

Alberico v LDG Bldrs. LLC

2019 NY Slip Op 31900(U)

June 28, 2019

Supreme Court, New York County

Docket Number: 154621/2016

Judge: Kathryn E. Freed

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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

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2EFM

Justice

-----X INDEX NO. 154621/2016

AMANDA ALBERICO,

MOTION SEQ. NO. 004

Plaintiff,

- v -

LDG BUILDERS LLC, ATC PLUMBING & MECHANIC INC., ATC
CONSTRUCTION GROUP, RIVERSIDE UNIT C, LLC, AE DESIGN
INC. D/B/A ANDRES ESCOBAR & ASSOCIATES, NEST
SEEKERS INTERNATIONAL LLC, HALSTEAD MANAGEMENT
COMPANY, LLC, LEV ASSET MANAGEMENT, LLC, and A.T.C.
CONSTRUCTION GROUP CORP.,

DECISION AND ORDER

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 105, 106, 107, 108,
109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 129, 130, 131, 132

were read on this motion for SUMMARY JUDGMENT

Upon the foregoing documents, it is ordered that the motion is **granted**.

In this personal injury action, defendant Halstead Management Company, LLC (“Halstead”) moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint and all cross claims. Only plaintiff Amanda Alberico opposes the motion. After oral argument, and after reviewing the parties’ papers and the relevant statutes and caselaw, it is ordered that the motion is **granted**.

Plaintiff commenced this action by filing a summons and complaint on October 13, 2016. (Doc. 107.) In the complaint, she alleges that she was struck by a plank of decorative wood that fell upon her as she sat at her work desk at Nest Seekers International in Manhattan. (*Id.* at 9.) So far in this action, depositions for defendants Halstead, ATC Construction Group, AE Design Inc.

d/b/a Andres Escobar & Associates, and Nest Seekers International LLC (“Nest Seekers”) have been held. (Docs. 112–15.) Plaintiff’s deposition has also been held. (Doc. 111.)

Defendant Halstead now moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint and all cross claims on the basis that it had nothing to do with the wooden plank that purportedly fell on plaintiff. (Doc. 106.) With respect to the office space in the building that was being used by co-defendant Nest Seekers, Halstead’s deposition testimony makes clear that the only involvement it had was to ensure that any contractors working in the space had proper insurance. (Doc. 1115 at 15.) In fact, nobody from Halstead even observed the work that had been done, or was being done, in the space. (*See id.*) Halstead has therefore established its prima facie entitlement to summary judgment by showing that it did not create or have notice of the dangerous condition. (*Langer v 116 Lexington Ave., Inc.*, 92 AD3d 597, 598 [1st Dept 2012] (in premises liability cases, a “defendant moving for summary judgment has the initial burden of showing that it did not create a dangerous condition, or have actual or constructive notice of a dangerous condition.”).)

Plaintiff’s sole argument in opposition is that the motion must be denied because this Court, in a prior order rendered on November 30, 2018, granted plaintiff’s motion (motion sequence 003) to add additional parties as defendants. (Docs. 119; 129.) Plaintiff argues that “these new and additional parties may have relevant information or share in the culpability for causing this accident” (Doc. 129 at 2.) However, plaintiff offered no such new arguments when the motion was argued. That discovery is still outstanding does not bar summary judgment in this situation. (*See Chem. Bank v PIC Motors Corp.*, 58 NY2d 1023, 1026 [1983] (summary judgment granted where opposition failed to tender an affidavit averring the existence of evidence that would present a triable issue of fact).)

In accordance with the foregoing, it is hereby:

ORDERED that the motion by defendant Halstead Management Company, LLC to dismiss the complaint and all cross claims is granted; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal of Halstead Management Company, LLC and that all future papers filed with the court bear the amended caption; and it is further


ORDERED that, within 30 days after this order is filed with NYSCEF, counsel for defendant Halstead Management Company, LLC is to serve a copy of this order with notice of entry on all parties and on the General Clerk's Office at 60 Centre Street, Room 119, and the Clerk is directed to note the change in the caption; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment dismissing all claims against defendant Halstead Management Company, LLC; and it is further

ORDERED that the parties are to appear for a status conference on August 13, 2019 at 2:15 PM in Room 280 at 80 Centre Street; and it is further

ORDERED that this constitutes the order and decision of this Court.

6/28/2019
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE