SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY: Part 13

CARLOS E. ROSA and CHRISTY ANN ROSA

Plaintiff(s),

v. Index No.: 32974/2018E

267 EAST 202 LLC, WALNUT 202 LLC, BETTER DAYS DEVELOPMENT LLC, PETER FINE, GENESIS REALTY GROUP LLC, BRIGGS TOWER LLC, and 2215 REALTY LLC

Defendant(s).

DECISION

This is a personal injury action, whereby plaintiffs, CARLOS E. ROSA and CHRISTY ANN ROSA allegedly sustained injuries from an electrical fire that started in the defendants' premises. Defendants, GENESIS REALTY GROUP LLC, BRIGGS TOWER LLC, and 2215 REALTY LLC (collectively, hereinafter GENESIS) now move to dismiss pursuant to CPLR § 3211 (a)(1), (7) and CPLR § 3212. GENESIS also moves for an order of sanctions against the plaintiff pursuant to 22 N.Y.C.R.R. §130-1.1.

After careful review of the motion papers, GENESIS' motions for dismissal and sanctions are **DENIED**.

DISMISSAL

GENESIS contends that plaintiffs' action against it should be dismissed because it did not own the building or premises in question at the time the electrical fire occurred. (*See* GENESIS' Counsel's Affirmation in Support, Pg. 6, ¶ 16). Rather, GENESIS maintains that it had sold the premises three (3) months prior to when the fire broke out. *Id.* Plaintiffs, however, argue that GENESIS had notice of the building's need for repairs as there were: several

outstanding building violations; a petition in Bronx County Housing Court by several tenants for repairs to be made; and several complaints alleging "sounds of crackling" in the building walls. (*See* Plaintiffs' Counsel's Affirmation in Opposition, Pg. 2, ¶ 7).

CPLR § 3212(b) provides in part that a motion for summary judgment "shall be denied if any party shall show facts sufficient to require a trial of any issue of fact." "As a general rule, liability for dangerous conditions on land does not extend to a prior owner of the premises. A narrow exception exists, however, and liability may be imposed where a dangerous condition existed at the time of the conveyance and the new owner has not had reasonable time to discover the condition, if it was unknown, and to remedy the condition once it is known." *Bittrolff v. Ho's Dev. Corp.*, 77 N.Y.2d 896 (1971); *See also*, *Farragher v. New York*, 26 A.D.2d 494 (1st Dep't 1966).

GENESIS asserts that the narrow exception to the *Bittrolff* rule is inapplicable as the buyer had roughly three (3) months to discover and remedy any defective condition(s). (*See* GENESIS' Counsel's Affirmation in Reply, Pg. 7, ¶ 20). However, contrary to GENESIS' assertion, the extent to which the building had previously been damaged before the fire is unclear. Therefore, an issue of fact remains as to whether the new owners had reasonable time to discover and remedy any defective condition(s). Further, an issue of fact also remains as to whether these alleged defects were the proximate cause of the electrical fire. Thus, granting GENESIS' motion to dismiss would be improper.

CONCLUSION

In sum, issues of material fact remain as to causation, and whether the new owners of the building had reasonable time to discover and remedy any defects the building may have had.

Further, as several issues of material fact remain, this court cannot impose sanctions against the plaintiffs as their claim has not been found to be meritless.

Accordingly, it is

ORDERED that GENESIS' motion to dismiss is **DENIED**; it is further

ORDERED that GENESIS' motion for sanctions is **DENIED** as moot.

Dated: May 28, 2019
Bronx, NY

Hon. Fernando Tapia, J.S.C.