atlantic.

Now Realty Corp. and Benelle move for summary judgment dismissing the complaint as against them arguing that they should not be held liable for any negligence that was performed by Atlantic in repairing the water line, since neither one created any hazardous condition, nor exercised any direction or control over Atlantic's performance. In support of their respective arguments, Realty and Benelle rely on the deposition testimony of witnesses Reyhanian, and Nandalall Kublall, one of Atlantic's shareholders.

It is well established that an owner is obligated to maintain its property in a reasonably safe condition (Laecca v New York University, 7 AD3d 415 [1st Dept], lv denied 3 NY3d 608 [2004]). "However, a party who employs an independent contractor for a particular task on the premises is generally not liable for the negligent acts of that contractor, absent a showing of a specifically imposed duty or knowledge by the principal of an inherent danger" (id. at 416; see also Tytell v Battery Beer Distributing, Inc., 202 AD2d 226 [1st Dept 1994]). Liability may also attach where the owner or employer exercises supervisory control over the independent contractor's performance (see Laecca

[* 4]
v New York University, 7 AD3d 415, supra; see also Leeds v D.B.D Services, Inc., 309 AD2d 666 [1st Dept 2003]).

Here, the record is devoid of any allegations or evidence demonstrating that Benelle or Realty were negligent or that they had any specific imposed duty or knowledge of any inherent danger (see Laecca v New York University, 7 AD3d 415, supra). Rather, Verizon seeks to impose liability on Realty and Benelle for the damages sustained to its telephone cable and conduit allegedly caused by their agent, Atlantic, during its repair and installation of the new water service for a sprinkler system for the Subject Premises in January 2003 (Realty's Exhibit D, Verizon's Bill of Particulars dated 9/9/05; Benelle's Exhibit C, Verizon's Bill of Particulars dated 10/11/05).

A review of the record amply demonstrates that neither Realty nor Benelle supervised or directed Atlantic's work in repairing and installing the water line in front of the Subject Premises. The record reveals that, after discovering the water leakage in the basement of the Subject Premises, Benelle's manager, Reyhanian, called Atlantic to repair the cracked water line (Realty's Exhibit E, Deposition of Reyhanian taken on 8/7/06, at 11-14). During his deposition, Reyhanian identified a contract, reflecting the contracting parties as Realty, Reyhanian and Atlantic (id. at 15-17; see also Benelle's Exhibit F,

Contract dated 1/25/03). Reyhanian also testified that he did not provide Atlantic with any input regarding the performance of its work (Realty's Exhibit E, Deposition of Reyhanian taken on 8/7/06, at 64). Kublall, a shareholder in the presently defunct corporation, Atlantic, confirmed that Reyhanian did not supervise any of Atlantic's work regarding the repair of the water line in front of the Subject Premises, nor have any input regarding how Atlantic should do its work (Realty's Exhibit F, Deposition of Nandalall Kublall taken on 8/14/06, at 36). Kublall also testified that Realty did not give Atlantic any input, direction or instructions as to how to perform its work (id. at 39-40). Thus, since these defendants sufficiently demonstrated that they did not supervise, assist or otherwise participate in the repair of the water line in front of the Subject Premises, and no proof has been submitted in opposition to raise a triable issue as to Realty's liability, summary judgment in favor of Realty and Benelle is warranted (see Laecca v New York University, 7 AD2d 415, supra; see also Jackson v Westminster House Owners Inc., 24 AD3d 249 [1st Dept 2005], lv denied 7 NY3d 704 [2006]).

Accordingly, it is

ORDERED that the motion by 45 West 37th Street Realty Corp. for summary judgment dismissing the complaint and cross claims asserted against it is granted, and the complaint is

severed and dismissed with costs and disbursements to said defendant as taxed by the Clerk of the Court upon the submission of an appropriate bill of costs; and it is further

ORDERED that the cross-motion by Rey Hanian, d/b/a Benelle, for summary judgment dismissing the complaint and cross claims asserted against it is granted, and the complaint is severed and dismissed with costs and disbursements to said defendant as taxed by the Clerk of the Court upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that the remainder of the action shall continue; and it is further

ORDERED that within 30 days of entry of this order, prevailing defendants shall serve a copy of this order upon all parties with notice of entry.

Dated:

4/9/07

HON. DORIS LING-COHAN



J. S. C.

FILED

APR 11 2007

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