

Holloway v New York City Hous. Auth.

2008 NY Slip Op 30889(U)

March 27, 2008

Supreme Court, New York County

Docket Number: 0110924/2006

Judge: Jane S. Solomon

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

PRESENT: Hon JANE S. SOLOMON
Justice

PART 55

Index Number : 110924/2006
HOLLOWAY, DAMIEN
VS.
NEW YORK CITY HOUSING AUTHORITY
SEQUENCE NUMBER : # 002
SUMMARY JUDGMENT

INDEX NO. 11092406
MOTION DATE 1-9-2008
MOTION SEQ. NO. #002
MOTION CAL. NO. _____

re read on this motion to/for _____

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

PAPERS NUMBERED
<u>1-3</u>
<u>4-5</u>
<u>6-7</u>

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed memorandum decision and order.

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

FILED
MAR 28 2008
NEW YORK COUNTY CLERK'S OFFICE

Dated: 3-27-08

J.S. SOLOMON
JANE S. SOLOMON J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

DO NOT POST REFERENCE

* 2]
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 55

-----X
DAMIEN HOLLOWAY, an infant under the
age of 18 Years old by his m/n/g,
TESHANNA SMITH, and TESHANNA SMITH,
individually,

Plaintiffs,

INDEX NO. 110924/2006

-against-

NEW YORK CITY HOUSING AUTHORITY,

DECISION and ORDER

Defendant.

-----X
FILED

MAR 28 2008

JANE S. SOLOMON, J.

In this personal injury **COUNTY CLERK'S OFFICE** **NEW YORK** defendant New York City
Housing Authority ("NYCHA") moves for summary judgment dismissing
the Complaint. Plaintiffs oppose the motion, which is granted as
follows.

In October 2004, plaintiff Teshanna Smith ("Smith") lived
together with her grandmother and her son, the infant-plaintiff
Damien Holloway ("Holloway"), in Apartment 1B (the "Apartment") in
the residential building located at 180 West 152nd Street in
Manhattan (the "Building"). The Building is part of housing
development known as the Harlem River Houses, which is owned and
managed by NYCHA. According to NYCHA's Development Data Book, the
Harlem River Houses were completed on October 1, 1937, and NYCHA's
records further indicate that no alterations exceeding 60% of the

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Building's value were made during any twelve-month period since its completion.

On October 20, 2004, at approximately 5:00 PM, Holloway was approximately 10 months old and was in his wooden crib while Smith was folding laundry. The crib was placed directly adjacent to an uninsulated vertical heating pipe that is located in the corner of the room and runs from the floor to the ceiling. Smith alleges that when she turned away for a minute, Holloway started to scream. She states that when she looked up, her son was standing by the headboard of his crib, and that he had apparently reached out of the crib and severely burned his hands on the heating pipe.

This vertical riser, which carries steam, is one of many such pipes that run from the basement of each building in the development and extend through the individual apartments. The risers are attached to radiators in individual apartment units through horizontal branch pipes. The Building has heating plant technicians that record data regarding the operation of the Building's boilers, including the condensate temperature and the boiler steam pressure.

Smith commenced this action on behalf of herself and Holloway in or around July 2006, alleging that NYCHA was liable for Holloway's injuries because it failed to insulate the heating pipe. Smith also asserts a derivative claim. NYCHA now moves for summary

judgment arguing that it had no legal duty to cover or insulate the pipe, it acted in conformity with prevailing practices, and that the accident was caused by Smith's improper placement of the crib.

New York City Administrative Code § 27-809, which requires building owners to insulate heating pipes, was enacted in 1968, and Administrative Code §§ 27-111, 27-115 and 27-116 provide that buildings constructed prior to its enactment are not subject to the statute's requirements unless they have undergone substantial renovations. NYCHA has provided sufficient evidence to show that the Building was constructed 31 years before the statute was enacted, and that it has not undergone substantial renovations since 1968. The 1916 building code -- which applies to the Building -- does not require heating pipes to be insulated. Thus, the Building is protected by the grandfathering provisions of the 1968 statute, and NYCHA was under no statutory duty to insulate the heating pipe (see Sanchez v. Biordi, 259 A.D.2d 434 [1st Dep't 1999]., *lv denied* 94 N.Y.2d 754; Hymah v. Queens County Vanop, Inc., 307 A.D.2d 984 [2nd Dep't 2004], *aff'd* 3 N.Y.3d 743).

Moreover, even if Administrative Code § 27-809 did apply, the statute does not require insulation on a heating pipe which carries a fluid of less than 250° F and where "insulation would interfere with the functioning of the system." NYCHA has presented the affidavit of an engineering expert that states, based on his

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review of the pertinent records, that the condensate temperature was 120° F on the day of the incident. The expert also opines that "one-quarter of the heat generated by the radiator and heating pipe would be lost if the pipe was insulated with one-inch snap-on fiberglass insulation" (Affidavit of Leonard Weiss, Ex. J to NYCHA's Motion ¶ 6). Plaintiffs have not submitted an affidavit of an expert to refute this opinion, and have thus not raised a material issue of fact regarding the applicability of the statute or NYCHA's purported violation of it.

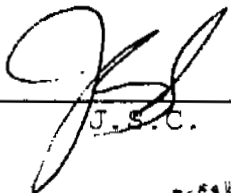
Further, under these circumstances, NYCHA was also under no common law duty to insulate the heating pipe. See Isaacs v. West 34th Apts. Corp., 36 A.D.3d 414 (1st Dep't 2007); Bruno v. New York City Hous. Auth., 21 A.D.3d 760 (1st Dep't 2005).

Accordingly, it hereby is

ORDERED that NYCHA's motion for summary judgment under CPLR § 3212 is granted, the Complaint is dismissed in its entirety, and the clerk is directed to enter judgment accordingly with costs and disbursements as taxed.

Dated: March 27, 2008

ENTERED
FILED
MAR 28 2008
NEW YORK
COUNTY CLERK'S OFFICE



J.S.C.
JANE S. SOLOMON