

<b>Mateo v Uphattan Corp.</b>
2011 NY Slip Op 32012(U)
July 18, 2011
Sup Ct, NY County
Docket Number: 109206/08
Judge: Louis B. York
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: LOUIS B. YORK  
J.S.C. Justice

PART 2

Index Number : 109206/2008  
MATEO, MARIA  
VS.  
UPHATTAN CORPORATION  
SEQUENCE NUMBER : 003  
SUMMARY JUDGMENT

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_  
MOTION CAL. NO. \_\_\_\_\_

this 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

**FILED**

JUL 19 2011

NEW YORK  
COUNTY CLERK'S OFFICE

**MOTION IS DECIDED IN ACCORDANCE  
WITH ACCOMPANYING MEMORANDUM DECISION.**

Dated: July 15, 2011

Louis B. York  
**LOUIS B. YORK** J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUBMIT ORDER/ JUDG.  SETTLE ORDER/ JUDG.

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

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK:**

**IAS PART 2**

-----X  
**MARIA MATEO,**

**Index No. 109206/08**

**Plaintiff,**

**-against-**

**FILED**

**UPHATTAN CORPORATION, and  
JONBIL LLC,**

**JUL 19 2011**

**Defendants.**

-----X  
**LOUIS B. YORK, J.:**

**NEW YORK  
COUNTY CLERK'S OFFICE**

Maria Mateo ("plaintiff") was a resident of 242 Bradhurst Avenue, Apartment 5, New York, New York (the "Apartment") continuously from February 1993 through December 2007. At approximately 3:00 am on December 20, 2007 a fire started in the Apartment (the "fire"). In the process of escaping the Apartment, plaintiff suffered severe burns to her body and various inhalation injuries which required extensive treatment and hospitalization. Plaintiff alleges that her injuries were the result of negligence by defendants Uphattan Corporation and Jonbil LLC ("defendants"), the building owners at the time of the fire.

In support of her claim plaintiff cites a litany of acts and omissions by defendants which she alleges caused the fire and contributed to her injuries. Among other things, plaintiff alleges that defendants failed to install, provide or maintain smoke detectors, carbon monoxide detectors, self-closing doors, fire stopping, safety lighting, window guards without gates, fire alarms and intercoms; improperly designed the Apartment and building; failed to fix loose electrical wiring and open ceilings; and failed to provide an adequate means of egress from the Apartment and the building.

Currently, defendants move for summary judgment dismissing the complaint in its entirety. In addition to disputing plaintiff's allegations concerning the condition of the building and the Apartment, defendants argue that plaintiff has failed to submit any evidence to support her claims that defendants violated any duty of care or that any of the alleged violations caused or exacerbated the fire. Defendants note that the evidence shows that plaintiff caused the fire when she failed to extinguish a lit cigarette, which in turn ignited combustible material near the entrance to the Apartment's bathroom. In support of this assertion Defendants point to the fire marshal's report which states that the cause of the fire was "occupant smoking in apartment." Furthermore, defendants claim that the fire was intensified by the high volume of combustible materials plaintiff had accumulated in the Apartment. According to defendants, plaintiff had created what emergency personnel call a "Collyer's Mansion," in which the occupant has hoarded such a voluminous amount of materials as to create a safety hazard to the occupant and emergency personnel. In support of this last contention, defendants cite statements of fire department personnel in the fire department's incident report and the fire marshal's report, along with deposition testimony of plaintiff, defendant's managing agent and the building super.

#### Analysis

To obtain summary judgment "the movant must establish its defense or cause of action sufficiently to warrant the court's directing judgment in its favor as a matter of law." (*Gilbert Frank Corp. v. Federal Ins. Co.*, 70 NY2d 966, 967, 525 NYS2d 793, 793 [1988]). The party opposing the motion must then "produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim or must demonstrate [an] acceptable excuse for his failure to meet the requirement of tender in admissible form; mere

conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient.”  
(*Zuckerman v. City of New York*, 49 NY2d 557, 562, 427 NYS2d 595 [1980] (citations omitted)).  
When parties submit affidavits to support their respective burdens, the affiants should have personal knowledge of the facts. (*see S.J. Capelin Associates, Inc. v. Globe Mfg. Corp.*, 34 NY2d 338, 342, 357 NYS2d 478, 481 [1974]).

