

**Diaz v D&F Dev. Group, LLC**

2014 NY Slip Op 32100(U)

July 22, 2014

Sup Ct, Bronx County

Docket Number: 309407/11

Judge: Mark Friedlander

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**NEW YORK SUPREME COURT - COUNTY OF BRONX  
PART IA-25**

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JULIANA DIAZ,

Plaintiff,

**MEMORANDUM  
DECISION/ORDER**  
Index No.: 309407/11

-against-

D & F DEVELOPMENT GROUP, LLC,  
91 EAST 208 STREET TENANTS CORP. and  
MAUREEN RAMIREZ,

Defendants.

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HON. MARK FRIEDLANDER

Defendant, Maureen Ramirez (“Ramirez”), moves for an order, pursuant to CPLR§3212, granting her summary judgment dismissing plaintiff’s complaint and all cross-claims against her. Defendants D & F Development Group, LLC (“D & F”) and 91 East 208 Street Tenants Corp. (“91 East”), move for an order: (1) pursuant to CPLR§3212, granting them summary judgment dismissing all claims against them; and (2) granting D & F and 91 East indemnification against Ramirez. While delineated as a cross-motion, the application by defendants D & F and 91 East is actually a motion, not a cross-motion. The motions are consolidated for disposition and decided as hereinafter indicated.

This is an action by plaintiff to recover monetary damages for personal injuries allegedly sustained on June 21, 2011, purportedly as a result of slipping and falling on debris which fell from a hole in the bathroom ceiling of apartment 4I, located in 91 East 208<sup>th</sup> Street, Bronx, New York.

In support of Ramirez’s motion, Ramirez submit a copy of the pleadings, transcripts of

the deposition testimony of plaintiff and of Ramirez, and the proprietary lease agreement.

In support of the motion of defendant D & F and 91 East, they submit the affidavit of Hortensia Rosa ("Rosa"), an employee of LTD Management ("LTD"), which is the property manager of the premises, the Management Agreement between LTD and 91 East, the By-Laws of 91 East, the proprietary lease agreement, and a letter from Ramirez to LTD.

The facts, as culled from the pleadings, deposition transcripts and exhibits, are as follows: 91 East 208<sup>th</sup> Street, Bronx, New York, is a cooperative residential building owned by 91 East, and managed by D & F. LTD, a subsidiary of D & F, performed the management function. Ramirez is the owner of shares of 91East, and has a proprietary lease to apartment 4I in the building. Ramirez leased her co-op apartment to plaintiff.

Ramirez testified that, on June 16, 2011, she received a telephone call from plaintiff, telling Ramirez that the bathroom ceiling in the apartment had collapsed. At this time, Ramirez did not know that the ceiling had collapsed as a result of a water leak. Ramirez called Rosa and told her about the collapsed ceiling. Rosa told Ramirez that Rosa would be calling the super to go up to the apartment. Later that evening, Ramirez spoke with plaintiff, who informed her that the super came up earlier that day, removed portions of the ceiling and left debris in the apartment. The next day, Ramirez complained to Rosa about the super's performance and told Rosa that she wanted this problem fixed as soon as possible. Apparently, the super had found a broken pipe and Rosa told Ramirez that she would send a plumber the following day.

On June 18, 2011, Ramirez went to the co-op apartment to see the ceiling hole. She arrived after the plumber had fixed the broken pipe, but there remained a big hole in the ceiling. Ramirez then called Rosa and asked her why LTD had not sent someone to fix the hole. Rosa

told Ramirez that she was waiting for the handyman, who was busy on another project, and she would send him when he was available to fix the ceiling. Ramirez was told by plaintiff that management had promised that they would come on Monday, June 20, 2011, to fix the hole. No one came to fix the hole until July 1, 2011. According to Ramirez, the repair job done by management on July 1, 2011 was terrible, and the bathroom ceiling was left unfinished. As a result thereof, Ramirez hired her own contractor to redo and/or complete the work, deducting the cost thereof from her monthly maintenance charges.

Plaintiff testified that, on June 21, 2011, she was in the shower in the bathroom when a large piece of debris came down from the ceiling striking her across her left shoulder. Plaintiff then stepped out of the shower and fell as a result of the debris coming down.

The relevant paragraphs of the proprietary lease agreement are as follow:

**LESSOR'S REPAIRS**- 2. The Lessor shall at its expense keep in good repair all of the building including all of the apartments, the sidewalks and courts surrounding the same, and its equipment and apparatus except those portions and maintenance and repair of which are expressly stated to be the responsibility of the Lessee pursuant to Paragraph 18 hereof.

**DAMAGE TO APARTMENT OR BUILDING**- 4.(a) If the apartment or the means of access thereto or the building shall be damaged by fire or other cause covered by multiperil policies commonly carried by cooperative corporationu (*sic*) in New York City (any other damage to be repaired by Lessor or Lessee pursuant to Paragraphs 2 and 18, as the case may be), Lessor shall at its own cost and expense, with reasonable dispatch after receipt of notice of said damage, repair or replace or cause to be repaired or replaced, with materials of a kind and quality then customary in buildings of the type of building, the building, the apartment, and the means of access thereto, including the walls, floors, ceilings, pipelines, wiring and conduits in the apartment. Anything in this Paragraph or Paragraph 2 to the contrary notwithstanding Lessor shall not be required to repair or replaco (*sic*), or cause to be repaired or replaced, equipment, fixtures, furniture, furnishings or decorations installed by the Lessee or any of his predecessors in title nor shall Lessor be obligated to repaint or replace wallpaper or other decorations in apartments.

