

Van Overloop v Robles
2015 NY Slip Op 30208(U)
January 12, 2015
Supreme Court, Bronx County
Docket Number: 306655/2010
Judge: Mary Ann Brigantti
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**SUPREME COURT STATE OF NEW YORK
COUNTY OF BRONX TRIAL TERM - PART 15**

PRESENT: Honorable Mary Ann Brigantti

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TIMOTHY VAN OVERLOOP and CRISTIN VAN
OVERLOOP,

Plaintiffs,

-against-

ISABEL ROBLES and JOSE BARBECHO,

Defendants

DECISION / ORDER

Index No. 306655/2010

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The following papers numbered 1 to 6 read on the below motion noticed on September 12, 2014 and duly submitted on the Part IA15 Motion calendar of **October 24, 2014**:

<u>Papers Submitted</u>	<u>Numbered</u>
Defs.' Notice of Motion, Exhibits	1,2
Pls.' Aff. In Opp., Exhibits, Memo of Law	3,4,5
Defs.' Aff. In Reply	6

Upon the foregoing papers, the defendants Isabel Robles and Jose Barbecho (collectively, "Defendants"), move for summary judgment, dismissing the complaint of the plaintiffs Timothy Van Overloop ("Plaintiff") and Cristin Van Overloop (collectively, "Plaintiffs"), pursuant to CPLR 3212. Plaintiffs oppose the motion.

I. Background and Party Contentions

Defendants are the owners of a two-story brick and wood two-family house located at 646 Coster Street in the Bronx, New York. On May 11, 2010 at around 9:30AM, a fire broke out at the premises. Plaintiff was one of the firefighters who responded to the scene. Plaintiff testified he and his fellow firefighters encountered a large, active fire at the premises, which he described the premises as an 80 year-old brick and joists structure consisting of three levels - a basement, a first floor, and a second floor.

Plaintiff saw a woman screaming that her two children were trapped inside. His Captain informed Plaintiff's team that they needed to get into the building to search for the boys.

To gain access and commence an attack on the fire, Plaintiff and his squad mates had to go up the front steps and through the front door, which had been broken down by the ladder company.

Plaintiff was the lead firefighter holding the fire hose, otherwise described as the “nozzle position.” He was responsible for stretching the hose line, bleeding air from the line, and operating the hose nozzle. Plaintiff testified that prior to entering the house, the hose was successfully hooked up to a nearby fire hydrant, and began to fill with water. Once the hose was fully “charged,” Plaintiff began to walk up the front steps and prepared his oxygen mask. He observed fire emanating from the front door, and saw that the first floor bay windows were completely engulfed in flames. Plaintiff positioned the hose straight ahead and crossed the threshold of the front door, pushing the fire back with a stream of water. As he was trained to do, Plaintiff was down on his right knee while using the hose. He applied water to the stairwell so that the ladder team could ascend the stairs to perform rescue operations. Plaintiff then proceeded into the hallway with the hose line. The hallway was engulfed in flames from floor to ceiling. When he was about three to four feet inside, material in the ceiling crashed down nearby. Plaintiff heard his captain yell “Timmy, the fire is over your head.” Plaintiff then began to operate the hose line directly over his head at a 90 degree angle. As he did this, water cascaded back down on him, turning into steam. The hot water, steam, and various debris fell around Plaintiff, burning his right leg. Plaintiff switched to his left knee to alleviate the pain, but later burned that leg as well. Plaintiff nevertheless continued to push back the fire with the fire hose, eventually extinguishing the fire in the building’s living room and another room, which had been completely engulfed in flames. Plaintiff then informed the captain that he had been burned, and he exited the building for medical treatment. Plaintiff’s back-up man then came and relieved him, and Plaintiff was treated by EMS who transported him to the hospital.

