

Burgos v OLR LBCE Hous. Dev. Fund Co., Inc.
2016 NY Slip Op 30675(U)
April 14, 2016
Supreme Court Bronx County
Docket Number: 306992/2011
Judge: Sharon A.M. Aarons
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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF BRONX - PART IA- 24

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DEVORAH BURGOS,

Plaintiff(s),

- against -

INDEX NO: 306992/2011

OLR LBCE HOUSING DEVELOPMENT FUND
COMPANY, INC., OLR LBCE HOUSING
DEVELOPMENT FUND COMPANY, INC.,
as Nominee for OLR LBCE, L.P., OLR LBCE, L.P.,
RELIANT REALTY SERVICES, INC., and OMNI
NEW YORK, LLC,

DECISION/ORDER

Defendant(s).

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HON. SHARON A.M. AARONS

Motion by defendants' motion for summary judgment is decided as follows:

Plaintiff, a resident at 2254 Crotona Avenue, Apt B, Bronx, NY, alleges that on January 25, 2011 at 8:30 a.m., while sleeping in her bedroom, she was awakened by the sound of water coming from the ceiling and leaking onto the floor, to the right of her bed. Plaintiff got up to get a bucket from another other room. When she returned and placed the bucket down, a four to five-foot circular piece of ceiling fell and hit her on the right side. Plaintiff alleges that she and her mother, who resided with her, had made numerous complaints to the superintendent, Mr. Garcia, about the leaks since 2008. Following these complaint, the superintendent would only plaster the ceiling; this she claims would temporarily stop the water leakage for short periods of time, but the leak would re-occur.

Defendants seek summary judgment on the ground that plaintiff is unable to prove that they had actual or constructive notice of the alleged hazardous condition. Defendants rely on the testimony of Mr. Taylor, Vice President of Field Operations of defendant Reliant Realty Services (Reliant took over management of the building when it was purchased in November 2010 from defendant OLR LBCE). Mr. Taylor testified that he was involved in the day-to-day management of 100 buildings, including the subject premises. He confirmed that Victor Garcia was the superintendent of the building in January 2011, and that Mr. Garcia was involved in the day-to-day maintenance of the building. Mr. Taylor further testified that during his walk through of the building on the date of purchase, no mention was made to him concerning leaks in the building. He further testified that no leak-related complaints were expressed to him prior to the accident. Further, Mr. Taylor reviewed his records since the date of purchase and found no documentation of reported leaks.

In opposition, plaintiff argues that defendants offer no evidence contradicting plaintiff's testimony that repeated verbal complaints were made to the superintendent (Mr. Garcia) regarding the leaking water and plaster falling from her ceiling. Plaintiff further asserts that Mr. Taylor's testimony is vague and without probative value because he lacked knowledge of the day-to-day management of the building.

The law is clear that on a motion for summary judgment, "the moving party has the burden to establish a *prima facie* showing of entitlement to judgment as a

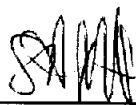
matter of law, tendering sufficient evidence to demonstrate the absence of any material issue of fact." Alvarez v. Prospect Hospital, 68 NY2d 320, 324 (1986). Moreover, a defendant in a premises liability case seeking summary judgment on the basis that it neither created the dangerous condition nor had notice of it must submit credible evidence as to prior inspections or usual maintenance procedures. See DiPini v. 381 E. 160 Equities, LLC, 12 AD3d 465 (1st Dept 2014).

Here, although, Mr. Taylor's testimony suggests that there were no prior complaints of leaks in the ceiling, he did not establish the prior inspections or maintenance procedures, if any, utilized at the premises, and he had little to no knowledge regarding repairs in the building. As a result, the evidence submitted by defendants is insufficient to make a *prima facie* showing of entitlement as a matter of law. In any event, plaintiff's evidence raised a triable issue of fact as to whether defendants had notice of the alleged hazardous condition and whether this condition was a cause of the ceiling collapse.

Accordingly, defendants' motion for summary judgment is denied.

This constitutes the decision of the Court.

Dated: March 14, 2016



Sharon A.M. Aarons, J.S.C.