In support of their motion defendants offer a variety of evidence, including the affidavits of Chase Horman, the building manager at the time of the fire, and Lawrence Byrnes, an independent consultant in the field of fire investigation retained by defendants following the fire; the deposition transcripts of plaintiff, Horman, and Joseph Verdejo, the super for 242 Bradhurst at the time of the fire; the fire marshal’s report; and the fire department incident report. Plaintiff’s opposition to the motion on the other hand is supported only by an affirmation of plaintiff’s counsel - a person who has no personal knowledge the facts at issue. The submission of an affirmation by an attorney who has no personal knowledge of the facts is without evidentiary value (*see Lopez v. Crotona Ave. Assoc., L.P.*, 39 A.D.3d 388, 390, 835 NYS2d 66, 68 (1<sup>st</sup> Dept. 2007) and is not sufficient to raise triable issues of fact. (*See Rothstein & Hoffman Elec. Serv., Inc. v. Gong Park Realty Corp.*, 37 AD3d 206, 207, 829 NYS2d 91, 92 [1<sup>st</sup> Dept 2007])). Thus, the only evidence the Court will examine to determine the existence of triable issues of fact is that which has been submitted by defendants in support of their motion.

To establish a cause of action for negligence a plaintiff must show that (1) defendant owed plaintiff a duty; (2) defendant breached its duty; (3) the breach proximately caused the alleged injury; and (4) plaintiff sustained loss, harm or damage. (*Salvador v. New York Botanical Garden*, 71 AD3d 422, 423, 895 NYS2d 410, 411 [1<sup>st</sup> Dept 2010]). In the context of the

landlord-tenant relationship, a landlord generally is not liable in negligence once the space is in the tenant's possession and control unless the landlord has violated a statutory or contractual duty to the tenant. *Howard v. Alexandra Restaurant*, 84 AD3d 498, 498, 922 NYS2d 386, 387 [1<sup>st</sup> Dept 2011]). If a landlord fails to uphold a duty designed to protect the well being of a tenant, and this failure causes the tenant to suffer an injury, the landlord will be liable. (see *Beck v. J.J.A. Holding Corp.*, 12 AD3d 238, 240, 785 NYS2d 424, 425 [1<sup>st</sup> Dept 2004]; see also *Acevedo v. Audubon Mgmt Inc.*, 280 AD2d 91, 96, 721 NYS2d 332, 336 [1<sup>st</sup> Dept](where plaintiff could not show that alleged failure to provide smoke detectors proximately caused the fire, plaintiff's claim failed)). However, if the injured tenant is unable to prove that the landlord violated the statute, or that the violation was the proximate cause of their injury, the landlord will not be liable.

As stated, plaintiff alleges that defendants are guilty of dozens of acts and omissions which violate various statutes and ordinances, including the Administrative Code of the City of New York and the Multiple Dwelling Law, and that these violations caused the fire and her injuries. In their motion, defendants correctly note that many of the statutes on which plaintiff relies are inapplicable – some fail to set forth required conduct by a landlord, others do not apply to defendants or to the property on which the Apartment is located. For example, plaintiff alleges that defendants violated Administrative Code §§ 27-419, 27-420 and 27-424, which specify the requirements for the placement and ventilation of boilers or furnaces. However, plaintiff has not offered any evidence to show that her injuries were caused by a defect in a boiler or furnace located on the property in question – 242 Bradhurst Avenue. In fact, in his affidavit Chase Horman states that the boiler for 242 Bradhurst Avenue is not located within that building,

but is housed in a neighboring building. Thus, plaintiff has failed to raise an issue of fact as to proximate cause regarding these alleged violations (*see Jamison v. 157-61 St. Housing Devel. Fund Corp.*, 15 Misc 3d 1106(A), 836 NYS2d 499 (Civ Ct, NY Co, March 21, 2007)(avail at 2007 WL 840983, at \*2)).