FDNY Fire Marshall Stephen R. Rogan (“FM Rogan”) appeared for deposition. He testified that the purpose of his job is to determine the origin and cause of the fire, and head criminal fire investigations when appropriate. Pertinently, FM Rogan acted as Lead Investigator for the subject fire. As part of his work, FM Rogan conducted a full physical examination of the scene after the fire was extinguished, interviewed occupants and neighbors, and took photographs. In his handwritten notes, FM Rogan noted that the living room only had one “receptacle,” or electrical outlet. He noted that it was possible that this was an overloaded outlet since nothing else was available. He also acknowledged at deposition that any cords may have been taken out of the outlets during the firefighting process to ensure that the fire was out. FM

Rogan ultimately determined that the area of the origin of the fire was the living room, since it had the most extensive fire damage. He testified, however, that the “ignition source” – something capable of actually starting the fire – was unknown. He observed a heavily damaged entertainment center with damaged cords running from it, along with a cable box and stereo in the living room where FM Rogan had determined the fire began. FM Rogan could not state for certain if there had been an extension cord present in the area. He believed that the origin of the fire was near the electrical outlet on the wall in the southwest corner of the living room. However, he testified that he was unable to determine whether this outlet was the actual origin of the fire. In order to do this, the outlet would have needed to be examined by an electrical engineer. FM Rogan did not request such an examination. No physical evidence was “vouchered” at the scene, meaning no evidence was collected or stored for further examination.

As a part of the fire investigation, FM Rogan testified that the area was “dug out,” removing layers of debris in the floors and ceiling to examine the area underneath. He noted that items were probably thrown out of windows while the firefighters were extinguishing the fire, as is customary. In digging out the area, FM Rogan found, among other things, remnants of a couch, electrical cords, a TV, cable box, and entertainment center. He concluded that the fire was due to “electrical wiring.” He conceded that he was unable to determine the precise electrical cause of the fire, whether it was the receptacle in the corner, or items connected to the receptacle. The investigation further revealed outlets in the hallway which appeared to be in violation of the electrical code. However, FM Rogan could not state for certain whether that faulty wiring was, or was not, related to the origin of the fire. FM Rogan also observed a light switch in the hall with “un-shielded” wiring - not in accordance with the electrical code. He testified that homes are “grand-fathered in” and not required to be updated upon changes in the electrical code. He did not trace this wiring to the living room, or have it examined by an electrical engineer.

On the written incident report, FM Rogan identified the “cause of fire” as numerical cause code 200 – “electrical wiring.” He determined the “cause” as noted in this report using the process of elimination – as there were no other heat sources in the living room where the fire began. When asked which particular wire caused this fire, he responded “unknown, undetermined.” FM Rogan confirmed that “electrical wiring” as coded did not specifically refer

to electrical wiring in the wall of the house as opposed to external wiring like an extension cord. He concluded that the fire in this case was accidental.

FDNY Battalion Chief Thomas P. McKiernan ("McKiernan") also appeared for deposition. McKiernan was responsible for drafting the incident report regarding this fire. The information contained in the report was a compilation of McKiernan's reporting as well as other officers who supervised and responded to the scene. McKiernan testified that if he is unable to determine a specific cause, the fire is coded as a "1041," meaning suspicious fire, which doesn't mean it was set on purpose, but rather no cause could be determined. Here, McKiernan was unable to determine the fire's cause, and referred the matter to the Fire Marshall (in this case, FM Rogan). He did not know the cause or origin of this fire.

Defendant Isabel Robles appeared for deposition. She and her husband owned the property since May 2005. She testified that her family occupied the first floor apartment, while the second floor apartment was rented out. Defendants had performed some work or renovations on the second floor apartment, but this work did not include any electrical or plumbing installation. She testified that the family never received any violations for electrical issues on the house, and they received no violations by the New York City Department of Buildings after the fire. Defendant Jose Barbecho testified that at the time of this incident, his niece had come to visit, and was babysitting a neighbor's baby at the house. The niece told Mr. Barbecho that she had been making coffee, went to the bedroom, but then heard something and eventually saw smoke in the living room. She took the baby and ran outside. She did not know how or where the fire started. Mr. Barbecho was told that it was caused by light cables. He never had any electrical problems with the house before the fire and never performed any electrical work. The only time he needed to hire an electrician was at some point in 2007 or 2008 when a pipe broke. The City of New York required Mr. Barbecho to hire an electrician to repair the wires and cables which had broken outside of the home.

