

Barreiro v New York City Hous. Auth.

2017 NY Slip Op 32805(U)

January 8, 2017

Supreme Court, Bronx County

Docket Number: 300867/2012

Judge: Llinet M. Rosado

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 25

ZOBEIDA BARREIRO,

Plaintiff,

INDEX NUMBER:300867/2012

-against-

Present:

HON. **LLINÉT M. ROSADO**

NEW YORK CITY HOUSING AUTHORITY,
Defendant.

NEW YORK CITY HOUSING AUTHORITY,
Third Party Plaintiff,

-against-

THIRD PARTY

INDEX NUMBER:42060/2012

DIONICIO SANTOS and MARINA SANTOS,
Third Party Defendants.

Defendant NEW YORK CITY HOUSING AUTHORITY (hereinafter “NYCHA”) moves this Court for an order pursuant to CPLR 3212 dismissing the plaintiff’s complaint. Plaintiff opposes the motion and the NYCHA submitted a reply.

The within action arises out of injuries sustained by the plaintiff on May 25, 2011 when she slipped and fell due to a puddle of water that had formed in the hallway outside her bathroom as a result of a leak in the ceiling in the hallway of Apartment 3F where she resided at 1160 Burke Avenue, Bronx, New York 10469. Said building is part of the Eastchester Garden Houses and is owned by NYCHA.

NYCHA seeks summary judgment dismissing the complaint as against it, arguing that, as a matter of law, NYCHA is not liable to plaintiff. Specifically, NYCHA argues that there is no evidence that NYCHA had actual or constructive notice of the hazardous condition complained of that allegedly caused plaintiff’s accident. NYCHA argues that plaintiff admitted that the puddle was not present earlier that day before she left for work and that she was not aware of the puddle until she slipped on it immediately after returning from work late at night. NYCHA argues that plaintiff admitted that she had not complained about a ceiling leak at this particular location in her apartment

prior to her fall and that NYCHA, through its submissions herein, established that any complaints previously made by plaintiff prior to her fall were related to other areas of her apartment and had been addressed and remedied prior to the incident complained of herein.

In support of the motion, NYCHA submits a memorandum of law; a copy of the notice of claim filed by plaintiff; a copy of the summons and complaint; a copy of NYCHA's verified answer, demand for a verified bill of particulars; a copy of plaintiff's verified bill of particulars; a copy of the March 19, 2013 Preliminary Conference Order; a copy of the October 21, 2014 Compliance Conference Order; a copy of the September 29, 2015 Compliance Conference Order; a copy of plaintiff's deposition transcript; a copy of the property manager of Eastchester Garden Houses Michelle Pulley's deposition transcript; a copy of NYCHA's work tickets referring to plaintiff's apartment; a copy of the Note of Issue; and a copy of last complaint plaintiff gave NYCHA about a leak in her apartment on October 26, 2010.

Plaintiff opposes the motion. The plaintiff notes that NYCHA has failed to provide complete discovery and have further failed to comply with each Court Order with regard to the exchange of discovery. As such, plaintiff argues that much of the discovery that NYCHA failed to disclose included the very proof of notice that they seek to use as subject for instant motion. Plaintiff also argues that NYCHA's actions warrant Spoliation charges. Plaintiff contends that her papers and exhibits confirm that the NYCHA was upon actual and constructive notice of the chronic water leaking conditions that led plaintiff to slip and fall. Additionally, plaintiff contends that NYCHA's own records and witness testimony also confirms actual notice of the defective and hazardous water leaking conditions that caused plaintiff to slip and fall. Plaintiff argues that NYCHA failed to meet its burden but that plaintiff had raised triable issues of fact warranting denial nonetheless. Plaintiff also argues NYCHA's claim for preclusion should be denied.

In support of her opposition, plaintiff submits copies of Preliminary Conference Order dated March 19, 2013 and two Compliance Orders dated October 21, 2014 and September 29, 2015; plaintiff's letters to NYCHA seeking compliance with the multiple Court orders; a copy of plaintiff's notice for discovery and inspection with references to EBT transcripts; NYCHA's response to plaintiff's notice for discovery and inspection; a copy of plaintiff's supplemental bill of particulars in response to NYCHA's demands; copies of water related complaints regarding plaintiff's

apartment; and a copy a May 25, 2011 NYCHA Tenant Record Report.

In reply, NYCHA argues that plaintiff has failed to offer any evidence sufficient to demonstrate that a material question of fact exists.

On motions for summary judgment, the court's function is issue finding rather than issue determination. see *Sillman v Twentieth Century Fox Film Corp.*, 3 NY2d 395 (1957); *Rose v DaEcib USA*, 259 AD2d 258, 686 NYS 2d 19 (1st Dept, 1999). Since summary judgment is a drastic remedy, it should not be granted where there is any doubt as to the existence of a triable issue. see *Rotuba Extruders v Ceppos*, 46 NY 2d 223 (1978); *Sillman v Twentieth Century Fox Film Corp*, *supra*.

The proponent of a motion for summary judgment has the initial burden of the production of sufficient evidence to demonstrate, as a matter of law, the absence of any material issue of fact. see *Alvarez v Prospect Hospital*, 68 NY 2d 320. Once the initial burden has been satisfied, the burden then shifts to the party opposing the motion to produce sufficient evidence in admissible form to establish the existence of a triable issue of fact. see *Zuckerman v City of New York*, 49 NY 2d 557.

In the case at bar, NYCHA has failed to establish a *prima facie* entitlement to summary judgment in that evidence contrary to NYCHA's denial of notice of the hazardous condition causing plaintiff's accident raises triable issues not addressed in NYCHA's moving papers. see *Perez v 2305 University Ave, LLC*, 78 AD 3d 462, 911 NYS 2d 38, 2010 NY Slip Op 08006 (1st Dept 2010). Assuming, *arguendo*, NYCHA had met its burden, the Court would nonetheless deny the motion as the totality of plaintiff's submissions raise triable issues with respect to NYCHA's notice of condition. see *David v New York City Housing Authority*, 284 AD2d 169, 727 NYS 2d 404, 2001 NY Slip Op 05456 (1st Dept 2001); *Dones v New York City Housing Authority*, 81 AD3d 554, 917 NYS2d 186, 2011 NY Slip Op. 01348 (1st Dept 2011).

Accordingly, it is hereby

ORDERED that NYCHA's motion seeking dismissal pursuant to CPLR§ 3212 is denied; it is further

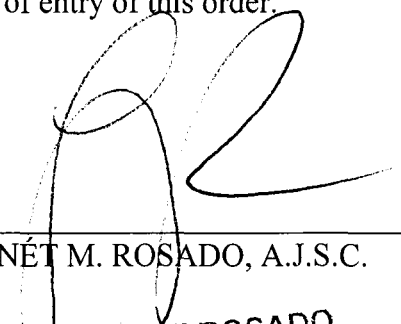
ORDERED that NYCHA's application for preclusion and plaintiff's application for the Spoilation Charge are hereby denied; it is further

ORDERED hat NYCHA shall serve a copy of this order with Notice of Entry upon the

Plaintiff and Third Party Defendants within thirty (30) days of entry of this order.

This constitutes the decision and order of the court.

Dated: January 8, 2017



LLINET M. ROSADO, A.J.S.C.
HON. LLINET ROSADO