

Freedman v 109-11 Ludlow St., LLC

2015 NY Slip Op 30671(U)

April 24, 2015

Supreme Court, New York County

Docket Number: 159278/2014

Judge: Cynthia S. Kern

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

-----X
ROBYN FREEDMAN,

Plaintiff,

-against-

109-11 LUDLOW STREET, LLC and MPDRAW LLC
d/b/a LOS FELIZ,

Defendants.
-----X

Index No. 159278/2014

DECISION/ORDER

HON. CYNTHIA KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for: _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Answering Affidavits and Cross Motion.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Plaintiff commenced the instant action seeking damages for personal injuries she allegedly sustained when she tripped and fell on broken glass and broken bottles in the lower level lounge area at the establishment known as “Los Feliz.” Defendant 109-11 Ludlow Street, LLC (“Ludlow LLC”) now moves for an order pursuant to CPLR § 3212 granting it summary judgment dismissing plaintiff’s complaint. For the reasons set forth below, Ludlow LLC’s motion is granted.

The relevant facts are as follows. This is an action for personal injuries which plaintiff claims she sustained when she fell on a large pile of broken glass and glass bottles which had been allowed to build up over time while she was present at defendant MPDRAW LLC’s (“MPDRAW”) establishment known as Los Feliz. Defendant Ludlow LLC is the owner of the commercial space where Los Feliz is located (hereinafter the “premises”). MPDRAW rents the premises from

Ludlow LLC pursuant to a commercial lease agreement (the “Lease”).

On a motion for summary judgment, the movant bears the burden of presenting sufficient evidence to demonstrate the absence of any material issues of fact. *See Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986). Once the movant establishes a *prima facie* right to judgment as a matter of law, the burden shifts to the party opposing the motion to “produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim.” *See Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). Summary judgment should not be granted where there is any doubt as to the existence of a material issue of fact *Id.*

In the present case, Ludlow LLC’s motion for summary judgment dismissing plaintiff’s complaint is granted as it has established a *prima facie* right to judgment as a matter of law and plaintiff has failed to raise an issue of fact. “A landlord is generally not liable for negligence with respect to the condition of property after the transfer of possession and control to a tenant unless the landlord: (1) is contractually obligated to make repairs or maintain the premises, or (2) has a contractual right to reenter, inspect and make needed repairs and liability is based on a significant structural or design defect that is contrary to a specific statutory safety provision.” *Vasquez v. The Rector*, 40 A.D.3d 265, 266 (1st Dept 2007); *see also Reyes v. Morton Williams Associated Supermarkets, Inc.*, 50 A.D.3d 496 (1st Dept 2008).

Here, Ludlow LLC has made a *prima facie* showing of its entitlement to summary judgment dismissing plaintiff’s complaint by establishing that it cannot be held liable for plaintiff’s injuries as it had transferred possession of the premises at the time of plaintiff’s accident and that neither of the above exceptions apply. As an initial matter, the Lease clearly establishes that Ludlow LLC had transferred possession and control of the premises to MPDRAW at the time of plaintiff’s accident

and that MPDRAW, not Ludlow LLC, was obligated to make all non-structural repairs and to maintain the premises. The rider to the Lease explicitly provides:

Except as otherwise herein specifically provided, Tenant shall, at its own cost and expense, keep and maintain in good repair and order, and in safe condition, and make replacements as required to the interior of the demised premises and any sign erected by Tenant on the exterior, and improvements comprising the demised premises and each and every part thereof, except to structural portions of the Building, which shall be the responsibility of the Landlord. Structural portions shall be deemed to include roof, facade, exterior brick, and any other exterior surface repairs, unless repairs are necessitated by acts of Tenant, its agents, servants, and employees.

Further, plaintiff alleges that her accident arose from broken glass and glass bottles that had accumulated on the floor. This alleged dangerous condition is neither a structural or design defect. Thus, the second exception as set forth above is completely inapplicable.

In opposition, plaintiff has failed to raise a triable issue of fact. Plaintiff contends that a question of fact exists as to Ludlow LLC's liability under the Lease as it had a right to reenter the premises. However, this contention is without merit as a right to reenter is only material if liability in the action is also based upon a structural or design defect contrary to a specific safety provision. Here, as stated above, the dangerous condition that allegedly caused plaintiff's injuries was neither a structural nor a design defect. Thus, the fact that Ludlow LLC had the right to reenter is immaterial.

Additionally, to the extent plaintiff contends that summary judgment should be denied pursuant to CPLR § 3212(f) because discovery remains outstanding, such argument is unavailing. It is well settled that "[a] determination of summary judgment cannot be avoided by a claimed need for discovery unless some evidentiary basis is offered to suggest that discovery may lead to relevant evidence." *Ruttore & Sons Constr. Co. v. Petrocelli Constr.*, 257 A.D.2d 614 (2nd Dept 1999). Here, plaintiff has failed to provide any basis to suggest that further discovery would lead to

