

Paredes v Trump Plaza Owners, Inc.

2008 NY Slip Op 33437(U)

December 19, 2008

Supreme Court, New York County

Docket Number: 106642/08

Judge: Martin Shulman

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

PRESENT: MARTIN SHULMAN
J.S.C. Justice

PART 1

Index Number : 106642/2008

PAREDES, ANNA

VS.

TRUMP PLAZA OWNERS

SEQUENCE NUMBER : 001

DISMISS

INDEX NO.

106642/08

MOTION DATE

MOTION SEQ. NO.

001

MOTION CAL. NO.

this motion to/for

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

A-K
A-D

PAPERS NUMBERED

1, 2, 3

Answering Affidavits — Exhibits

4, 5

Replying Affidavits

Arch. A

6

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

is decided in accordance with the attached decision and order.

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

FILED

DEC 24 2008

COUNTY CLERKS OFFICE
NEW YORK

Dated:

DEC 19 2008

MARTIN SHULMAN J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 1

-----X
ANNA PAREDES

Plaintiff,

Index No: 106642/08

-against-

Decision and Order

TRUMP PLAZA OWNERS, INC., BELLMARC
PROPERTY MANAGEMENT SERVICES, INC. and
OTIS ELEVATOR COMPANY,

Defendants.

FILED
DEC 24 2008
COUNTY CLERK'S OFFICE
NEW YORK

-----X
Hon. Martin Shulman, J.S.C.:

Co-defendant, Otis Elevator Company ("OTIS"), moves pursuant to CPLR §3126 to dismiss plaintiff's complaint¹ *inter alia* for failure to provide a Supplemental Verified Bill of Particulars("Supp. BP") "as directed by the preliminary conference order of September 9, 2008 as to paragraph[] 9 . . ." ² of the Verified Bill of Particulars ("Ver. BP") or, alternatively, to preclude plaintiff from furnishing any evidence at trial about the subject matter addressed therein.

In ¶¶ 8 and 9 of the Demand for a Verified Bill of Particulars ("Demand") (Exhibit D to Motion), OTIS seeks to learn what "section and subdivision the statutes, ordinances, laws, rules and regulations . ." plaintiff alleges were violated and what

¹ Co-defendants, Trump Plaza Owners, Inc. and Bellmarc Property Management Services, Inc. adopt and incorporate the factual and legal arguments set forth in OTIS's motion (Bates Supporting Aff. at ¶ 3).

² At a December 17, 2008 status conference, counsel for OTIS informed the court that based upon the issuance of a Compliance Conference Order of said date, OTIS's receipt of the Supp. BP containing more factual details as well as plaintiff's prior turnover of certain requested documents (e.g., HIPAA authorizations, etc.), the parties appear to have resolved certain discovery and/or pleading issues. Thus, counsel advised the court that OTIS was limiting its relief to a CPLR §3126 order solely addressing the statutory violation(s) subject matter contained in the Ver. BP, *infra*.

manner defendants violated one or more of the foregoing. Plaintiff's Ver. BP (Exhibit E to Motion) states:

8. Plaintiff will rely upon the Court to take judicial notice at the time of trial of the applicable laws, rules, regulations, statutes, and ordinances that defendants, their agents, servants and/or employees violated including, but not necessarily limited to §§ 26-228, 26-234, 26-235 and 27-127 of the New York City Administrative Code.

9. Plaintiff objects to this demand . . . [as] evidentiary in nature and not designed to amplify the pleadings, and therefore . . . [should] not [be] properly in a bill of particulars . . . (bracketed matter added).

OTIS essentially contends that plaintiff has not sufficiently identified the statute(s), rule(s) or regulation(s) defendants allegedly violated and the precise manner in which plaintiff claims defendants violated any statute(s), rule(s) or regulation(s) which led to the elevator misleveling condition that allegedly caused plaintiff's accident.

In opposition, plaintiff implicitly stands by her response to paragraphs 8 and 9 of OTIS's Demand contained in the Ver. BP and as expanded in the Supp. BP (Exhibit B to Leav Opp. Aff.) without requiring any further changes, clarifications or specificity with respect thereto.

Discussion

Plaintiff is in error. "It is well settled that in a tort action, where the complaint alleges a statutory violation, the pleader is required to specify each statute, law, rule and regulation claimed to have been violated . . . The vague, ambiguous, nonspecific and open-ended assertions contained in . . . [the] bill of particulars, qualified by the language 'including[,] but not [necessarily] limited to,' fail to satisfy the purpose of a bill of particulars . . ." (bracketed matter added). *Alvarado v. New York City Housing Authority*, 302 A.D. 2d 264, 265, 756 N.Y.S.2d 6, 7 (1st Dept., 2003). *See also*,

Ramondi v. Paramount Fee, LP et al., 30 A.D.3d 396, 817 N.Y.S.2d 341 (2nd Dept., 2006).

In ¶ 8 of the Ver. BP, Plaintiff alleges violations of N.Y.C. Adm. Code §§ 26-234 and 26-235. These administrative code provisions appear to be wholly inapplicable here. Moreover, plaintiff pleads no facts implicating these administrative code provisions as the former is a reporting and inspection requirement for unsafe buildings and property, whereas the latter addresses the removal or repair of unsafe structures (and it being unclear whether an elevator, as vertical transport machinery, constitutes a structure within the meaning of N.Y.C. Adm. § 26-235).

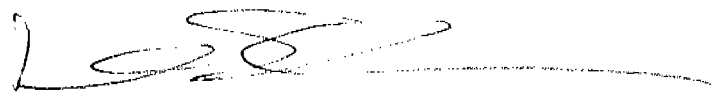
Notably, N.Y.C. Adm. Code §§ 26-228 and 27-127 “merely require that an owner of a building maintain and be responsible for its safe condition, [and] do not impose liability in the absence of a breach of some specific safety provision of the Administrative Code . . .” (*Plung v. Cohen*, 250 A.D.2d 430, 673 N.Y.S.2d 114, 115 [1st Dept., 1998]). A violation of these general safety and maintenance code provisions is certainly insufficient to establish a basis for liability when plaintiff here alleges an elevator misleveling condition caused her accident. See, *Dixon v. Nur-Hom Realty Corp.*, 254 A.D.2d 66, 678 N.Y.S.2d 613 (1st Dept., 1998).

Accordingly, this Court grants the branch of OTIS’s CPLR § 3126 motion to the extent of directing plaintiff to amend ¶¶ 8 and 9 of the Supp. BP to particularize the precise statute, ordinance, law, rule or regulation that was allegedly violated as well as the manner in which the alleged violation resulted in her accident. Plaintiff shall serve the amended Supp. BP on OTIS within thirty (30) days of the issuance of this Decision

and Order or be precluded at trial from offering evidence of any statutory violation as a basis for defendant's liability for the accident and injuries plaintiff sustained.

This constitutes this court's Decision and Order. Courtesy copies of this Decision and Order have been provided to counsel for the parties.

DATED: New York, New York
December 19, 2008



HON. MARTIN SHULMAN, J.S.C.

FILED

DEC 24 2008

COUNTY CLERK'S OFFICE
NEW YORK