

Yong Jun Li v A.Z.N. Realty LLC
2019 NY Slip Op 33780(U)
December 24, 2019
Supreme Court, New York County
Docket Number: 160401/2015
Judge: Lucy Billings
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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 NEW YORK: PART 46

YONG JUN LI,

Index No. 160401/2015

Plaintiff

- against -

DECISION AND ORDER

A.Z.N. REALTY LLC,

Defendant

LUCY BILLINGS, J.S.C.:

Plaintiff, an employee of Café China restaurant at 13 East 37th Street, New York County, sues defendant owner of the building for injuries sustained June 14, 2015, when plaintiff fell as he ascended the restaurant's interior staircase from the basement to the ground floor. He testified at his deposition that, when he stepped on the third stair from the bottom, the marble tread broke and detached from and slid off the staircase.

I. DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Defendant moves for summary judgment dismissing the complaint based on defendant's contention that its lease with its tenant Café China imposed on the tenant the duty to repair any unsafe or defective condition, even a structural condition, of the staircase, but defendant fails to authenticate the lease in support of the motion. B & H Florida Notes LLC v. Ashkenazi, 149 A.D.3d 401, 403 n.2 (1st Dep't 2017); AO Asset Mgt. LLC v. Levine., 128 A.D.3d 620, 621 (1st Dep't 2015); IRB-Brasil Resseguros S.A. v. Portobello Intl. Ltd, 84 A.D.3d 637, 638 (1st

Dep't 2011); Bermudez v. Ruiz, 185 A.D.2d 212, 214 (1st Dep't 1992). Although Xian Zhang testified at his deposition that he and his wife signed a lease for the restaurant space on Café China's behalf, the lease was not presented to him at his deposition.

Even assuming that the lease obligated Café China to effect structural repairs of the stairs, defendant concedes that the lease entitled defendant to re-enter the leased premises. Therefore, if the condition of the stairs constituted a structural hazard or defect that violated a statutory safety provision, the owner of the premises remains liable for the condition based on actual or constructive notice of the condition. Guzman v. Haven Plaza Hous. Dev. Fund Co., 69 N.Y.2d 559, 566-67 (1987); Marie D. v. Roman Cathoic Church of the Sacred Heart, 161 A.D.3d 448, 448 (1st Dep't 2018); Yuying Oiu v. J&J Grocery & Deli Corp., 115 A.D.3d 627, 627 (1st Dep't 2014); Quing Sui Li v. 37-65 LLC, 114 A.D.3d 538, 539 (1st Dep't 2014). Defendant building owner is considered on notice of a building condition in violation of a statute. Hakim v. 65 Eighth Ave., LLC, 42 A.D.3d 374, 374 (1st Dep't 2007); Pirraglia v. CCC Realty NY Corp., 35 A.D.3d 234, 235 (1st Dep't 2006); Lopez v. 1372 Shakespeare Ave. Hous. Dev. Fund Corp., 299 A.D.2d 230, 231 (1st Dep't 2002).

II. PLAINTIFF'S CROSS-MOTION TO AMEND HIS COMPLAINT AND BILL OF PARTICULARS

Plaintiff cross-moves to amend his complaint and bill of particulars to claim defendant's violations of New York City

Building Code § 1001.3, which requires that "means of egress shall be maintained in accordance with the New York City Fire Code," and Fire Code §§ 1027.1 and 1027.3. Fire Code § 1027.1 requires that "the means of egress for buildings . . . or parts thereof, shall be maintained." Section 1027.3 requires that "all required means of egress . . . shall be continuously maintained free from obstructions and impediments to immediate use." Violations of New York City Building and Fire Code provisions qualify as violations of statutory safety provisions for which the owner of the premises remains liable. Lopez v. 1372 Shakespeare Ave. Hous. Dev. Fund Corp., 299 A.D.2d at 231. See Marie D. v. Roman Cathoic Church of the Sacred Heart, 161 A.D.3d at 448; Levine v. 425 Madison Assoc., 138 A.D.3d 606, 607 (1st Dep't 2016); Drotar v. 60 Sweet Thing, Inc., 106 A.D.3d 426, 427 (1st Dep't 2013); Heim v. Trustees of Columbia Univ. in the City of N.Y., 81 A.D.3d 507, 507 (1st Dep't 2011).

Plaintiff maintains that defendant was well aware of the stairs' condition that impeded their use. He described the stairs' treads as "mostly cracked" with visible dirt embedded in the cracks. Zhang confirmed upon repeated questioning that, from the commencement of the lease in 2011 until plaintiff's injury, defendant's owner and the owner's son who assisted in managing the building inspected the leased premises once or twice per year. The owner and his son both had used the stairs that broke under plaintiff, because the stairs led to Zhang's office, and thus had observed the cracked, worn, and insecure treads, which

posed an impediment to their use.

