

Slote v 200 W. 58th St.
2018 NY Slip Op 30693(U)
April 19, 2018
Supreme Court, New York County
Docket Number: 150346/16
Judge: Paul A. Goetz
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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

Hon. Paul A. Coetz, JSC

PRESENT: _____
Justice

PART 47

slate 1

-v-

200 West 58th Street

INDEX NO. 150346/16

MOTION DATE _____

MOTION SEQ. NO. 001

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause – Affidavits – Exhibits _____ No(s) 1

Answering Affidavits – Exhibits _____ No(s) 2 + 3

Replying Affidavits _____ No(s) 4

Upon the foregoing papers, it is ordered that this motion is

The Braxton Defendants now move for summary judgment seeking dismissal of plaintiffs' claims. The Braxton Defendants argue that they cannot be held liable because it was the landlord, and not them, that was responsible for replacing the enclosure. They argue that their sole involvement with the building was to perform Local Law 11 inspections, which included inspecting the plaintiffs' apartment to determine if the enclosure needed to be demolished in order to make repairs due to water leakage into the apartment. The Braxton Defendants claim that their recommendation to the landlord for removal of the enclosure was not false and was based on the condition of the property. In support, they submit an affidavit from defendant Marino, the engineer who performed the inspection, who states that his recommendation was based on his observations and is consistent with a prior recommendation from another engineer. In response, plaintiffs point out that the Braxton Defendants' letter to the landlord recommending demolition of the enclosure due to water leakage is contradicted by their contemporaneous Local Law 11 report submitted to the DOB in which the Braxton Defendants state that there was "no water intrusion into the building." According to plaintiffs, one of these statements must be false and it is likely the statement made to the landlord rather than the DOB. Plaintiffs also submit an affidavit from their own engineer who performed an inspection of the property in 2016 and found that none of the repair work that had been performed by the landlord required removal of the enclosure. This evidence is sufficient to raise an issue of fact with respect to the Braxton Defendants' recommendation and accordingly plaintiffs' claims cannot be dismissed on this basis. *Mason v. Dupont Direct Fin. Holdings*, 302 A.D.2d 260, 262 (1st Dep't 2003)

FOR THE FOLLOWING NO. 4580049

Dated: _____
↓

see page 4, J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

Hon. Paul A. Goetz, JSC

PRESENT: _____
Justice

PART 47

State
-v-
200 West 58th Street

INDEX NO. 150 346/16

MOTION DATE _____

MOTION SEQ. NO. 001

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). 1

Answering Affidavits — Exhibits _____ No(s). 273

Replying Affidavits _____ No(s). 4

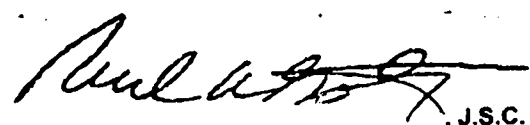
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Finally, the Braxton Defendants also note in their motion papers that they seek dismissal of the landlord's cross-claims against them for contractual and common law contribution and indemnification. The Braxton Defendants do not assert any additional arguments with respect to these claims and for the reasons stated above, they will not be dismissed. Accordingly, it is

ORDERED that the Braxton Defendants' motion is denied.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 4/19/18


_____, J.S.C.

Hon. Paul A. Goetz, JSC

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(2/0F(4)