

**Torres v West Harlem Renaissance Homes II Hous.
Dev. Fund Co., Inc.**

2020 NY Slip Op 31063(U)

April 27, 2020

Supreme Court, New York County

Docket Number: 154482/2019

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2EFM

Justice

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INDEX NO. 154482/2019

ASHLEY TORRES, K T,

Plaintiff,

MOTION SEQ. NO. 001

- v -

WEST HARLEM RENAISSANCE HOMES II HOUSING DEVELOPMENT FUND COMPANY, INC., WEST HARLEM GROUP ASSISTANCE, INC., PYTHAGORAS GENERAL CONTRACTING CORP., EDGAR TORRES,

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23

were read on this motion to/for DISMISS

In this personal injury action commenced by plaintiff Ashley Torres and plaintiff K.T., by his by his mother and natural guardian Hermin Torres, defendants West Harlem Renaissance Homes II Housing Development Fund Company, Inc. ("WHR") and West Harlem Group Assistance, Inc. ("WHG") move, pursuant to CPLR 3211(a)(1) and (a)(7), to dismiss the complaint. Plaintiffs oppose the motion. After a review of the parties' contentions, as well as the relevant statutes and case law, the motion is decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND:

This case arises from an incident on July 18, 2009 in which plaintiff Ashley Torres (“Ashley”) was injured when a metal door slammed on her finger, as well as an incident on April 29, 2011 in which plaintiff K.T.’s foot was injured by a metal door. Doc. 1. The incidents occurred at 2007 Adam Clayton Powell Boulevard in Manhattan (“the premises”), where plaintiffs resided. Doc. 1.

In October 2007, defendant Edgar Torres (“Edgar”), father of Ashley and K.T., entered into a contract of sale with WHR to purchase the premises. Doc. 9. Pursuant to the contract of sale, WHR was to retain a contractor to make certain renovations before Edgar took possession of the premises. WHR retained defendant Pythagoras General Contracting Corp. (“PGC”) for this purpose. Doc. 1. The premises were transferred from WHR to Edgar on September 4, 2008. Doc. 9.

The premises were rehabilitated and conveyed from WHR to Edgar as part of a program operated jointly by the United States Department of Housing and Urban Development (“HUD”) and Local Initiatives Support Corporation (“LISC”), a New York not-for-profit corporation. Pursuant to what was known as the HUD 203(k) Program, the premises were to be rehabilitated by WHR and eligible for a subsidy from HUD. Neither the contract of sale nor the punch list prepared by

WHR and Edgar in connection with the renovation mentioned the replacement of doors at the premises. Doc. 9.

On May 1, 2019, plaintiffs commenced the captioned action against WHR, WHG, PGC and Edgar. Doc. 1. In the complaint, plaintiffs claimed that Ashley and K.T. were injured by the negligence of the defendants. Specifically, they alleged that, pursuant to the contract of sale, defendants were required to perform certain renovations, including replacing “heavy metal doors throughout the [premises] with hollow wooden doors” and that the alleged incidents occurred because the metal doors were not so replaced. Doc. 1. Plaintiffs further alleged that WHR was a “department or component” of WHG. Doc. 1. Additionally, plaintiffs alleged that WHR and/or WHG contracted to have the rehabilitation work performed. Doc. 1.

WHR and WHG now move, pursuant to CPLR 3211(a)(1) (documentary evidence) and (a)(7) (failure to state a claim), to dismiss the claims against them.

In support of the motion, WHR and WHG argue that former owners of real estate owe no duty of care to later occupants where, as here, they did not retain any right or obligation to enter to make repairs. Moreover, WHG claims that it never owned the premises and plaintiffs make no specific allegation that it caused the alleged injuries. Accordingly, maintain WHR and WHG, plaintiffs have failed to assert any basis for holding WHR or WHG liable. WHR and WHG further assert

that the contract of sale and punch list utterly refute the allegations in the complaint that they were required to replace the metal doors at the premises and thus warrant dismissal based on documentary evidence.

In opposition, plaintiffs argue that, in prior litigation sounding, inter alia, in breach of contract, commenced by Edgar against WHR and WHG under New York County Index Number 159474/13 (“the related action”), the parties entered into a settlement agreement with Edgar pursuant to which WHR and WHG agreed to replace steel doors throughout the property with lighter wooden doors. Thus, argue plaintiffs, a jury must decide whether WHR and WHG negligently failed to replace the doors. They further assert that WHR and WHG, as prior owners, can be held liable for the alleged incidents.