Defendants now move for summary judgment, dismissing the complaint. They argue that Plaintiff's claims made under GML §205-a must fail because Plaintiff has not established that any alleged code violation caused his injuries. FM Rogan's inspection of the cause of the fire was inconclusive. Plaintiff was only two feet into the house when material in the ceiling crashed down. Plaintiff then directed the hose line at a 90-degree angle over his head, and shot

water at the ceiling in a circular clockwise motion. As he did this, the water cascaded back down on him, turning into steam because the fire was intense and hot. Hot water, steam, and debris fell on and around Plaintiff, causing injury. Defendants contend that, accordingly, there is no connection between the injury and a statute/code/ordinance violation. Defendants also contend that Plaintiff has failed to make out a prima facie cause of action for common law negligence in this matter. Any electrical issues were unknown, as the house purchased in 2005 with no issues. Defendants, therefore, had no actual or constructive notice of alleged issues with the electrical system. Moreover, the property was not a "multiple dwelling." Even if there was an "illegal" basement apartment, that illegality had nothing to do with Plaintiff's injuries.

Plaintiffs oppose the motion. Plaintiffs contend that their claims under GML §205-a are "irrefutable." They argue that it was Defendants' burden to prove that the condition of the premises was not in violation of any statute, regulation, or ordinance. Here, Defendants failed to meet that burden and they are liable under statute for (1) allowing the electrical circuitry within the building to remain in a state of disrepair which caused this fire, (2) failing to provide smoke detectors at the premises, (3) illegally converting the premises into a three-family dwelling, and (4) violating a non-delegable duty to maintain the premises in a safe condition.

Plaintiff's expert, Eugene West, reviewed FM Rogan's investigation that found exposed wiring in a shared wall that was not protected with BX or Romex encasing. There was also an open wire that had been spliced, with no protection of a junction box. An electrical arch could result. Substandard wiring in a wall, improperly placed electrical outlet in the hallway placed two inches off of the floor. This violated Admin. Code §27-3017, 3018, 3027, 29-105.1, and 29-107.5, multiple dwelling law, and national electric code §§300.15 and 300.16, and was the cause of this fire.

Mr. West's expert also notes that an investigation revealed that 13 people were living at the property, which presented a significant electrical load that exceeded the design for this building. Following the fire, Defendants' were issued a violation citing "work without a permit. Noted: Partition creating a class "A" apt. w/3 PCS bathroom and kitchen" and another violation citing "Occupancy contrary to that allowed by c/o or bldg dept. records. Noted: Class "A" Apt. at cellar w/3 PC Bathroom and Kitchen." Plaintiffs claim that, as a result, the firefighters were forced to search each of the three apartments during the fire to look for tenants. Mr. West opines

that this illegal conversion placed a load on the electrical services to the premises that was improper.

Plaintiffs' contend that "notice" is not a prerequisite for recovery under GML §205-a. In any event, Plaintiffs allege that Defendant Barbecho had notice of hazardous electrical wiring prior to this incident. He noted that in 2007 or 2008, a pipe broke on the exterior of the house and damaged wires. The City of New York required him to repair the damage. There is no record of any repairs performed, even though Defendant Barbecho states that he hired an electrician to perform the repairs. Mr. West opined that such an event could compromise the building's electrical services.

In reply, Defendants' contend, *inter alia*, that they have made a sufficient prima facie showing, as there is no causal connection between any alleged code or ordinance violation and this fire. Moreover, there is no indication that Defendants were in any way apprised of any faulty electrical wiring, or caused or created any hazardous condition. The prior issue with the broken exterior pipe had nothing to do with the building's interior wiring. The report of Mr. West must be disregarded since Defendants' have not set forth his qualifications as an expert in this field. In any event, his conclusions are speculative since they are entirely based on the investigative reports of FM Rogan, who could not conclusively state the cause of this fire. Defendants' argue that Plaintiff's multiple dwelling law assertions are a "red herring" since there is no connection between any alleged "illegal apartment" and this fire.

II. Standard of Review

To be entitled to the "drastic" remedy of summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case." (*Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 [1985]; *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395 [1957]). The failure to make such prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers. (*Id.*, see also *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 [1986]). Facts must be viewed in the light most favorable to the non-moving party (*Sosa v. 46th Street Development LLC.*, 101 A.D.3d 490 [1st Dept. 2012]). Once a movant meets his initial burden, the burden shifts to the opponent, who must then

produce sufficient evidence, also in admissible form, to establish the existence of a triable issue of fact (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]). When deciding a summary judgment motion the role of the Court is to make determinations as to the existence of bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499 [2012]). If the trial judge is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied. (*Bush v. Saint Claire's Hospital*, 82 N.Y.2d 738 [1993]).

