

<b>Brown v Concord Hill Apts., LLC</b>
2019 NY Slip Op 34472(U)
June 27, 2019
Supreme Court, Westchester County
Docket Number: Index No. 54621/2017
Judge: Janet C. Malone
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To commence the statutory period for appeals as of right under CPLR § 5513[a], you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK  
WESTCHESTER COUNTY

-----X  
LAMETRIUS BROWN,

Index No. 54621/2017

Plaintiff,

-against-

DECISION AND ORDER  
Motion Sequence: 1

CONCORD HILL APARTMENTS, LLC,  
PETER SCIARRIANO and LILY DiLEO

Defendants.

-----X  
MALONE, J.

The following papers numbered 1-4 were read and considered in deciding the motion before the Court:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion/Affirmation of Peter H. Cohen, Esq. in Support/ Exhibits A-I	1
Affirmation of Peter G. Monaghan, Esq. in Opposition/Exhibit 1	2
Reply Affirmation of Anoushka S. Bayley, Esq.	3
Note of Issue and Certificate of Readiness filed January 7, 2019 <sup>1</sup>	4

On May 28, 2014, Plaintiff allegedly stepped on a nail in or around her residence at Concord Hill Apartments, LLC located at 302 North Central Avenue, Apartment 1B, Hartsdale, New York 10530 (“the premises”) which is owned and operated by Peter Secchiano sued herein

<sup>1</sup> This document was viewed on the New York State Courts Electronic Filing system.

as Peter Sciarriano<sup>2</sup>. *See*, Affirmation of Peter H. Cohen, Esq. in Support at paragraphs 4 and 7; *see also*, Bill of Particulars at Exhibit C.

Plaintiff commenced this negligence action on April 6, 2017 and issue was joined on July 13, 2017. On June 13, 2018 an Examination Before Trial was conducted of Plaintiff<sup>3</sup> and on September 6, 2018 Examinations Before Trial were conducted of Defendants Peter Sciarriano and Lily DiLeo. The Note of Issue and Certificate of Readiness was filed on January 7, 2019. *See*, Summons and Verified Complaint, Defendants' Verified Answer, and transcripts of Examination Before Trial of Plaintiff and Defendants Peter Sciarriano and Lily DiLeo as Exhibits A, B, D, F, and G; *see also*, Note of Issue and Certificate of Readiness filed January 7, 2019.

On February 21, 2019 Defendants Concord Hill Apartments, LLC, Peter Sciarriano and Lily DiLeo, daughter of Peter Sciarriano, ("Defendants") moved for summary judgment on the issue of liability and for further and other relief as may be just and proper, which is opposed by Plaintiff. *See*, CPLR § 3212.

In moving for summary judgment in a premises liability case, Defendants must show that there was a defective condition that was not created by Defendants or that Defendants did not have actual or constructive notice of its existence for a sufficient length of time to discover and remedy it. *See*, *Lezama v. 34-15 Parsons Blvd, LLC*, 16 A.D.3d 560 (2d Dept. 2005) and *Bloomfield v. Jericho Union Free Sch. Dist.*, 80 A.D.3d 637, 638 (2d Dept. 2011); *see also*, Affirmation of Peter H. Cohen, Esq. in Support at paragraph 56.

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<sup>2</sup> It should be noted that neither Plaintiff nor Defendants' Counsel have moved to amend the caption to correct the spelling of Peter Secchiano sued herein as Peter Sciarriano.

<sup>3</sup> Although the transcript of Plaintiff's Examination Before Trial is unsigned, the deposition transcript was certified by the reporter and Counsel for Plaintiff did not raise any challenges to its accuracy. *See*, *Boadu v. City of New York*, 95 A.D. 3d 918 (2d Dept. 2012) and *Rodriguez v. Ryder Truck, Inc.*, 91 A.D. 3d 935 (2d Dept. 2012).

