

Cardona v City of New York
2015 NY Slip Op 32182(U)
October 22, 2015
Supreme Court, Bronx County
Docket Number: 350294/13
Judge: Elizabeth A. Taylor
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, I.A.S. PART 2

STEVE CARDONA, an infant by mother and natural guardian MARILYN HERNANDEZ,

Plaintiff,

Index No. 350294/13

-against-

DECISION/ORDER

Present:

HON. ELIZABETH A. TAYLOR

THE CITY OF NEW YORK, HOUSING SOLUTIONS
USA, AGUILA, INC., 1625-1631 FULTON AVE.
OWNER, LLC,

Defendants.

1625-1631 FULTON AVE. OWNER, LLC,

Third-Party Plaintiff,

Index No. 83878/14

-against-

INTREPID GROUP, LLC,

Third-Party Defendants.

The following papers numbered 1 to ___ read on this motion, _____

No	On Calendar of	PAPERS NUMBERED
	Notice of Motion-Order to Show Cause - Exhibits and Affidavits Annexed-----	1-2, 3-4
	Answering Affidavit and Exhibits-----	5-6, 7
	Replying Affidavit and Exhibits-----	8
	Affidavit-----	
	Pleadings -- Exhibit-----	
	Stipulation -- Referee's Report --Minutes-----	
	Filed papers-----	

Upon the foregoing papers, this motion has been referred to me for disposition by the Supreme Court Justice at IAS Part 3, pursuant to the published rules of IAS Part 3 and the Administrative Judge.

Motion pursuant to CPLR 3212 for an order granting defendant/third-party plaintiff summary judgment dismissing the complaint and all cross-claims against defendant/third-party plaintiff 1625-1631 Fulton Ave. Owner, LLC. is granted.

Cross-motion pursuant to CPLR 3025(b) for an order amending the summons and complaint to add Intrepid Group, LLC. as an additional defendant is granted.

Plaintiff commenced this action to recover for personal injuries as a result of the alleged sexual assault upon plaintiff Steven Cardona on August 6, 2012, at 1627 Fulton Avenue, Bronx, New York. Plaintiff alleges that he was sexually assaulted by an employee at on the subject premises. 1625-1631 Fulton Ave., owner of the subject premises, leased the subject space to Intrepid. 1625-1631 Fulton Avenue retained a right of re-entry to make any repairs that are the obligation of the landlord or any obligation that Intrepid failed to perform. Thereafter, Intrepid sublet the premises to Housing Solutions.

An out-of-possession landlord is not liable for injuries that occur on the leased premises due to the criminal acts of third parties unless it has retained control over the premises or is contractually obligated to provide security (*see Inger v PVK Development Co., Inc.*, 97 AD3d 895 [3d Dept 2012]). Furthermore, it is well settled that the mere reservation of a right to enter property for the purpose of effecting repairs, without more, does not create a duty on the part of the landlord to assure the safety of the premises (*Apra v Carol Mgt. Corp.*, 190 AD2d 838 [2d Dept 1993]).

It is undisputed that 1625-1631 Fulton Avenue neither maintained control over the subject premises nor was contractually required to provide security. In fact, the record is devoid of any indication that 1625-1631 Fulton Avenue was on actual or constructive notice of the danger, which would create a duty to protect plaintiff from the alleged assault.

Accordingly, 1625-1631 Fulton Avenue has established entitlement to summary

judgment as a matter of law.

The Clerk is directed to: 1) dismiss the action against 1625-1631 Fulton Ave. Owner, LLC.; 2) dismiss 1625-1631 Fulton Ave. Owner, LLC's third-party action; and amend the caption to reflect said dismissals.

Cross-motion pursuant to CPLR § 3025 for leave to amend the summons and complaint to add Intrepid Group, LLC. as a party defendant, is granted, without opposition, as the proposed amendment has not been shown to expose the Intrepid to undue pressure and surprise.

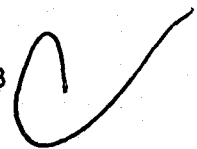
The amended caption shall read as follows.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, I.A.S. PART 3

STEVE CARDONA, an infant by mother and natural guardian MARILYN HERNANDEZ,

Plaintiff,

Index No. 350294/13



-against-

THE CITY OF NEW YORK, HOUSING SOLUTIONS
USA, AGUILA, INC. and INTREPID GROUP, LLC.,
Defendants.

Within thirty days of the date of this order, plaintiff shall: 1) file the supplemental summons and complaint; 2) serve the supplemental summons and complaint upon the defendants; and 3) serve a copy of this order with notice of entry upon the defendants.

Upon the filing of the supplemental summons and complaint and service of a copy of this order with notice of entry upon the trial support Clerk, the Clerk is directed to amend the caption to reflect the addition of Intrepid Group, LLC. as a party

defendant.

The foregoing shall constitute the decision and order of this court.

Dated: OCT 22 2015



A.J.S.C.