

Cortes v Seventh Regiment Armory Conservancy, Inc.
2018 NY Slip Op 32828(U)
October 25, 2018
Supreme Court, New York County
Docket Number: 156592/2015
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

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DAISY CORTES,

Index No. 156592/2015

Plaintiff

- against -

DECISION AND ORDER

SEVENTH REGIMENT ARMORY CONSERVANCY,
INC., and PARK AVENUE ARMORY
CONSERVANCY,

Defendants

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LUCY BILLINGS, J.S.C.:

Plaintiff sues defendants for personal injuries sustained July 8, 2012, when she stepped through a floor panel into a hole in third floor premises leased by her employer in a building at 643 Park Avenue, New York County, where defendant Seventh Regiment Armory Conservancy, Inc., leased the first, second, and fourth floors. Defendants move for summary judgment dismissing the complaint. C.P.L.R. § 3212(b). First they maintain that no entity named Park Avenue Armory Conservancy, named as Seventh Regiment Armory Conservancy's co-defendant, was associated with 643 Park Avenue, whether through ownership, rental, possession, occupancy, or use of the premises, during or before 2012. Second, defendants maintain that, while Seventh Regiment Armory Conservancy leased other floors at 643 Park Avenue during and before 2012, this defendant never owned, leased, possessed, occupied, or used the third floor or owed any duty to maintain or repair the third floor or the structure beneath the third floor.

Plaintiff claims Seventh Regiment Armory Conservancy created the condition that caused the floor panel to become unsecured and to give way under her, through this tenant's major construction repairing and replacing structural components in its leased space, particularly replacement of windows in the fourth floor space in 2006, almost six years before plaintiff's injury. While Seventh Avenue Armory Conservancy's lease for its space, which defendants present in support of their motion, provides for such construction, plaintiff relies also on unauthenticated photographs, which the court may not consider in opposition to summary judgment, to show that the windows in the fourth floor space are behind a parapet outside the third floor space. Rivera v. GT Acquisition 1 Corp., 72 A.D.3d 525, 526 (1st Dep't 2010); Hanley v. McClier Corp., 63 A.D.3d 453, 455 (1st Dep't 2009); Coleman v. Maclas, 61 A.D.3d 569, 569 (1st Dep't 2009). See People v. Price, 29 N.Y.3d 472, 477-78 (2017). She then points out that the loose floor panel that broke under her was near the windows in the third floor space.

Plaintiff does not indicate that the photographs on which she relies are among the photographs defendants present, entitling her to rely on them even if they are unauthenticated. Mitchell v. Calle, 90 A.D.3d 584, 585 (1st Dep't 2011); Ayala v. Douglas, 57 A.D.3d 266, 267 (1st Dep't 2008); Navedo v. Jaime, 32 A.D.3d 788, 789-90 (1st Dep't 2006); Thompson v. Abbasi, 15 A.D.3d 95, 97 (1st Dep't 2005). See Joseph v. Board of Educ. of the City of N.Y., 91 A.D.3d 528, 529 (1st Dep't 2012); Dembele v.

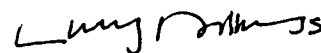
Cambisaca, 59 A.D.3d 352 (1st Dep't 2009); Hernandez v. Almanzar, 32 A.D.3d 360, 361 (1st Dep't 2006). Nevertheless, even if her photographs are the same, and the court considers them, the record reveals no evidence that replacement of windows in the fourth floor space, for which Seventh Regiment Armory Conservancy's lease provides, actually occurred. No evidence indicates that any replacement of windows in the fourth floor space affected the parapet outside the third floor space, that the impact on the parapet in turn affected the windows in the third floor space above the loose panel in the floor below, and that the impact on these windows in turn dislodged the floor panel.

To find a factual question whether Seventh Regiment Armory Conservancy's replacement of windows in its fourth floor space dislodged the floor panel below windows in the third floor space would stretch permissible inferences to the point of sheer speculation. E.g., Ortiz v. Lynch, 105 A.D.3d 584, 585 (1st Dep't 2013); Beloff v. Gerges, 80 A.D.3d 460, 460-61 (1st Dep't 2011). See People v. Ford, 66 N.Y.2d 428, 441-42 (1985); People v. Way, 59 N.Y.2d 361, 366-67 (1983). Nor does plaintiff claim the need for disclosure under C.P.L.R. § 3212(f) to try to draw a connection, having filed a note of issue February 26, 2018, signaling that disclosure is complete. 22 N.Y.C.R.R. § 202.21(b); Arons v. Jutkowitz, 9 N.Y.3d 393, 411 (2007); Fernández v. City of New York, 84 A.D.3d 595, 596 (1st Dep't 2011); Chichilinsky v. Trustees of Columbia Univ. in City of

N.Y., 52 A.D.3d 206, 206 (1st Dep't 2008); Melcher v. City of New York, 38 A.D.3d 376, 377 (1st Dep't 2007). See Madison v. Sama, 92 A.D.3d 607, 607 (1st Dep't 2012); Ahroner v. Israel Discount Bank of N.Y., 79 A.D.3d 481, 483 (1st Dep't 2010). Therefore the court grants defendants' motion for summary judgment dismissing the action against defendant Seventh Regiment Armory Conservancy, Inc. C.P.L.R. § 3212(b).

Finally, plaintiff presents no evidence rebutting the affidavit by Wayne Lowery, Seventh Regiment Armory Conservancy's Director of External Operations and Director of Security over the past 11 years. He attests that no entity named Park Avenue Armory Conservancy was associated with 643 Park Avenue during his employment there, whether through ownership, rental, possession, occupancy or use of any part of the premises. Therefore the court also grants defendants' motion for summary judgment dismissing the action against defendant Park Avenue Armory Conservancy. Id. Plaintiff's remedy lay against the undisputed owner of the building, the State of New York.

DATED: October 25, 2018



LUCY BILLINGS, J.S.C.

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