

**Klupchak v First E. Wil. Assoc.**

2015 NY Slip Op 32081(U)

January 7, 2015

Supreme Court, New York County

Docket Number: 110617/09

Judge: Geoffrey D. Wright

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This opinion is uncorrected and not selected for official publication.

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: GEOFFREY D. WRIGHT

PART 47

Justice

Anastasia Klupchat

INDEX NO.

110617/09

MOTION DATE

MOTION SEQ. NO.

003

MOTION CAL. NO.

- v -

First East Village Assoc, et al.

The following papers, numbered to were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

1

3

4

Cross-Motion:  Yes  No

*This ~~cross~~ motion is decided in accordance with the annexed hereto decision.*

**FILED**

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JAN 13 2015  
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GEOFFREY D. WRIGHT  
AJSC

Dated: 1/7/15

J.S.C.

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
ANASTASIA KLUPCHAK,

Plaintiff,

Index # 110617/09

-against-

DECISION

FIRST EAST VILLAGE ASSOCIATES,  
BERNARD MCELONE, SUSAN SCHECK,  
TRI-STAR EQUITIES, INC., and ROD FELDMAN,  
Defendants.

**Present:**  
Hon. Geoffrey D. Wright

-----X Acting Justice Supreme Court

RECITATION , AS REQUIRED BY CPLR 2219(A), of the papers considered in the  
review of this Motion/Order for summary judgment.

**FILED**

PAPERS

JAN 13 2015  
NUMBER

Notice of Motion and Affidavits Annexed.....	<b>NEW YORK</b>
Order to Show Cause and Affidavits Annexed.....	<b>COUNTY CLERK'S OFFICE</b>
Answering Affidavits.....	<u>3</u>
Replying Affidavits.....	<u>4</u>
Exhibits.....	<u>        </u>
Other.....cross-motion.....	<u>2</u>

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

On November 15, 2008, Plaintiff, Anastasia Klupchak (“Plaintiff”) fell from a vertical ladder fire escape outside the kitchen of her friend’s apartment in a building (“Building”) located at 82 Second Avenue, and sustained grievous injuries. Defendants First East Village Associates, Bernard Mcelhone, Susan Schenk, Tri-Star Equities, Inc. and Ron Feldman, (“Defendants”) now move, pursuant to CPLR 2221 (a): (1) for leave to reargue this Court’s June 13, 2014 decision

and order (“Decision”) insofar as it denied their motion for summary judgment dismissing plaintiff’s cause of action alleging violation of § 27 of the New York City Building Code; (2) to renew their motion for summary judgment dismissing plaintiff’s causes of action alleging violation of Multiple Dwelling Law (MDL) § 53 and New York City Housing Code § 15; and (3) for clarification of whether the Decision grants defendants partial summary judgment as to MDL § 53 and Housing Code § 15, or denies defendants summary judgment altogether. Klupchak cross-moves for leave to reargue the Decision insofar as it denied her cross motion for partial summary judgment that Multiple Dwelling Law § 53 and Housing Code § 15 are applicable to this action, as a matter of law. Upon reflection, I am granting Klupchak’s cross motion and denying the defendants’ motion.

It is undisputed that, at the time of Klupchak’s accident, the Building was a multiple dwelling, and that both the Building and the fire escape were constructed prior to April 18, 1929. MDL § 53 and Housing Code § 15, which is applicable only when MDL § 53 applies, set forth requirements pertaining to the construction and maintenance of fire escapes. The introductory paragraph of MDL § 53 provides that

“[e]very fire-escape erected after April eighteenth, nineteen hundred twenty-nine, shall be located, arranged, constructed and maintained in accordance with the following provisions:”

MDL § 53 (1) to (8) set forth the requirements applicable to fire escapes erected after April 18, 1929. MDL § 53 (9), however, provides, in relevant part, that:

“[a] wire, chain cable, vertical ladder or rope fire-escape is an unlawful means of egress. Every such fire-escape, if required as a means of egress, shall be removed and replaced by a system of fire-escapes constructed and arranged as provided in this section.”

These two sentences were added by L 1948 ch. 850. The first of these sentence is the only sentence in MDL § 53 that is written in the present tense. The second sentence requires that, when required as a means of egress, fire escapes of the type listed in the first sentence “shall be removed and replaced.” Inasmuch as the 1948 amendment declared fire escapes of the types listed in the first sentence quoted above to be unlawful, if required for egress, and inasmuch as the removal of a fire escape does not come within the location, arrangement, construction or maintenance thereof, the applicability of subsection 9 extends to all fire escapes in existence in 1948, notwithstanding the limitation set forth in the introductory paragraph. Indeed, the 1948 amendment is titled “An Act to amend the multiple dwelling law, in relation to *existing* fire escapes” (emphasis added), without reference to the time at which they were constructed, and the March 19, 1948 memorandum in support of the bill by the Joint Legislative Committee on Housing and Multiple Dwellings states:

“Present provisions of law make a wire, chain cable, vertical ladder or rope fire escape an unlawful means of egress for any existent tenement due to their hazardous construction and inadequacy. Such types of fire escapes are also unlawful for all multiple dwellings built since 1929.

This act proposes to make the same provisions applicable to all types of multiple dwellings erected before 1929 particularly since many hotels and similar type transiently occupied multiple dwellings are presently so equipped.”

*See* New York State Legislative Annual, 1948, 237. Thus, since 1948, fire escapes, such as the one from which Klupchak fell, have been unlawful on any multiple dwelling, regardless of when the building or the fire escape was built.

Accordingly, plaintiff’s cross motion is being granted, and consequently, that branch of defendants’ motion which seeks renewal is being denied, as it would be in any case, inasmuch as the only new fact upon which it purports to be based is the Decision, and that branch which seeks

clarification is being denied as moot.

Finally, that branch of defendants' motion that seeks reargument as to Building Code § 27 is being denied, because defendants' argument, that none of the citations given the Building for violation of the Building Code pertained to the fire escape, is irrelevant to the statement in the Decision, that, if Building Code § 27 were inapplicable to the Building, there would be no basis for the citations.

Accordingly, it is hereby

ORDERED that the motion of defendants First East Village Associates, Bernard Mcelhone, Susan Schenk, Tri-Star Equities, Inc. and Ron Feldman for leave to reargue is denied; and it is further

ORDERED that the motion of plaintiff Anastasia Klupchak for leave to reargue is granted, and upon reargument it is

ORDERED that Klupchak's motion for partial summary judgment is granted to the extent that Multiple Dwelling Law § 53 and New York City Maintenance Code § 15 are held to be applicable to this action, as a matter of law.

Dated: January 7, 2015

  
**GEOFFREY D. WRIGHT**  
**AJSC**

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JUDGE GEOFFREY D. WRIGHT  
Acting Justice of the Supreme Court

**FILED**  
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