III. Applicable Law and Analysis

(A) Statutory Cause of Action

General Municipal Law (“GML”) § 205-a(1) states, in part, that a firefighter may maintain an action to recover damages for personal injuries sustained “directly or indirectly as a result of any neglect, omission, willful or culpable negligence of any person or persons in failing to comply with the requirements of any of the statutes, ordinances, rules, orders and requirements of the federal, state, county, village, town or city governments.”

To sufficiently make out a claim under General Municipal Law § 205-a, a plaintiff must “identify the statute or ordinance with which the defendant failed to comply, describe the manner in which the firefighter was injured, and set forth those facts from which it may be inferred that the defendant's negligence directly or indirectly caused the harm to the firefighter” (*Zvinys v. Richfield Inv. Co.*, 25 A.D.3d 358 [1st Dept. 2006])[internal citations omitted]. “On a motion for summary judgment to dismiss a GML § 205-a claim, the defendant bears the initial burden of showing either that it did not negligently violate any relevant government provision, or, if it did, that the violation did not directly or indirectly cause the plaintiff's injuries. Only if the defendant sustains this burden must the plaintiff raise a triable issue of fact as to whether the alleged code violations directly or indirectly caused his injuries” (*Id.*, citing *Giuffrida v. Citibank Corp.*, 100 N.Y.2d 72, 82 [2003]).

It is true that the causation element will not be found where the connection between violation and a claimed injury is too speculative to support (*see Cotter v. Pal & Lee Inc.*, 86 A.D.3d 463 [1st Dept. 2011]). Still, the criterion is simply whether the connection between the statutory violation and the resultant injury is sufficiently “practical or reasonable” so as to sustain

an action under GML §205-a (*O'Connell v. Kavanaugh*, 231 A.D.2d 29 [1st Dept. 1997])[internal citations omitted]. Courts, moreover, must recognize the statute's "clear legislative intent to offer firefighters greater protections" and therefore the causation element is accorded a broad application (*see Giuffrida v. Citibank Corp.*, 100 N.Y.2d at 81). Further, "[i]t is not necessary for plaintiff to show that the violation allegedly causing the fire exposed him to additional hazards immediately causing his injury" (*Driscoll v. Tower Assoc.*, 16 A.D.3d 311 [1st Dept. 2005]). A 1996 amendment of the statute provides a cause of action "regardless of whether the injury or death is caused by the violation of a provision prohibiting activities or conditions which increase the dangers already inherent in the work of [firefighters]" (*see O'Connell v. Kavanaugh*, 231 A.D.2d 29 [1st Dept. 1997]).

Finally, "[r]ecovery under GML §205-a does not require the same proof of actual or constructive notice as would be required for a common-law negligence claim based upon an unsafe condition on the property. Rather, the statute requires only that the circumstances surrounding the failure to comply with the local law or regulation indicate that it was a result of 'neglect, omission, willful or culpable negligence on the defendant's part.'" (*Terranova v. NYCTA*, 49 A.D.3d 10 [2nd Dept. 2007], citing *Lusenskas v. Axelrod*, 183 A.D.2d 244 [1st Dept. 1992]).

In this matter, Plaintiffs' complaint and bill of particulars alleged, among other things, violations of Admin. Code City of New York §§28-301.1, which directs that all buildings be maintained in a safe condition, and re-codified §§27-127 and 27-128 of the Code, and is a valid predicate for a GML §205-a cause of action (*see Giuffrida v. Citibank Corp.*, 100 N.Y.2d 72, 80 [2003]; *Pirraglia v. CCC Realty NY Corp.*, 35 A.D.3d 234 [1st Dept. 2006]). In light of the foregoing standard, the Defendant homeowners herein were tasked with either affirmatively demonstrating (1) that there were no violations of any code or government provisions in this matter, or (2) if there were, those violations did not directly or indirectly cause the various burn injuries that Plaintiff sustained as he was responding to this fire. It appears that Defendants have elected the latter course – they argue that, even assuming that the electrical wiring was faulty or various other code violations were present, these issues had no connection to the fire or the injuries alleged. In support of this contention, the Defendants rely heavily on the post-fire investigation performed by FM Rogan and deposition testimony, wherein he noted various

problems with the electrical system, but could not specifically identify what caused the fire.