One of the few potentially relevant statutory provisions on which plaintiff relies is Administrative Code § 27-2045. Administrative Code § 27-2045(a) imposes a duty on owners of Class A multiple dwellings – a category of properties to which 242 Bradhurst Avenue belongs – to install a smoke detecting device in a dwelling unit upon the commencement of a new tenancy in that unit. Administrative Code § 27-2045(c) states that an “owner who has provided and installed a smoke detecting device in a dwelling unit pursuant to this section shall not be required to keep and maintain such device in good repair or to replace any such device which is stolen, removed, missing or rendered inoperable during the occupancy of such dwelling unit.” The responsibility to maintain and replace smoke detecting devices thus lies with the occupant once his or her tenancy commences. (Administrative Code § 27-2045(b); *see; Tucker v. 64 W. 108<sup>th</sup> St. Corp.*, 2 AD3d 193, 194, 768 NYS2d 460, 460 [1<sup>st</sup> Dept 2003]).

In plaintiff’s deposition, she claims that she was not provided with an operational smoke detector at the commencement of her tenancy, and that she made repeated requests to the various owners of the property, including defendants, to install one, but her complaints went ignored. She argues that the absence of a smoke detector violated defendants’ duty under Administrative Code § 27-2045(a) and was a contributing factor in causing her injuries.

In the current motion, however, defendants deny that plaintiff informed them that the Apartment lacked a smoke detector at any time between August 2007, when they purchased the

property, and the date of the fire on December 20, 2007. Defendants also argue that they did not breach a duty to plaintiff because she was provided with a smoke detector when her tenancy commenced. In support of this argument defendants annex a signed copy of plaintiff's first lease for the Apartment dated January 22, 1993. Paragraph 29 of the lease, entitled "SMOKE ALARMS," states:

Tenant knows that the apartment being rented has a smoke alarm in proper working order and that it is the Tenant's responsibility to maintain the smoke alarm including replacing the battery when necessary and replacing the smoke alarm if it is stolen, removed, or broken during the Tenant's occupancy.

Defendants also attach a document which was given to them by the previous owner of the building, which indicates that plaintiff gave her original landlord access to the Apartment in 2002, during which time that landlord changed the smoke detector in the Apartment.

Additionally, defendants annex a photograph - taken by Ed Wysocki, an investigator they retained following the fire - which depicts what appears to be a detached smoke detector lying on a table within the Apartment.

The submission of the signed lease which includes this language along with evidence showing plaintiff's signature is authentic, establishes a prima facie showing of a landlord's compliance with Administrative Code § 27-2045(a). (*see Peyton v. State of Newburgh Inc.*, 14 AD3d 51, 786 NYS2d 458 [1<sup>st</sup> Dept 2004]). In light of this, plaintiff's "bare unsubstantiated assertions, alone, ... are insufficient to raise a genuine triable issue of fact as to the presence of a smoke detector." (*Suhina v. 780 2<sup>nd</sup> Street Co., LLC*, 2008 WL 4532825 [Sup Ct, NY Co 2008]). Plaintiff acknowledges her signature on the original lease and states that she received a copy of it from the landlord who owned the building at that time. Plaintiff also states that her sister, Rosa

Nival, leased the Apartment immediately prior to the start of plaintiff's tenancy, and at that time plaintiff observed at least one smoke detector in the Apartment. Furthermore, plaintiff offers no evidence apart from her self-serving deposition testimony to show that she was not provided with a smoke detector. Her bare accusations are insufficient to overcome the substantial evidence offered by defendants establishing their compliance with Administrative Code § 27-2045(a).

As for plaintiff's remaining arguments, defendants have introduced sufficient evidence to rebut each of these assertions, thereby establishing their entitlement to a judgment as a matter of law. The Court finds no evidence to indicate that any triable issues of fact exist which would tend to show that defendants breached any statutory or common law duty owed to plaintiff. Furthermore, the Court finds that the record is devoid of any evidence which would establish a causal connection between defendants' alleged conduct and plaintiff's injuries. (*Sheehan v. City of New York*, 40 NY2d 496, 501, 387 NYS2d 92 [1976] ("[P]roximate cause is no less essential an element of liability because the negligence charged is premised in part or in whole on a claim that a statute or ordinance...has been violated").

Based on the foregoing, and after careful consideration of the parties' arguments in connection with this motion, therefore, it is

ORDERED that defendants' motion for summary judgment is granted and this action is hereby dismissed with prejudice.

Dated: 7/18/11

**FILED**

JUL 19 2011

NEW YORK  
COUNTY CLERK'S OFFICE

Enter:

*Ley*

Louis B. York, J.S.C.

**LOUIS B. YORK  
J.S.C.**