Leave to amend pleadings is to be freely granted unless it would surprise or otherwise prejudice the opposing party.

C.P.L.R. § 3025(b); Davis v. South Nassau Communities Hosp., 26 N.Y.3d 563, 580 (2015); Kimso Apts., LLC v. Gandhi, 24 N.Y.3d 403, 411 (2014); Global Liberty Ins. Co. v. Tyrell, 172 A.D.3d 499, 500 (1st Dep't 2019); Y.A. v. Conair Corp., 154 A.D.3d 611, 612 (1st Dep't 2017). Defendant does not maintain that the court must deny plaintiff's proposed amendments because they lack merit, see Davis v. South Nassau Communities Hosp., 26 N.Y.3d at 580; Thomas Crimmins Contr. Co. v. City of New York, 74 N.Y.2d 166, 170 (1989); Reyes v. BSP Realty Corp., 171 A.D.3d 504, 504 (1st Dep't 2019); Y.A. v. Conair Corp., 154 A.D.3d at 612, but maintains that his delay in amending his complaint and bill of particulars has prejudiced defendant because the amendments amount to a new theory of liability, and defendant moved for summary judgment based on the originally claimed theories.

Defendant must demonstrate actual prejudice to warrant the denial of permission to amend the complaint or bill of particulars; defendant's speculation as to potential prejudice is insufficient. Eshaghian v. Eshaghian, 170 A.D.3d 416, 416 (1st Dep't 2019); Flowers v. 73rd Townhouse LLC, 149 A.D.3d 420, 421 (1st Dep't 2017); Spitzer v. Schussel, 48 A.D.3d 233, 234 (1st Dep't 2008). Unquestionably, plaintiff's original complaint and bill of particulars claimed defendant's failure to maintain the stairs according to New York City codes. Notably, defendant

fails to specify what, given plaintiff's proposed amendments, it now would claim as its defense that it has not already claimed. The Building and Fire Code violations that plaintiff now seeks to add stem from the same conditions and conduct that formed the basis of his original claims. These added violations do not require defendant to conduct any further investigation or gather further evidence, mitigating any concerns about stale evidence. Plaintiff's proposed amendments, at most, extrapolate on allegations in the original complaint, of which defendant received notice over four years ago, having given defendant ample time to investigate and gather evidence relating to plaintiff's original and new claims soon after the alleged occurrence.

Angeliades, Inc. v. Hill Intl., Inc., 150 A.D.3d 607, 608 (1st Dep't 2017); Wadsworth Condos, LLC v. Dollinger Gonski & Grossman, 114 A.D.3d 487, 487 (1st Dep't 2014); Alarcon v. White Plains Hous. Dev. Fund Corp., 100 A.D.3d 431, 432 (1st Dep't 2012). If in fact defendant is prejudiced by being deprived of the opportunity to move for summary judgment dismissing plaintiff's new claims, defendant may seek to justify a second motion for summary judgment, Maggio v. 24 W. 57 APF, LLC, 134 A.D.3d 621, 626 (1st Dep't 2015); Healthcare I.O., LLC v. Tsai Chung Chao, 118 A.D.3d 98, 103 (1st Dep't 2014), and excuse the motion's lateness on that basis. C.P.L.R. § 3212(a); Lewis v. Rutkovsky, 153 A.D.3d 450, 453-54 (1st Dep't 2017); Kase v. H.E.E. Co., 95 A.D.3d 568, 569 (1st Dep't 2012); Butt v. Bovis Lend Lease LMB, Inc., 47 A.D.3d 338, 339-40 (1st Dep't 2007);

Mayer v. New York City Tr. Auth., 39 A.D.3d 349, 349 (1st Dep't 2007).

III. CONCLUSION

For all the reasons explained above, the court grants plaintiff's cross-motion to amend his complaint and bill of particulars in the form attached as Exhibits G and H to his cross-motion. C.P.L.R. § 3025(b). Based on these new claims and the evidence in support of and in opposition to defendant's motion for summary judgment, the court denies the motion. C.P.L.R. § 3212(b). Defendant's supporting evidence fails to show that its lease to Café China obligated the tenant to effect structural repairs of the stairs that broke under plaintiff. Even if the lease so provided, against plaintiff's new claims defendant's evidence, which includes plaintiff's and Zhang's testimony, raises a factual issue regarding its constructive notice that the cracked, worn, insecure treads on the stairs posed an impediment to their use, in violation of New York City Building Code § 1001.3 and Fire Code §§ 1027.1 and 1027.3.

DATED: December 24, 2019



LUCY BILLINGS, J.S.C.

LUCY BILLINGS