

**Reyes v New York City Hous. Auth.**

2019 NY Slip Op 35031(U)

October 29, 2019

Supreme Court, Bronx County

Docket Number: Index No. 20995/2019E

Judge: Llinét M. Rosado

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX, PART 25  
PRESENT: HONORABLE LLINÉT ROSADO, J.S.C.

CHRISTINA REYES,

INDEX NUMBER:20995/2019E

Plaintiff,

-against-

DECISION and ORDER

NEW YORK CITY HOUSING AUTHORITY and NEW  
YORK MELROSE COMMONS REDEVELOPMENT  
CORPORATION,

Defendants.

Defendant NEW YORK CITY HOUSING AUTHORITY (NYCHA) moves this Court for an Order dismissing the plaintiff’s complaint pursuant to C.P.L.R. 3211(a)(1) and (a)(7) on the ground that NYCHA does not own, operate or manage the subject property nor did it own it on the date of the accident. As such, NYCHA argues it owed no duty to the plaintiff and can not be liable for plaintiff’s injuries as a matter of law. This motion is submitted on the default of plaintiff.

The underlying action arises from an April 29, 2018 trip and fall accident, in which plaintiff alleges she was caused to sustain injuries due to a trip and fall on a stairwell in the building located at 310 Alexander Avenue, County of the Bronx by reason of loose debris including nails in the stairwell. Plaintiff alleges that NYCHA is liable for this alleged injury for breaching their duty as owners to to manage, maintain, operate, inspect and perform necessary repairs to keep the stairwell in a reasonably safe, proper, and secure condition.

In support of the instant motion, NYCHA submits the Notice of Claim served on NYCHA, an affidavit of Laurence Wilensky, correspondence from NYCHA’s Law Department to plaintiff’s counsel informing them that NYCHA did not own the subject building, and a subsequent Notice of Claim served on NYCHA.<sup>1</sup>

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<sup>1</sup>While the movant makes reference to the pleadings served on NYCHA and alleges it is attached as Exhibit E of the moving papers, no such exhibit is attached.

Laurence Wilensky swears that he is the Deputy Director of Department of Performance Tracking & Analytics Department of the New York City Housing Authority. His affidavit indicates that his department maintains address and property databases which include such information as development names, addresses, tax block and lots, zip codes, community districts and other development identifying data. Mr. Wilensky indicates that the databases list all the property owned by NYCHA including those “under construction,” “in planning,” and those that NYCHA rents for such uses as administrative offices, parking lots, and storage. Mr. Wilensky further delineates all the steps he took when he searched and cross-referenced a number of sources to determine whether NYCHA did presently or on the date of the alleged accident own, manage, maintain, or control the property described as 310 Alexander Avenue. Based on the steps he took and the searches he conducted, Mr. Wilensky states, in good faith, that the subject property was not owned, managed, maintain, or controlled by NYCHA on the date of the alleged accident.

A motion to dismiss pursuant to CPLR 3211(a)(1) should be granted only where the documentary evidence submitted absolutely resolves all factual allegations made in the plaintiff’s complaint. *Leon v Martinez*, 84 NY 2d 83 (1994). On a motion to dismiss pursuant to CPLR 3211(a)(7) for failure to state a cause of action, the pleading is to be afforded a liberal construction ( *see* CPLR 3026). The court must accept the facts as alleged in the complaint as true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. *See, Sokoloff v. Harriman Estates Dev. Corp.*, 96 NY2d 409, 729 NYS 2d 425, 754 N.E.2d 184 [2001]). A CPLR 3211 motion should be granted only where “the essential facts have been negated beyond substantial question by the affidavits and evidentiary matter submitted.” *Biondi v. Beekman Hill House Apartment Corp.*, 257 AD 2d 76 (1<sup>st</sup> Dept. 1999)..

Defendant NYCHA has met its burden in establishing that NYCHA did not own the subject property nor did it own it on the date of plaintiff’s alleged accident.

Accordingly, it is

ORDERED that defendant NYCHA’s motion to dismiss pursuant to CPLR 3211(a)(1) and (a)(7) is hereby granted. It is further


ORDERED that all causes of action as to defendant NYCHA are hereby dismissed; and it

is further

ORDERED that the clerk is directed to enter judgment accordingly.

This constitutes the decision and order of this court.

Dated: October 29, 2019



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Hon. Llinet M. Rosado, J.S.C.

**HON. LLINET ROSADO**