 FILED May 13 2016 Bronx County Clerk

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF BRONX - PART IA-24

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DEBORAH BRYANT,

Plaintiff(s),

- against - INDEX NO: 300288/2011

THE CITY OF NEW YORK and THE NEW YORK CITY DEPARTMENT OF HOUSING, PRESERVATION & DEVELOPMENT, DECISION/ORDER

Defendant(s).

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HON. SHARON A.M. AARONS

Defendants' motion for summary judgment, is decided as follows:

Plaintiff alleges that, on October 15, 2009 at approximately 2:30 p.m., she slipped and fell in the stairway between the first and second floor landing of her rental premises located at 388-90 Grand Concourse, Bronx, New York. Specifically, she claims that while descending the stairway, she slipped on stairs that had been mopped by the building superintendent, resulting in injuries to her shoulder and back.

Defendants, the City of New York (the City) and the New York City Department of Housing, Preservation and Development (HPD), seek summary judgment on the grounds that the City was an out of possession landowner and, as a result, relinquished control of the leased premises and was not obligated under the terms of the lease to maintain and repair the leased premises. In support, they submit the lease, dated July 1, 2012, between the City, acting through the Department of Housing, Preservation and Development, as lessor, and 388-90

Grand Concourse Tenant Association, as lessee. Pursuant to the lease, the lessee was required to regularly inspect the premises and cause the premises to be maintained and operated in a safe and sanitary condition.

Defendants argue that, at the time of the incident, the lessee was performing its duties and obligations under the terms of the lease and the City had no control over the day-to-day maintenance of the premises. Further, the lease contained an indemnity clause, which states that the lessee shall indemnify and hold the lessor harmless from any and all claims and judgments.

Plaintiff opposes defendants' motion for summary judgment on the ground of equitable estoppel (see Bender v. New York City Health & Hospitals, Corp., 38 NY2d 662 (1976))[1]. Plaintiff argues that the defendants' did not disclose the lease until they sought summary judgment -- at which time the statute of limitations had expired as against the lessee; that defendant's act of withholding the lease therefore prevented plaintiff from bringing a timely action against the lessee; and that defendants' act was intentional or negligent. Moreover, plaintiff asserts that she relied on defendants' repeated acts and omissions that indicated that they owned, controlled and managed the subject property.

In support, plaintiff provided a search with the New York City Department of Finance that revealed there was no lease in effect for the subject property and that

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[1]"We believe that where a governmental subdivision acts or comports itself wrongfully or negligently, including reliance by a party who is entitled to rely and who changes his position to his detriment or prejudice that subdivision should be stopped from asserting a right or defense which it otherwise could have raised." Id. at 668.

the tenants association entity is not listed in any public record database. In addition, plaintiff points to her own testimony that she was aware of the tenants association in the building, and knew the president of the tenant association, Ms. Polanco, to whom tenants directed their complaints. Plaintiff testified that, according to Ms. Polanco, Ms. Polanco could not resolve a complained-of condition until she received direction from HPD. Plaintiff claims that sufficient facts have been adduced to estop defendants from asserting that they are out-of-possession landlords. In addition, plaintiff argues that, based on her testimony, questions of fact exist as to whether defendants, specifically HPD, maintained control of the management of the building.

Lastly, plaintiff argues that defendants are liable for the condition of the premises based on their violation of NYC Administration Code § 27-375(h).[2] She asserts that this regulation is applicable against defendants as the lease agreement states that the lessor shall be permitted to enter and inspect common areas.

In support, plaintiff submits an affidavit stating that she complained to Ms. Polanco about the surface of the stair treads as being torn and worn down, exposing the stairs; Ms. Polanco advised plaintiff that she could do nothing about the stairs without HPD's intervention. In addition, plaintiff submits four color photographs taken in May 2014 showing the stair tread surface completely removed, which plaintiff testified is a fair and accurate depiction of the stairs on which she slipped in 2009.

On a motion for summary judgment, the moving party has the burden to

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[2] NYC Administrative Code §27-375(h) provides: "Stair construction... Treads and landings shall be built of, or surfaced with, non-skid materials."

establish a *prima facie* showing of entitlement to judgment as a matter of law tendering sufficient evidence to demonstrate the absence of any material issues of fact. See Alvarez v. Prospect Hospital, 68 NY2d 320, 324 (1986). This drastic remedy should not be granted where there is any doubt as to the existence of triable issues, or where the issue is "arguable"; issue finding, rather than issue determination, is the key. See Stillman v. Twentieth Century-Fox, 3 NY2d 395 (1957).

Here, defendants made a *prima facie* showing of entitlement to judgment as a matter of law. The lease revealed the City was an out-of-possession landowner and the lease required the lessee (388-90 Grand Concourse Tenant Association) to maintain and operate the premises in a safe condition. However, plaintiff raised a triable issue of fact with respect to whether defendant HPD maintained control of the management of the building. Moreover, plaintiff established a question of fact as to whether defendants violated NYC Administrative Code §27-375(h) and whether this violation was a proximate cause of plaintiff's slip and fall.

Thus, defendants' motion is denied.

This constitutes the decision and order of this Court.

Dated: May 9, 2016

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