

Vaca v Village View Hous. Corp.

2020 NY Slip Op 30622(U)

March 3, 2020

Supreme Court, New York County

Docket Number: 114747/2009

Judge: Carol R. Edmead

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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
NEW YORK COUNTY

PRESENT: HON. CAROL R. EDMOND PART IAS MOTION 35EFM

Justice

-----X

ROBIN VACA,

Plaintiff,

- v -

VILLAGE VIEW HOUSING CORP, METRO MANAGEMENT & DEVELOPMENT, FOWLER EQUIPMENT COMPANY,

Defendant.

-----X

FOWLER EQUIPMENT COMPANY

Plaintiff,

-against-

WHIRLPOOL CORPORATION

Defendant.

-----X

INDEX NO. 114747/2009
MOTION DATE 02/03/2020
MOTION SEQ. NO. 010

DECISION + ORDER ON MOTION

Third-Party
Index No. 590030/2014

The following e-filed documents, listed by NYSCEF document number (Motion 010) 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents and the memorandum decision below, it is

ORDERED that the branch of defendants Village View Housing Corp.'s (Village View) and Metro Management & Development's (collectively, the Building Defendants) that seeks summary judgment on the issue of Village View's entitlement to summary judgment on its cross claim for contractual indemnification against defendant Fowler Equipment Company (Fowler) is granted; and it is further

ORDERED that the branch of the Building Defendants' motion seeking dismissal of Fowler's cross claims against them is granted; and it is further

ORDERED that the remainder of the Building Defendants' motion is denied; and it further

ORDERED that the issue of reasonable attorney's fees owed by Fowler to Village View is severed and referred to a Special Referee to hear and determine; and it is further

ORDERED that counsel for the Building Defendants are to serve a copy of this order, along with notice of entry, on all parties and the Special Referee's Clerk, Room 119, within 10 days of entry.

CASE DISPOSED

In this personal injury action, defendants Village View Housing Corp. (Village View) and Metro Management & Development (Metro) (collectively, the Building Defendants) move, pursuant to CPLR 3212, for summary judgment on their contractual indemnification cross claim against defendant Fowler Equipment Company (Fowler). Moreover, the Building Defendants also seek an order dismissing Fowler's cross claims for indemnification and contribution against the Building Defendants. Fowler opposes only the branch of the motion seeking contractual indemnification against it.

BACKGROUND

On August 15, 2009, plaintiff Robin Vaca (Plaintiff) was injured while removing laundry from a washing machine in a residential building owned by Village View. When she opened the machine, water and soap spilled onto her, and she reeled back and fell, injuring herself. Pursuant to a Laundry Operating Agreement between Fowler and Village View, Fowler maintained and operated the laundry machines in the subject residential building's laundry room (NYSCEF doc No. 275).

Plaintiff filed her summons and complaint on August 11, 2010, alleging that defendants were liable in negligence. Fowler brought a third-party action against Whirlpool Corporation, alleging that the subject washing machine was defective. However, by order dated September 15, 2015, the Court dismissed the third-party action after finding that Fowler spoliated the washer (NYSCEF doc No. 122).

Counsel for the Building Defendants and Fowler aver that Fowler has reached a settlement agreement with Plaintiff, and that Plaintiff has discontinued her claims as against all defendants. All that remains in this case are defendants' cross claims against each other.

DISCUSSION

“Summary judgment must be granted if the proponent makes ‘a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact,’ and the opponent fails to rebut that showing” (*Brandy B. v Eden Cent. School Dist.*, 15 NY3d 297, 302 [2010], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). However, if the moving party fails to make a prima facie showing, the court must deny the motion, “regardless of the sufficiency of the opposing papers” (*Smalls v AJI Indus., Inc.*, 10 NY3d 733, 735 [2008], quoting *Alvarez*, 68 NY2d at 324).