Plaintiff testified during her deposition that several days before her accident on May 28, 2014, Defendant Peter Sciarriano and “his workers” were on the sloped roof, above her apartment complex, laying shingles. Additionally, Plaintiff’s Bill of Particulars, which is verified, states that Defendants failed to remove the nails, roofing materials, and or debris once the work was completed in such area where persons were likely to pass through, thereby creating a hazardous condition, which is corroborated by Plaintiff’s daughter, Brittany Hull, who states that roofing nails and debris fell off the sloped roof onto the driveway in front of the garage and walkway area several days before May 28, 2014 and that she observed no effort to clean up the nails and falling debris. However, Defendant Peter Sciarriano testified that no roofing work was done in May of 2014, as the last time roofing work was completed was in 2011, at which time no nails or debris were thrown onto the driveway or walkway. Therefore, the motion for summary judgment is denied considering a question of fact exists as to whether Defendants created a defective condition of falling debris and nails in May of 2014. *See, Lezama v. 34-15 Parsons Blvd, LLC*, 16 A.D.3d 560 (2d Dept. 2005), *Bloomfield v. Jericho Union Free Sch. Dist.*, 80 A.D.3d 637, 638 (2d Dept. 2011); *see also*, Reply Affirmation of Anoushka S. Bayley, Esq. at paragraph 16, Examination Before Trial of Plaintiff at page 41 line 8 to page 43 line 9, Bill of Particulars at paragraph 4, and Examination Before Trial of Defendant Peter Sciarriano at page 6 line 19 to page 7 line 14; page 9 line 12 to page 11 line 3; page 44 lines 7-20; page 46 lines 7-17; page 50 lines 8-12; page 55 lines 21-25; page 58 lines 2-9 at Exhibits D, C, and F respectively and Affidavit of Brittany Hull at Exhibit 1.

Defendants’ motion for summary judgment to dismiss the Complaint with respect to individual Lily DiLeo is **granted** as Plaintiff’s Counsel does not oppose that Lily DiLeo bears no relationship to this action in her individual capacity as she has no job title with Concord Hill

Apartments, LLC or had any involvement in any work done on the roof at Concord Hill Apartments, LLC. Therefore, Counsel are to file a stipulation, discontinuing the action against Defendant Lily DiLeo with prejudice no later than **July 12, 2019**. *See*, CPLR R 3025(b); *see also*, Affirmation of Peter H. Cohen, Esq. in Support at paragraphs 47, 48, 53-54, Affirmation of Peter G. Monaghan, Esq. in Opposition at page 1, Reply Affirmation of Anoushka S. Bayley, Esq. at paragraph 27, and transcript of Examination Before Trial of Defendant Lily DiLeo at page 5 line 24 to page 7 line 6 as Exhibit G.

However, Defendants' motion for summary judgment to dismiss the Complaint with respect to individual Defendant Peter Sciarriano, is **denied** as there is a question of fact as to whether the alleged tortious conduct of such Defendant was in furtherance of the business of Concord Hill Apartments, LLC. *See*, Limited Liability Company Law §§ 609, 610; *see also*, *Rothstein v. Equity Ventures, LLC*, 299 A.D.2d 472, 474 (2d Dept. 2002)(holding "...members of limited liability companies, such as corporate officers, may be held personally liable if they participate in the commission of a tort in furtherance of company business."), Affirmation of Peter H. Cohen, Esq. in Support at paragraphs 4 and 51-54 and Affirmation of Peter G. Monaghan, Esq. in Opposition at pages 1-2.

As the Note of Issue and Certificate of Readiness has been filed, this matter is referred to the Settlement Conference Part for a conference on **August 13, 2019 at 9:15 a.m.** in Courtroom 1600. *See*, Note of Issue and Certificate of Readiness filed January 7, 2019.

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This constitutes the Decision and Order of this Court.

To the extent not addressed, the remaining relief is denied.

Dated: June 27, 2019  
White Plains, New York

ENTER:

  
HON. JANET C. MALONE, J.S.C.

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