After review, the Court finds that FM Rogan's testimony and related investigation reports, photographs, and other documents do not eliminate all triable issues of fact as to whether a code violation either directly or indirectly caused the injuries to the responding firefighter, Plaintiff. FM Rogan confirmed that the fire originated in the premises' living room, around the room's sole electrical outlet, which was located next to electronics and an entertainment center (see Rogan Dep. at 56:17-21; 57). He based this conclusion on, among other things, remnants of heavily fire-damaged electrical cords, extensive other fire damage in the area, interviews with witnesses, and upon the elimination any other sources of heat in the area. It is also clear that FM Rogan ultimately found that problems with the house's electrical wiring likely caused this fire, as indicated in the written report. While he could not state for certain the specific cause, he positively identified a multitude of conditions in the premises that he believed constituted electrical code violations, including a lack of a junction box, and improperly shielded/unprotected wiring, or an overloading of the single receptacle located in the living room (*Id.* at 99). When asked how he was able to make the determination that electrical wiring caused the fire, without knowing which particular wire or condition caused the fire, he replied, "I limited other heat sources, including candles, smoking" (*id.* at 94:1-3), and he based this conclusion on "numerous pieces of evidence" (95-96) including the severely damaged electrical cords in the living room wall and near its lone electrical outlet. When viewing this evidence in a light most favorable to Plaintiff (*see Steinbergin v. Ali*, 99 A.D.3d 609 [1st Dept. 2012]), the testimony of FM Rogan is insufficient to carry the Defendant's initial burden of proving that any violation did not directly or indirectly cause Plaintiff's injuries, as necessary to shift the burden to Plaintiffs.

Even if Defendants' had satisfied their initial burden in this respect, the affidavit of Plaintiffs' expert, Eugene West, raises a triable issue of fact by linking various findings of FM Rogan to the subject fire. Mr. West's affidavit, detailing his work history, knowledge, skills, and expertise in this area, properly qualified himself as an expert, contrary to the assertions of Defendants (*Matott v. Ward*, 48 N.Y.2d 455 [1979]). Mr. West opines that, based on his review of the investigative file, the most probable cause of this fire was an electrical fault involving circuit wiring present within the first floor living room. He notes that FM Rogan could not identify the specific wire that caused the fire. However, he noted that there was substandard

wiring in the area, specifically (1) substandard wiring that was not either in BX or Romex cable; (2) an open BX wiring spliced without the protection of a junction box; and (3) an electrical outlet improperly located two inches off of the floor. He explained that the wire shielding and junction box are components that protect circuit wiring from electrically induced arcing and fires.

Mr. West opines that the electrical conditions present at the property is a “clear indicator” that the premises’ electrical interior was not performed by a qualified and licensed electrician. Contrary to Defendants’ arguments, these opinions were not conclusory or speculative since they were based on a review of the investigative file, as well as photographs and testimony (*see Cuevas v. City of New York*, 32 A.D.3d 372 , 374 [1st Dept. 2006]).

There is, moreover, an issue of fact as to whether this property had functioning smoke detectors, and further, whether functioning smoke detectors would have obviated Plaintiff’s injuries (*see Baker v. Riverhouse Realty Co., Inc.*, 300 A.D.2d 214 [1st Dept. 2002]). Battalion Chief McKiernan did not personally inspect the site and could not state for certain whether there were detectors on the premises, but FM Rogan did not testify as to the presence of any smoke detectors. While the Defendants both testified that smoke detectors were installed in the first floor apartment, the occupants were not alerted of the fire until defendant Barbecho’s niece smelled smoke from the kitchen, and saw a “heavy” fire in the living room. Under these circumstances, the Defendants have not competently demonstrated that fire detectors had been installed, and were indeed operational when this fire occurred.

