

Palmer v 1520, LLC

2014 NY Slip Op 32644(U)

September 19, 2014

Supreme Court, Bronx County

Docket Number: 306696/2011

Judge: Lucindo Suarez

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 19

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JUANITA PALMER,

Plaintiff,

- against -

1520, LLC and CHESTNUT HOLDINGS OF NEW
YORK,

Defendants.

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PRESENT: Hon. Lucindo Suarez

Upon plaintiff's notice of motion dated June 16, 2014 and the affirmation, affidavit and exhibits submitted in support thereof; defendants' affirmation in opposition dated August 14, 2014 and the affidavits (2) and exhibits annexed thereto; plaintiff's reply affirmation dated September 4, 2014; and due deliberation; the court finds:

Plaintiff commenced this action to recover damages for personal injuries suffered on May 21, 2011 when a portion of her bathroom ceiling collapsed on her. Plaintiff resided in Apartment 4A at 1520 Sheridan Avenue, a building defendants owned or maintained. Plaintiff now moves pursuant to CPLR 3212 for summary judgment on the issue of defendants' liability. Submitted on the motion are the deposition transcript, plaintiff's affidavit, and an affidavit from expert Scott M. Silberman, P.E. ("Silberman"), among other exhibits.

Plaintiff testified that she told Rubin, the building superintendent, about a three-inch hairline crack and a brown stain on the bathroom ceiling four or five days before the accident. Rubin looked at bathroom ceiling one or two days after that conversation and stated that he would fix the problem. No repairs were made. Plaintiff was standing over the sink when she heard a crack. She then felt pieces

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of rock fall on her. The debris felt wet to the touch, and after she returned home from the hospital, she noticed a hole roughly five inches in diameter above the bathtub. Plaintiff complained to Rubin about leaks she found “monthly” in the bathroom, but Rubin would only paint over any moldy areas. Plaintiff was also aware of water leaks in the apartments directly above and below her apartment.

Tataria E. Burns (“Burns”) lived directly above plaintiff in Apartment 5A, and the two apartments shared the same layout. Burns stated there were often water leaks in the bathroom directly above the bathroom where plaintiff’s accident occurred. Burns also lodged verbal complaints with the superintendent and the management company about leaks in the bathroom, among other conditions.

Fidel Herrera (“Herrera”) served as a Field Manager responsible for inspecting plaintiff’s apartment building. Herrera testified that the building’s superintendent was responsible for cleaning the building, maintaining the boilers, and performing minor repairs including water leaks from exposed pipes. Tenants conveyed their complaints to the superintendent or the management office. Rubin was not required to document the complaints he received, and he would make minor repairs without telling Herrera. Herrera could not recall receiving complaints about a leak in plaintiff’s apartment, but he was unaware if Rubin had been told of any leaks. If a tenant complained about a leak, Herrera expected Rubin to determine the source of the leak and to contact him immediately, especially if the repair work required an outside contractor. The management company kept forms indicating that the superintendent had performed repairs and a superintendent’s log book in its office. Rubin was fired sometime after May 2011 for poor work performance.

Plaintiff’s expert, Scott M. Silberman, P.E. (“Silberman”), attributed the collapse to a longstanding condition caused by a leak and cracked sheetrock. He stated that patchwork and painting over cracks and water damage would exacerbate a hazardous condition by adding weight and concealing additional damage.

Defendants oppose the motion and offer an affidavit from expert George H. Pfreundschuh, P.E.

("Pfreunds Schuh"), who conducted a site inspection in the apartment below plaintiff's on July 3, 2014. Based upon unattached photographs purportedly exchanged by plaintiff, Pfreunds Schuh opined that defendants were unaware of an imminent collapse of the bathroom ceiling. He attributed the cause of the ceiling collapse to a previous repair or to an inordinate amount of weight within the ceiling. He did not believe that the collapse was caused by longstanding water damage. Plaintiff urges the court to reject Pfreunds Schuh's report as inadmissible based on defendants' failure to timely disclose their expert during pre-trial discovery. *See Scott v. Westmore Fuel Co., Inc.*, 96 A.D.3d 520, 947 N.Y.S.2d 15 (1st Dep't 2012). Although defendants offer no excuse for the delay, the court may consider the report on a timely summary judgment motion. *See Abreu v. Metropolitan Transp. Auth.*, 117 A.D.3d 972, 986 N.Y.S.2d 557 (2d Dep't 2014).

It is well settled that it is a landowner's duty to maintain the property in a reasonably safe condition. *See Caicedo v. Sanchez*, 116 A.D.3d 553, 984 N.Y.S.2d 323 (1st Dep't 2014). In an action where plaintiff claims a ceiling collapse, it is plaintiff's burden to establish actual or constructive notice of a defect prior to the collapse. *Figueroa v. Goetz*, 5 A.D.3d 164, 165, 774 N.Y.S.2d 9, 10 (1st Dep't 2004). If it is alleged that the ceiling collapsed because of a leak, then "plaintiff must show that the defendant had prior notice, actual or constructive, of the leak and that the leak was never repaired." *Id.* Plaintiff has met her burden.

Defendants have not refuted plaintiff's evidence of actual notice of the crack or brown stain. *See Best v. 1482 Montgomery Estates, LLC*, 114 A.D.3d 555, 980 N.Y.S.2d 755 (1st Dep't 2014). Pfreunds Schuh's affidavit is speculative and conclusory. *See Schwartz v. Kings Third Ave. Pharmacy, Inc.*, 116 A.D.3d 474, 984 N.Y.S.2d 13 (1st Dep't 2014). He stated that metal mesh was "reportedly" used to construct the plaster ceiling in plaintiff's bathroom but he did not state whether that material was shown in any of the photographs. The photographs Pfreunds Schuh reviewed showed no signs of brown staining, but he ignored plaintiff's testimony that the debris which struck her was wet to the

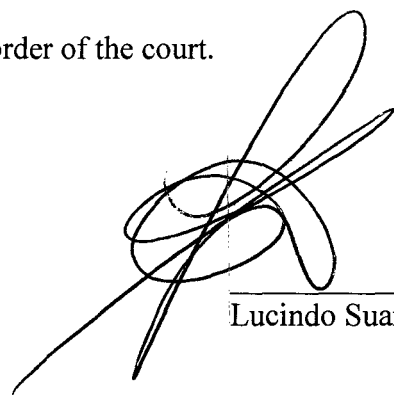
touch. Moreover, Pfreundschuh admitted that it was improper to use sheetrock to repair a plaster ceiling. Pfreundschuh's statement as the second cause of the collapse is hardly convincing. He offered no explanation how material within the ceiling could have become "dislodged" and stated only that it was "possible" a sudden weight could have been applied to the ceiling.

Accordingly, it is

ORDERED, that plaintiff's motion for partial summary judgment on the issue of defendants' liability is granted.

This constitutes the decision and order of the court.

Dated: September 19, 2014

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Lucindo Suarez, J.S.C.