

<b>Rios v 1146 Ogden LLC</b>
2014 NY Slip Op 32096(U)
July 23, 2014
Sup Ct, Bronx County
Docket Number: 306747/09
Judge: Raymond Guzman
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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX**

Index No. 306747/09  
Motion Calendar No. 21  
Motion Date: 5/5/14

YVONNE RIOS

Plaintiff,

-against-

1146 OGDEN LLC, CYA MANAGEMENT LLC, and  
NEW CITY MANAGEMENT, LLC.,  
Defendant.

**DECISION/ ORDER**

**Present**

**Hon. Wilma Guzman**  
Justice Supreme Court

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for summary judgment.

<u>Papers</u>	<u>Numbered</u>
<b>Notice of Motion, Affirmation in Support, and Exhibits thereto.....</b>	<b>1</b>
<b>Affirmation in Opposition of Motion and Exhibits thereto .....</b>	<b>2</b>
<b>Reply Affirmation .....</b>	<b>3</b>

*Upon the foregoing papers and after due deliberation, following oral argument, the Decision/Order on this motion is as follows:*

Defendant 1146 Ogden LLC and New City Management, LLC move this Court pursuant to C.P.L.R. 3212 for an Order granting summary judgment and dismissing the plaintiff's complaint on the grounds that defendants are out of possession landlords and thus not liable for plaintiff's accident. Defendants further argue that they did not cause or created the defective condition that caused the plaintiffs accident nor did defendant have actual or constructive notice of any defective condition. Plaintiff opposes the defendant's motion.

Plaintiff commenced this cause of action seeking damages for injuries allegedly sustained when plaintiff slipped on fallen tiles in her bathroom on the premises owned by defendant 1146 Ogden LLC and managed by defendant New City Management, LLC. Pursuant to a lease dated August 16, 2006, non-appearing defendant CYA Management, LLC was the tenant of the building and leased apartments pursuant to individual lease, to plaintiff.

The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issues of fact and the right to judgment as a matter of law. Alvarez v. Prospect Hospital, 68 N.Y.2d 320 (1986) and Winegrad v. New York University Medical Center, 64 N.Y.2d 851 (1985). Summary judgment is a drastic remedy that deprives a litigant of his or her day in Court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to non-moving party. See, Assaf v. Ropog Cab Corp., 153 A.D.2d 520 (1<sup>st</sup> Dept., 1989). It is well settled that issue finding, not issue determination, is the key to summary judgment. See, Rose v. Da Ecib USA, 259 A.D.2d 258 (1<sup>st</sup> Dept., 1999). Summary judgment will only be granted if there are no material, triable issues of fact. See, Sillman v. Twentieth Century-Fox Film Corp., 3 N.Y.2d 395 (1957).

An out of possession landlord with the right of reentry may be liable to a plaintiff for injuries if it has “constructive notice of a significant structural or design defect in violation of a specific statutory safety provision.” Brignoni v. 60 West 162 Associates, L.P. et al, 93 A.D.3d 417 (1<sup>st</sup> Dept. 2012).

Paragraph 16 of the August 2006 lease states:

The Landlord, its Agents, employees and mechanics shall be permitted to enter the apartment at all reasonable hours for the purposes of making repairs, showing the apartment to prospective tenants, mortgagees or buyers or for inspection of the apartment in the event of an emergency which affects the safety of the tenants in the building or which may cause damage to the building the Landlord may enter the premises without prior notice to the Tenant.”

Plaintiff testified that she resided at 1146 Ogden Avenue for approximately six months. Upon moving in the social worker, Ms. Garwood, and plaintiff did a walk through of the apartment. Plaintiff testified that at that time the bathroom was in disrepair and the kitchen needed cabinets. Plaintiff testified that she was introduced to the superintendent of the building, Ishmael Israel. After approximately one month, the plaintiff noticed the wall bulging and swollen and that a tile had fallen off. She reported this incident to Ms. Garwood. Plaintiff continued to report the wall and the falling tiles to Ms. Garwood who would take the complaints down in writing for plaintiff to sign. She

testified that she also reported it to the super and to 311. Plaintiff testified that on February 9, 2009 she was taking a shower in her bathtub when she slipped on a fallen tile and fell. Plaintiff testified that tiles had fallen off the shower wall prior to this incident, and she would have to sweep it up in order to take a shower. The tile fell from the area of the bulged area of the wall. Plaintiff recalls management coming to her apartment to inspect the wall once or twice but does not remember the name of the person but recalls them being in green super's suits.

Oz Levi testified that he is the General Manager for New City Management which also shares a business address with 1146 Ogden of which he is the managing agent. Stadium Holdings transferred the subject premises to 1146 Ogden rented apartments to CYA Management via lease who then rented the apartments out to individual tenants. 1146 Ogden and New City had a superintendent who lived in the basement of the building named Luis Garcia. Another individual named Wasot now works in that position. He did not recall receiving any complaints or violations from HPD or from the tenants living in the CYA Apartments. However, it was his understanding that CYA Management was responsible for the repairs within their leased apartments. Mr. Levi testified that Ishmael or Israel was an employee of CYA with whom he communicated if there was an issue with the CYA apartments or tenants. If there was an issue with plumbing, 1146 Ogden and New management would get an estimate from licensed plumbers, however to Mr. Levi's knowledge there was no issue. Likewise is there was an issue of an HPD violation, 1146 Ogden or New City Management, then they would inspect and complete the job. He did not recall if there was an inspection when New City Management took over the building.

Benjamin Hadar testified that he is a partner with 1146 Ogden LLC which contracted with New City Management to, among other things, maintain and repair the building. Other than an awareness of CYA Management leasing certain apartments in the building, Mr. Hadar did not have any other knowledge of CYA or its tenants. Nor did he have any knowledge of any complaints or HPD violations prior to February 13, 2009. Mr. Hadar testified however, any leaks would be fixed by management.

Based upon the aforementioned lease, in addition to the testimony of Mr. Levi and Mr. Hadar, sufficient questions of fact exist as to warrant denial of summary judgment for the out-of-possession landlord as being liable for the structural defect. Furthermore, sufficient questions of fact

exist as to whether the moving defendants had notice of the dangerous condition. Plaintiff testified that superintendents other than Ishmael or Israel came to her apartment to inspect the walls, however, neither Mr. Levi nor Mr. Hadar possessed sufficient information to rule out that the inspections were not by the superintendent on the premises as employed by these defendants. In fact, Mr. Hadar testified that if there was a leak in the plumbing, New City Management would be responsible for such repairs.

Accordingly, it is

ORDERED that defendants 1146 Ogden and New City Management's motion for summary judgment is hereby denied. It is further

ORDERED that defendants 1146 Ogden and New City Management's shall serve a copy of this Order with Notice of Entry upon plaintiffs within thirty (30) days of entry of the Order.

This constitutes the decision and order of this Court.

DATE 7-23-14

  
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HON. WILMA GUZMAN, JSC.