Defendants’ also argue Plaintiffs’ statutory cause of action must fail to the extent it relies on a violation of Multiple Dwelling Law. Defendants have proffered evidence to show that, even if the house were considered a “multiple-dwelling,” and allegedly illegal conversion of the basement was not a contributing factor to this fire, as no one opined that the fire originated in that area. Still, these claims cannot be dismissed at this juncture. After the fire, the defendants were issued a violation for a partition in the basement that created a class “A” apartment, with a kitchen and bathroom, which exceeded the occupancy permitted by the certificate of occupancy. Post-fire investigation revealed that approximately thirteen (13) people resided at the premises. Mr. West, when reviewing the investigative materials and testimony of FM Rogan, opined that this occupancy of the premises may have placed a load on existing wiring that exceeded the property’s original design specifications. In all, it cannot be stated as a matter of law, and as

argued by Defendants, that (1) this building was not a “multiple dwelling,” and further, (2) Multiple Dwelling Law was either inapplicable to the building, or any violation of that law did not cause the alleged injuries. In any event, and as discussed *supra*, Plaintiffs have already raised a genuine issue of fact as to the viability of their GML §205-a claims predicated on alleged violations of Admin. Code City of New York §§28-301.1, as well as 29-107.5 (owner is responsible for safe maintenance of premises in accordance with fire code).

Defendants contend that even assuming faulty or insufficient electrical wiring caused this fire, they cannot be liable since they had no actual or constructive notice of any hazardous condition. This argument is unavailing. The statute only requires that the circumstances surrounding an alleged violation indicate that it was “a result of any neglect, omission, wilfull or culpable negligence” on the defendants’ part (*Lusenskas v. Axelrod*, 183 A.D.2d 244 [1st Dept. 1992]). Defendants here argue that they never performed any electrical work on the property and had no prior issues with the wiring, which was hidden behind walls and did not expose itself until after the fire. However, where an object, like an electrical system, is capable of deterioration and concealed from view, a property owners’ duty of reasonable care entails periodic inspection of the area of potential defect. Without such inspections, constructive notice is imputed (*see Hayes v Riverbend Hous. Co., Inc.*, 40 AD3d 500, 501 [1st Dept 2007], *lv. den.*, 9 N.Y.3d 809 [2007]; *Onetti v. Gatsby Condominium*, 111 A.D.3d 496 [1st Dept. 2013], citing *Kush v. City of Buffalo*, 59 N.Y.2d 26, 29-30 [1983];). Here, the Defendants presented no evidence of when, if ever, the electrical wiring was inspected from the time of purchase in 2005 to the date of this incident in May 2010. Defendants have therefore failed to carry their burden of demonstrating the absence of neglect or an omission that would infer liability under GML §205-a.

Defendants also make an argument that Plaintiff’s own actions in attempting to extinguish this fire may have led to his injuries (“The direct/indirect cause of plaintiff’s injury is simply pointing the hose 90 degrees up, knowing the water from the hose will cause steam and hot water” [Defs.’ Aff. In Support, Page 28]). Comparative fault principles, however, cannot be applied in the defense of a GML §205-a cause of action (*Giuffrida, supra*). Moreover, since the 1996 amendment to the statute, a cause of action is viable regardless of whether the code/ordinance violation created hazards additional to those that firefighters already face in their

profession (*see O'Connell v. Kavanaugh, supra*).

(B) Common-Law Cause of Action

The motion papers do not distinguish arguments directed at dismissal of Plaintiffs' statutory cause of action as opposed to their common-law cause of action. In any event, Defendants' failed to establish entitlement to dismissal of the common law cause of action, since they have not affirmatively demonstrated a lack of constructive notice of a potentially hazardous wiring condition (*see Onetti v. Gatsby Condominium, supra*), or that the premises had functioning smoke detectors in place. As noted, *supra*, there remains an issue of fact as to whether Defendants' failure to maintain the premises in a safe condition proximately caused Plaintiff's injuries.

IV. Conclusion

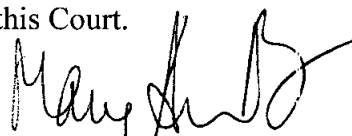
Accordingly, it is hereby

ORDERED, that Defendants' motion for summary judgment is denied.

This constitutes the Decision and Order of this Court.

Dated:

1/12/15



Hon. Mary Ann Brigantti, J.S.C.