In reply, WHR reiterates its contention that, as former owner, it cannot be liable for plaintiffs’ injuries. WHG asserts that there is no evidence that it had any obligation to replace the metal doors at the premises. WHR and WHG further maintain that the settlement agreement in the related action is inadmissible in this action to prove that they committed any wrongdoing.

LEGAL CONCLUSIONS:

As a general rule, liability for dangerous conditions on land does not extend to a prior owner of the premises (*Pharm v Lituchy*, 283 NY

130, 132). 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 a reasonable time to discover the condition, if it was unknown, and to remedy the condition once it is known (*id.*; see also, *Kilmer v White*, 254 NY 64; *Farragher v City of New York*, 26 AD2d 494, 496, *affd on opn below* 21 NY2d 756).

Bittrolff v. Ho's Dev. Corp., 77 NY2d 896, 898 (1991).

WHR, the former owner, cannot be held liable for any alleged dangerous condition on the premises since it conveyed the property to Edgar almost one year before Ashley's accident and almost three years before K.T.'s accident. This gave Edgar, the new owner, ample time to discover and/or cure any potentially dangerous condition on the premises. See *Privette v Precision El.*, 143 A.D.3d 639, 640 (1st Dept 2016) (3 months was a reasonable time to discover and/or correct a dangerous condition). Moreover, plaintiffs failed to establish that Edgar "had insufficient time to remedy the condition, and proffered no evidence of any efforts [by Edgar] to investigate or cure, in support of [their] claim that [WHR] could be liable pursuant to a prior owner exception." *Smith v 562 Morris Realty LLC*, 173 AD3d 586 (1st Dept 2019).

Additionally, WHG correctly asserts that it is entitled to dismissal since the only allegations involving it are that WHR was a "department or component" of WHG and that WHR and/or WHG hired PGC. Doc. 1. However, the contract of

sale clearly obligated the seller, WHR, and not WHG, to hire a contractor for the rehabilitation. Thus, plaintiffs' claim that WHG was obligated to replace an internal steel door and replace it with a wooden door is without any basis in fact.

In light of the foregoing, there is no need to address plaintiffs' claim that the settlement agreement in the related matter warrants the denial of this motion. Nevertheless, this Court notes that plaintiffs' claims related to the settlement agreement are also without merit. Initially, the agreement itself provides that it "is not and shall not in any way be construed as an admission by the [parties to the related action] of any allegations contained in the pleadings or to any claim or cause of action related to the litigation." Doc. 16 at par. 5(c).

Additionally, although the settlement agreement reflects at paragraph 1 that WHR was to hire a contractor to perform "the work identified in the scope of work and proposal attached [to the settlement agreement] as Exhibit A", no such exhibit is attached. Further, an estimate annexed to the settlement agreement reflects that WHR was to replace a front entry door (made of unspecified material) with an oak door, *install a new metal door* at the bottom of the stairs from the sidewalk hatch door, and remove a steel door in the third floor bathroom and replace it with a new wooden door. Thus, even assuming that the estimate contained an accurate description of the work to be performed, it contradicts plaintiffs' allegation that WHR was required to replace "heavy metal doors throughout the [premises] with

hollow wooden doors.” Doc. 1. Moreover, plaintiffs submit no evidence that any of the doors referenced in the estimate was involved in the alleged accidents.

Therefore, in light of the foregoing, it is hereby:

ORDERED that the motion to dismiss by defendants West Harlem Renaissance Homes II Housing Development Fund Company, Inc. and West Harlem Group Assistance, Inc. is granted; and it is further

ORDERED that the complaint is dismissed in its entirety as against West Harlem Renaissance Homes II Housing Development Fund Company, Inc. and West Harlem Group Assistance, Inc. and the Clerk is directed to enter judgment accordingly in favor of said defendants; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal of the complaint as against defendants West Harlem Renaissance Homes II Housing Development Fund Company, Inc. and West Harlem Group Assistance, Inc. and that all future papers filed with the court bear the amended caption; and it is further

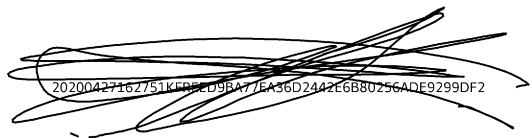
ORDERED that counsel for the moving party shall serve a copy of this order, with notice of entry, upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119),

who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that this constitutes the decision and order of the court.

4/27/2020
DATE



KATHRYN E. FREED, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE