

Allan v 31 E. 1st St. Assoc., L.p.
2019 NY Slip Op 30011(U)
January 3, 2019
Supreme Court, New York County
Docket Number: 159117/2015
Judge: Barbara Jaffe
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART IAS MOTION 12EFM

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KRISTI ALLAN,

Plaintiff,

- v -

31 EAST 1ST STREET ASSOCIATES, L.P., BIG
APPLE MANAGEMENT,

Defendants.

INDEX NO. 159117/2015

MOTION DATE _____

MOTION SEQ. NO. 004

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77

were read on this motion to/for JUDGMENT - SUMMARY.

HON. BARBARA JAFFE:

By notice of motion, defendants move pursuant to CPLR 3212 for an order summarily dismissing the complaint. Plaintiff opposes.

I. UNDISPUTED FACTUAL BACKGROUND

Beginning in September 2014, plaintiff rented a first-floor apartment in the subject building owned and managed by defendants. Sometime after plaintiff's tenancy began, defendants' building superintendent installed a smoke detector in her apartment and tested it to ensure its operability. (NYSCEF 64).

On December 10, 2014, plaintiff was roused from her sleep by someone banging on the wall of the apartment and yelling "fire, get out of the building." Plaintiff safely exited the building and returned approximately three hours later to retrieve her belongings. Her apartment and belongings smelled like smoke but were not damaged. Her clothing was successfully dry cleaned. (NYSCEF 63).

The New York City Fire Department (FDNY) responded to the fire and issued two fire incident reports following its investigation into the cause of the fire. In the first report, written on the date of the fire, it concludes that the fire was caused by “electrical wiring,” originating in combustible material, or wire insulation, that was located in the right rear bedroom of the basement apartment, approximately two feet east of the west wall of the bedroom, six feet north of the south wall, and “approximately one foot from floor level.” The fire had extended to the bed, box spring, dresser, and walls, ceiling, floor, and contents. In an amended report, dated January 8, 2015, it is reported that upon the arrival at the scene by the FDNY, smoke was emanating from the basement apartment door, heavy smoke was inside the apartment, and a fire was in the rear of the apartment. As the fire had been confined to the basement apartment, it did not reach plaintiff’s apartment. A smoke detector in the basement apartment had alerted its occupants to the smoke and fire. The report reflects that “cause under investigation.” (NYSCEF 65).

No complaint from the tenant of the basement had been lodged with defendants’ superintendent before the fire. (NYSCEF 64).

Plaintiff filed an action claiming that defendants negligently caused the fire which resulted in her sustaining physical and emotional injuries and property damage. (NYSCEF 1).

II. ANALYSIS

A premises owner, in moving for summary dismissal, must establish, *prima facie*, that it maintained the premises in a reasonably safe condition and neither created nor had actual or constructive notice of a dangerous condition. (*Black v Kohl’s Dept. Stores, Inc.*, 80 AD3d 958 [3d Dept 2011]; *Mitchell v City of New York*, 29 AD3d 372 [1st Dept 2006]).

Here, the FDNY first concluded that the fire had been caused by wire insulation located within the basement apartment and not inside a wall, and to the extent that plaintiff alleges that the FDNY had concluded that the building's wiring was faulty it is not supported. Consequently, plaintiff fails to raise a triable issue in opposition to defendants' *prima facie* demonstration that they had no actual or constructive notice of the condition of the wire insulation or that they did not proximately cause the fire. (See *Robertson v New York City Hous. Auth.*, 58 AD3d 535 [1st Dept 2009] [fire marshal report, which showed that fire originated in electrical cords on apartment floor, demonstrated absence of factual issue as to whether building's wiring was defective]; *Andrews v New York City Hous. Auth.*, 66 AD3d 619 [2d Dept 2009] [defendant entitled to summary judgment based on fire and incident report and investigating fire marshal's report, as marshal determined cause of fire was electrical cord that ignited combustible materials and that nearby outlet and receptacles were not cause of fire]; *Delgado v New York City Hous. Auth.*, 51 AD3d 570, 571 [1st Dept 2008], *lv denied* 11 NY3d 706 [defendant submitted evidence that fire caused by problematic extension cord situated in combustible material, rather than defect in wiring system or outlet]; *Graham v New York City Hous. Auth.*, 42 AD3d 323 [1st Dept 2007], *lv denied* 9 NY3d 816 [fire department found no evidence that building's wiring contributed to fire's origin]).

Under the circumstances, namely, that there are two incident reports, the first of which states the cause of the fire, and absent any indication that any further investigation uncovered anything to the contrary, no issue of fact is raised by the second report.

Defendants also establish, *prima facie*, that they had installed an operational smoke detector in plaintiff's apartment within no less than 10 weeks before the fire, and even assuming that it was not working at the time of the fire, plaintiff does not show that it was defendants' duty

to replace it. (Administrative Code § 27-2045; *see Vanderlinde v 600 W. 183rd St. Realty Corp.*, 101 AD3d 583 [1st Dept 2012] [landlord entitled to judgment as it showed it had no duty to maintain, repair or replace smoke detector in tenant's apartment, having installed functional smoke detector within one year of fire and received no written notice of inoperable detector within one year of its installation]; *Curry v 1716 Ave. T Realty, LLC*, 89 AD3d 978 [2d Dept 2011] [defendant established that apartment contained operational smoke detector when tenancy began]; *Fairclough v 679 Magenta LLC*, 309 AD2d 619 [1st Dept 2003] [complaint dismissed in action where tenant injured in apartment fire and alleged proximate cause of injury was absence of working smoke detector; landlord had no duty to maintain or replace smoke detector after commencement of tenant's occupancy]).

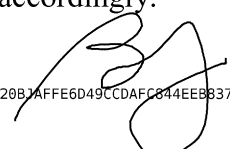
Moreover, even if defendants had a duty to maintain a working smoke detector and failed to do so, they establish, *prima facie*, that the alleged violation was not the proximate cause of plaintiff's alleged damages, as it is undisputed that she exited her apartment safely and without any physical injury. (*See Nguyen v Prime Residential Bronx R & R V*, 307 AD2d 201 [1st Dept 2003] [function of smoke detector is to alert residents to presence of smoke "so they may then take action, if appropriate, to suppress the fire or, if necessary, to escape its spread."]; *Gilley v New York City Housing Auth.*, 217 AD2d 493 [1st Dept 1995] [purpose of smoke detector "is to sound a loud alarm upon the detection of smoke and to thereby alert sleeping or otherwise unaware persons that a fire is afoot and danger of injury is presenting itself]; *see also Poree v New York City Housing Auth.*, 139 AD3d 528 [1st Dept 2016] [alleged failure to provide operational smoke detector not proximate cause of plaintiff's injuries as he had time to exit apartment without injury but instead tried to extinguish flames]; *Acevedo v Audubon Mgt., Inc.*, 280 AD2d 91 [1st Dept 2001] [even if owners failed to install smoke detectors in apartment,

plaintiff could not show that failure was proximate cause of decedent’s death absent evidence from which it could be inferred that deceased was not timely alerted to fire; testimony indicated that although fire started while deceased was asleep, deceased’s wife woke him before leaving apartment to seek help]; *compare Nguyen* 307 AD2d at 201 [plaintiff raised triable issue as to whether working smoke detector would have given her earlier warning of fire and thereby prevented injuries, where fire in her apartment started while she was asleep and when she awoke, smoke and flames were already present]; *Lein v Czaplinski*, 106 AD2d 723 [3d Dept 1984] [fire chief testified that properly positioned smoke detector would have given adequate warning of fire and coroner testified that decedent was sleeping when fire started and then awakened and tried to escape but was too overcome by smoke to do so, thereby establishing proximate cause between failure to install smoke detector properly and decedent’s death]). Plaintiff raises no triable issue.

III. CONCLUSION

Accordingly, it is hereby

ORDERED, that defendants’ motion for summary judgment is granted, and the complaint is dismissed in its entirety, with costs and disbursements to defendants upon submission of an appropriate bill of costs, and the clerk is directed to enter judgment accordingly.


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BARBARA JAFFE, J.S.C.

1/3/2019
DATE

CHECK ONE:

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<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN

CHECK IF APPROPRIATE: