

Thompson v Haque

2015 NY Slip Op 31084(U)

June 23, 2015

Supreme Court, New York County

Docket Number: 152065/14

Judge: Cynthia S. Kern

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

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ROCHELLE THOMPSON,

Plaintiff,

Index No. 152065/14

-against-

DECISION/ORDER

LATIF HAQUE, ELEGANT EYEBROW THREADING
SALON, HATA REALTY CORP., SUB CLUB INC. and
SUBWAY RESTAURANTS, INC.,

Defendants.
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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.....	1
Answering Affidavits and Cross Motion.....	2
Replying Affidavits.....	3
Exhibits.....	4

This is an action to recover damages for personal injuries. Defendant Hata Realty Corp. (“Hata”) now moves pursuant to CPLR § 3212 for summary judgment dismissing all claims and cross-claims asserted against it in this action on the ground that it is an out-of-possession landlord. Plaintiff cross-moves for an order striking defendants Latif Haque, Sub Club Inc. and Subway Restaurants, Inc.’s (collectively referred to herein as “Subway Defendants”) answers for failing to respond to plaintiff’s discovery demands. For the reasons set forth below, Hata’s motion is denied and a determination on plaintiff’s cross-motion shall be held in abeyance

pending oral argument in front of this court.

The relevant facts are as follows. This is a personal injury action. The plaintiff, Rochelle Thompson, was allegedly injured while exiting a Subway Restaurant located at 612 8th Avenue, New York, New York (the "Property"). Specifically, according to plaintiff's bill of particulars, she was at the "entrance/exit ramp" of the Property "when she was caused to slip and fall on a foreign substance on the ramp." The Property is owned by defendant Hata. On June 13, 2007, Hata leased the first floor and basement of the Property to nonparty Carthago Corporation, for a term ending on March 31, 2017 (the "Lease"). On April 22, 2009, Carthago Corporation assigned its interest as tenant of the Property to codefendant Sub Club, Inc. ("Sub Club"). Per the executed Assignment and Assumption and Modification of Lease Agreement, Sub Club "assume[d] the observance and performance of the obligations of Tenant under the Lease." As such, Sub Club was the tenant in possession of the first floor and basement of the Property on the day of the accident.

The court first turns to Hata's motion for summary judgment. 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).

In the present case, Hata's motion for summary judgment is denied as it has failed to establish a prima facie right to summary judgment dismissing all claims against it on the ground

that it is an out-of-possession landowner. “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, summary judgment is inappropriate as, on the evidence presented to the court by Hata, there remains an issue of fact as to whether Hata was contractually obligated to maintain the area where plaintiff’s accident occurred. According to plaintiff’s bill of particulars, the accident occurred in front of the entrance/exit ramp of the Subway restaurant. Hata contends that it was not obligated to maintain this area as Section 45 of the Rider to the Lease explicitly provides that “Tenant [Sub Club] shall maintain all portions of the leased Premises, including all entrances and exits leading to or from the leased Premises, and all glass windows, doors, window sashes, and frames in a safe, clean and neat condition at all times.” While this is true, Paragraph 4 of the Lease, entitled “Repairs,” also provides in pertinent part that “Owner [Hata] shall maintain and repair the public portions of the building, both exterior and interior.” The Lease neither exempts nor includes the “entrance/exit ramp” to the Subway restaurant as a “public portion of the building.” Thus, from the face of the Lease it is ambiguous as to whether Hata was contractually obligated to maintain the area of the Property where plaintiff’s accident occurred and, as such, summary judgment is inappropriate as the court cannot say that as a matter of law Hata cannot be held liable for plaintiff’s injuries.

