

Moore v 158 St. Riverside Drive Hous. Co., Inc.

2007 NY Slip Op 32501(U)

August 6, 2007

Supreme Court, New York County

Docket Number: 0108232/2003

Judge: Barbara Kapnick

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

PRESENT: BARBARA R. KAPNICK
Justice

PART 12

Index Number : 108232/2003
MOORE, PAMELA
vs
158 ST. RIVERSIDE DRIVE
Sequence Number : 004
SUMMARY JUDGMENT

INDEX NO. 108232/03

MOTION DATE _____

MOTION SEQ. NO. 004

MOTION CAL. NO. _____

motion to/for _____

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

*and cross-motion are decided
in accordance with the
accompanying memorandum decision.*

FILED
AUG 14 2007
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 8/6/07



J.S.C.

BARBARA R. KAPNICK
JAC

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IA PART 12

-----X
PAMELA MOORE,

Plaintiff,

- against -

158 ST. RIVERSIDE DRIVE HOUSING CO.,
INC. and RIVER TERRACE APARTMENTS,
INC.,

Defendants.

-----X
158 ST. RIVERSIDE DRIVE HOUSING CO., INC.,

Third-Party Plaintiff,

- against -

EDWIN GOULD FOUNDATION FOR CHILDREN, INC.,
EDWARD GOULD SERVICES FOR CHILDREN and
EDWIN GOULD SERVICES FOR CHILDREN &
FAMILIES,

Third-Party Defendants.

-----X
158 ST. RIVERSIDE DRIVE HOUSING CO., INC.,

Second Third-Party Plaintiff,

- against -

KINGSLAND SERVICE FUND, INC.,

Second Third-Party Defendant.

-----X
BARBARA R. KAPNICK, J.:

Plaintiff seeks in this action to recover damages for personal injuries she sustained on December 17, 1999 in Apartment 13V of the cooperative building located at 157-10 Riverside Drive West in Manhattan owned by defendant/third-party plaintiff/second third-party plaintiff 158 St. Riverside Drive Housing Co., Inc. ("158

DECISION/ORDER

Index No. 108232/03

Motion Seq. No. 004

Third-Party

Index No. 592286/03

Second Third-Party

Index No. 5590170/05

Street"). Plaintiff allegedly fell from a ladder while changing a light bulb.

The apartment was allegedly leased to plaintiff's employer, third-party defendant Edwin Gould Services for Children (later known as Edwin Gould Services for Children & Families), by second third-party defendant Kingsland Services Fund, Inc. ("Kingsland").¹

Defendant/third-party plaintiff/second third-party plaintiff now moves for an order:

(1) granting summary judgment dismissing plaintiff's Complaint against it; and

(2) granting summary judgment on its third-party and second third-party claims.

Third-party defendants and second third-party defendant cross-move for an order:

(1) granting summary judgment dismissing plaintiff's claim pursuant to Labor Law § 240(1);

(2) granting summary judgment dismissing the third-party claims based in common-law negligence against 'Edwin Gould Services/Kingsland' and/or seeking common law indemnification or

¹ The shares to the apartment were previously owned by Edwin Gould Foundation for Children, Inc., but were allegedly transferred without consideration to Kingsland in 1976 or 1979.

contribution from 'Edwin Gould Services/Kingsland' in this action on the ground that such claims are barred by the Workers' Compensation Law; and

(3) denying that portion of 158 Street's motion seeking summary judgment on its third-party claims on the ground that there was no binding indemnification agreement between the parties.

After the making of this motion, the third-party action was discontinued against third-party defendant Edwin Gould Foundation for Children, Inc. pursuant to 'Stipulation of Discontinuance as to Edwin Gould Foundation Only' dated December 13, 2006.

In addition, defendant/third-party plaintiff acknowledged on the record during oral argument on June 20, 2007 that third-party defendants Edwin Gould Services for Children, Inc. and Edwin Gould Services for Children & Families should not be parties to this action.

Finally, plaintiff does not oppose those portions of the motion and cross-motion seeking to dismiss plaintiff's claim pursuant to Labor Law § 240(1). Therefore, those portions of the motion and cross-motion seeking to dismiss said claim are granted.

That portion of defendant/third-party plaintiff's motion seeking to dismiss the remainder of plaintiff's Complaint is also granted, as there has been no showing that 158 Street owed any duty to plaintiff and/or that it was responsible for the lighting fixtures in Apartment 13V.


Accordingly, based on the papers submitted and the oral argument held on the record on June 20, 2007, defendant/third-party plaintiff's motion is granted to the extent of dismissing plaintiff's Complaint in its entirety.²

The Clerk may enter judgment dismissing plaintiff's Complaint with prejudice and without costs or disbursements.

This constitutes the decision and order of this Court.

Dated: August 6, 2007

FILED
 AUG 14 2007
 NEW YORK
 COUNTY CLERK'S OFFICE


 Barbara R. Kapnick
 J.S.C.
BARBARA R. KAPNICK
 J.S.C.

² Those portions of the motion and cross-motion relating to the third-party Complaint which have not been resolved between the parties are now moot.