**REPAIRS BY THE LESSEE-** 18(a) The Lessee shall keep the interior of the apartment (including interior walls, floors and ceilings, but excluding windows, window pains, window frames, sashes, sills, entrance and terrace doors, frames and saddles) in good repair, shall do all of the painting and decorating required for his apartment, including the interior of window frames, sashes and sills, and shall be solely responsible for the maintenance, repair, and replacement of plumbing, gas and heating fixtures and equipment and such refrigerators, dishwashers, removable and through-the-wall air conditioners, washing machines, ranges and heating fixtures as used herein shall include exposed gas, steam and water pipes attached to fixtures, appliances and equipment and the fixtures, appliances and equipment to which they are attached, and any special pipes or equipment which the Lessee may install within the walls or ceiling, or under the floor, but shall not include gas, steam, water or other pipes or conduits within the walls, ceilings or floors or air conditioning or heating equipment which is part of the standard building equipment. The Lessee shall be solely responsible for the maintenance, repair and replacement of all lighting and electrical fixtures, appliances, and equipment, and all meters, fuse boxex or circuit breakers and electrical wiring and conduits from the junction box at the rise into and through the Lessee's apartment. Any ventilator or air conditioning device which shall be visible from the outside of the buildings shall at all times be painted by the Lessee in a standard color which the Lessor may select for the building.

**LESSOR'S RIGHT TO REMEDY LESSEE'S DEFAULTS-** 19. If the Lessee shall fail for 30 days after notice to make repairs to any part of the apartment, its fixtures or equipment as herein required, or shall fail to remedy a condition which has become objectionable to the Lessor for reasons above set forth, or is the Lessee or any person dwelling in the apartment shall request the Lessor, its agents or servants to perform any act not hereby required to be performed by the Lessor, the Lessor may make such repairs, or arrange for others to do the same, or remove such objectionable condition or equipment, or perform such act, without liability on the part of the Lessor; provided that, if the condition requires prompt action, notice of less than 30 days or, in case of emergency, no notice need be given. In all such cases the Lessor, its agents, servants and contractors shall, as between the Lessor and Lessee, be conclusively deemed to be acting as agents of the Lessee and all contracts therefore made by the Lessor shall be so construed whether or not made in the name of the Lessee. If the Lessee shall fail to perform or comply with any of the other covenants or provisions of this lease within the time required by a notice from Lessor (not less than 5 days), then Lessor may, but shall not be obligated, to comply therewith, and for such purpose may enter the apartment of Lessee. The Lessor shall be entitled to recover from the Lessee all expenses to be payable by the Lessee on demand as additional rent.

After review of the applicable proprietary lease provisions, cited above, defendant Ramirez has demonstrated her entitlement to summary judgment dismissing plaintiff's complaint and all

cross-claims by defendants D & F and 91 East against her. Paragraph 18(a) of the proprietary lease agreement specifically provides that lessee's responsibility for repairs "... *shall not include gas, steam, water or other pipes or conduits within the walls, ceilings, or floors or air conditioning or heating equipment which is part of the standard building equipment. (Italics added)*". Thus, it was the specific responsibility of the Lessor to repair the broken pipe in the ceiling of Ramirez's apartment. The Court further finds that the phrase "... or other cause covered by multiperil policies commonly carried by cooperative corporationu (*sic*) in New York City," contained in paragraph 4(a) (as quoted *supra*) is broad enough to cover a broken pipe in the ceiling. Additionally, paragraph 4(a) provides that "*Lessor shall at its own cost and expense, with reasonable dispatch after receipt of notice of said damage, repair or replace, or cause to be repaired or replaced, with materials of a kind and quality then customary in buildings of the type of building, the building, the apartment, and the means of access thereto, including the walls, floors, ceilings, pipelines, wiring and conduits in the apartment.*" (*Italics added*).

Clearly, pursuant to the terms of the proprietary lease, the responsibility for repair of the broken water pipe located in the ceiling, and for repair of the means of access thereto (the ceiling) is placed on the Lessor (D & F and 91 East). Accordingly, Ramirez's motion for summary judgment is granted, and plaintiff's complaint against Ramirez and well as the cross-claims of defendant D & F and 91 East against Ramirez are dismissed. The branch of the motion by D & F and 91 East for summary judgment is denied for the reasons stated above. The branch of the motion by D & F and 91 East for indemnification is denied. Under paragraph 19 of the proprietary lease agreement, indemnification is applicable only when Lessor is not obligated to perform. As noted above, Lessor was obligated to make the repairs to both the

broken pipe and the means of access thereto.

The foregoing constitutes the Decision and Order of the Court.

Dated: 7/22/14

  
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MARK FRIEDLANDER, J.S.C.