Initially, Fowler does not oppose the branch of the Building Defendants’ motion that seeks dismissal of Fowler’s cross claims. Thus, those claims are abandoned and the branch of the Building Defendants’ motion that seeks summary judgment dismissing Fowler’s cross claims is granted.

As to indemnification, the Building Defendants argue that they are entitled to contractual indemnification from Fowler. “A contract that provides for indemnification will be enforced as long as the intent to assume such a role is sufficiently clear and unambiguous” (*Bradley v Earl B. Feiden, Inc.*, 8 NY3d 265, 274 [2007] [internal quotation marks and citations omitted]). The Laundry Operating Agreement between Fowler and Village View contains an indemnification clause, which provides, in relevant part:

“[Fowler] shall hold harmless, defend, and indemnify [Village View] against and from any and all claims, damages, liability, loss, costs and expenses (including attorneys’ fees) arising out of or resulting from, or connected with the installation, operation, maintenance, or servicing, [or] control of the Laundry Room Equipment installed or operated pursuant to this Agreement”

(NYSCEF doc No. 275).

This provision does not require a showing of negligence, merely that the subject accident arose out of the “installation, operation, maintenance, or servicing” of the subject laundry machines. Plaintiff’s deposition makes clear that her accident arose out of the operation of a laundry machine covered by the contract between Village View and Fowler. Thus, Village View makes out a *prima facie* showing of entitlement to judgment on the issue contractual indemnification against Fowler. Metro fails to make such a showing, as it is not identified in the laundry contract as a party to whom indemnification is owed.

In opposition, Fowler argues that summary judgment as to contractual indemnification is premature as an issue of fact remains as to whether the Building Defendants’ were negligent in Plaintiff’s accident. In lieu of offering evidence to this effect, Fowler speculates that perhaps the accident was caused by faulty wiring or malfunctioning pipes for which the Building Defendants would be responsible. Such speculation, however, is insufficient to raise an issue of material fact. While Fowler notes that the Building Defendants have not been deposed and may have information that would support the speculative faulty-wiring, faulty-pipes theory, it is far too late, almost a decade after it answered the complaint, to object to the Building Defendants failure to appear for deposition.

Thus, Village View is entitled to summary judgment against Fowler on the issue of contractual indemnification. In light of the fact that the indemnification provision explicitly provides for attorneys’ fees, Village View is entitled to reasonable attorneys’ fees from Fowler. As Plaintiff’s claims are settled, this issue is moot except for Village View’s application for attorney’s fees. That issue is referred to a Special Referee to hear and determine. As the remainder of the issues in this action are dismissed, the case is disposed.

CONCLUSION

Accordingly, it is

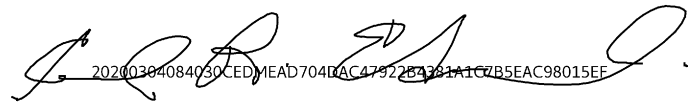
ORDERED that the branch of defendants Village View Housing Corp.'s (Village View) and Metro Management & Development's (collectively, the Building Defendants) that seeks summary judgment on the issue of Village View's entitlement to summary judgment on its cross claim for contractual indemnification against defendant Fowler Equipment Company (Fowler) is granted; and it is further

ORDERED that the branch of the Building Defendants' motion seeking dismissal of Fowler's cross claims against them is granted; and it is further

ORDERED that the remainder of the Building Defendants' motion is denied; and it further

ORDERED that the issue of reasonable attorney's fees owed by Fowler to Village View is severed and referred to a Special Referee to hear and determine; and it is further

ORDERED that counsel for the Building Defendants are to serve a copy of this order, along with notice of entry, on all parties and the Special Referee's Clerk, Room 119, with 10 days of entry.

 20200304084030CEDMEAD7040AC4792267381A1C7B5EAC98015EF

3/3/2020
DATE

CAROL R. EDMEAD, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED		
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input type="checkbox"/>	NON-FINAL DISPOSITION		
<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: