

Parekh v Maxwell Kates Inc.

2021 NY Slip Op 31464(U)

April 27, 2021

Supreme Court, New York County

Docket Number: 159127/2014

Judge: Richard G. Latin

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. RICHARD G. LATIN PART IAS MOTION 46
Justice
-----X

**ROXANNE HILLMAN PAREKH, AS ADMINISTRATRIX
OF THE ESTATE OF GLORIA HILLMAN A/K/A GLORIA
C. HILLMAN, AND ROXANNE HILLMAN PAREKH,
INDIVIDUALLY,**

Plaintiff,

INDEX NO. 159127/2014
MOTION DATE 02/11/2021
MOTION SEQ. NO. 008

- v -

**MAXWELL KATES INC.,315 SEVENTH RESIDENTIAL L.L.C.,
THE 315 SEVENTH AVENUE CONDOMINIUM,**

Defendants.

**DECISION + ORDER ON
MOTION**

-----X

315 SEVENTH RESIDENTIAL L.L.C.

Third-Party Plaintiff,

-against-

ANIL PAREKH

Third-Party Defendant.

-----X

Third-Party
Index No. 595089/2017

The following e-filed documents, listed by NYSCEF document number (Motion 008) 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 168, 169, 170, 171, 172, 173, 174, 175, 176, 202, 212

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

Upon the foregoing documents, defendants Maxwell Kates, Inc. and The 315 Seventh Avenue Condominium’s motion for, inter alia, summary judgment pursuant to CPLR 3212, and

plaintiff's cross motion to amend the bill of particulars pursuant to 3025(b), are determined as follows:

Plaintiff Roxanne Hillman Parekh is the daughter of decedent Gloria Hillman and administratrix of her estate. Gloria Hillman was an occupant of apartment 3D in the premises located at 315 7th Avenue, New York, New York. This wrongful death action involves a fire that broke out in decedent's apartment while she was sleeping on March 11, 2014 at approximately 4:00-4:30 a.m. Plaintiff alleges that decedent's apartment had non-functional battery-operated smoke detectors, and in the hallway, there were non-functional smoke detectors because the owners had previously placed covert cameras in place of smoke detectors. It is also alleged that defendants Maxwell Kates, Inc. and The 315 Seventh Avenue Condominium violated NYC Building Code, 1 RCNY Section 28-01, 28-02, 29-01, Smoke Detecting, NYC Building Code Local Law 62, 2014 Construction Codes Chapter 9, 27 and OSHA Fire Prevention Plans 1910 by failing to hot wire smoke alarms, failing to properly maintain and service the fire alarm system, the smoke detectors, and failing to replace faulty batteries in smoke detectors, among other allegations.

The defendants Maxwell Kates, Inc. and The 315 Seventh Avenue Condominium allege that since they were not the owners of decedent unit, they were not responsible for installing or maintaining the smoke detectors inside of decedent's apartment. Defendants Maxwell Kates, Inc. and The 315 Seventh Avenue Condominium also take the position that the fire was not caused as a result of an issue with the building's electrical system and/or outlets, but by compromised extension cords which were the personal property of the decedent and third-party defendant Anil Parekh, decedent's grandson.

By way of background, the aforementioned apartment building was once a fur factory before becoming a residential property. From 1975-1977, the building converted into an apartment building creating ninety-four new residential units. In 1998, the building began to convert to condominium ownership. From 2005 through 2006, the building underwent a repair project which included repair to steel columns, landings, and beams which allegedly cost in excess of \$150,000.

Prior to August of 2013, decedent's apartment was owned by sponsor, Nature Nurture Foundation. During that time, 315 Seventh Avenue Residential LLC purchased nineteen unsold condominium units from the Nature Nurture Foundation, including decedent's apartment. At the date and time of decedent's death, March 11, 2014, ABC Properties was the managing agent for the apartments owned by 315 Seventh Avenue Residential LLC, an investment property located within The 315 Seventh Avenue Condominium. The management company for The 315 Seventh Avenue Condominium is Maxwell Kates, Inc.

Defendants Maxwell Kates, Inc. and The 315 Seventh Condominium now seek summary judgment dismissing plaintiff's complaint, all claims, and cross claims, and any counterclaims, on the grounds that there are no triable issues of fact and that they are entitled to summary judgment, as a matter of law. Plaintiff also cross-moves pursuant to CPLR 3025(b) seeking to amend the bill of particulars to include additional code violations.

Pursuant to CPLR 3025(b), “[a] party may amend his or her pleadings or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances” [CPLR 3025(b)]. The decision to allow or disallow the amendment is committed to the court’s discretion (*see Detrinca v De Fillippo*, 165 AD2d 505 [1st Dept 1991]). “Mere lateness is not a barrier to the amendment, it must be lateness coupled with significant prejudice to the other side, the very elements of the laches doctrine” (Siegel, Practice Commentaries, McKinney’s Cons.Laws of NY, Book 7B, CPLR 302:5, P 477.) Additionally, “[i]t is well established law that, leave to amend pleadings ‘shall be freely given’ absent prejudice to or surprise resulting directly from the delay” (*see Detrinca v De Fillippo*, 165 AD2d 505 [1st Dept 1991]).

Here, although the action was commenced in 2014, plaintiff’s lateness will not result in significant prejudice to the other side. Based on the extensive discovery conducted in this matter, such as completed deposition testimony and expert reports, there is no significant prejudice to the other side. As such, plaintiff is granted leave to amend the bill of particulars to add additional code violations.

As to defendants Maxwell Kates, Inc. and The 315 Seventh Avenue Condominium’s motion, the proponent of a summary judgment motion has the burden of submitting evidence in admissible form demonstrating the absence of any triable issues of fact and establishing entitlement to judgment as a matter of law (*see Giuffrida v Citibank Corp.*, 100 NY2d 72 [2003]; *see also Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]). Only when the movants satisfy its *prima facie* burden will the burden shift to the opponent “to lay bare his or her proof and demonstrate the existence of triable issues of fact” (*Alvarez*, 68 NY2d at 324; *see Zuckerman v City of New York*, 49 NY2d 557 [1980]).

The plaintiff’s bill of particulars alleges that defendants herein violated numerous Administrative Codes, among them,

Administrative Code Section 27-2045(a)(1), which provides that:

- a. It shall be the duty of the owner of a class A multiple dwelling which is required to be equipped with smoke detecting devices pursuant to article six of chapter seventeen of chapter one of this title to:
 - (1) provide and install one or more approved and operational smoke detecting devices in each dwelling unit, such devices shall be installed in accordance with the requirements of reference standard 17-12.

Once the owner fulfills its statutory obligation to install an operable smoke detector, the occupant of the dwelling unit becomes solely responsible for maintenance and repair of the device (*see Peyton v State of Newburgh, Inc.*, 14 AD3d 51, 52, 786 NYS2d 458 [2004]).

A landlord is not liable for a violation of the statute governing smoke detectors unless such violation is the proximate cause of the tenant's injury/death during a fire. Thus, plaintiff must show the cause of the fire, where the deceased was at the time of the fire, and whether the deceased was alerted to the fire by means other than a smoke detector (*see Acevedo v Audubon Mgmt.*, 280 AD2d 91 [1st Dept 2001]). Also, the landlord's sole obligation under the law is to install smoke detectors in the apartment. Once this is done, it then becomes the tenant's responsibility to keep the smoke detectors in good repair (e.g. replace batteries) (*id.*). A landlord was able to obtain dismissal of a case where it showed that it had no duty to maintain, repair or replace the smoke detector in the tenant's apartment. The landlord submitted evidence that it had installed a functional smoke detector in the tenant's apartment within one year of the subject fire, and had not received written notice of an inoperable detector within one year of the installation (*see Vanderlinde v 600 West 183rd Street Realty Corp.*, 101 AD3d 583 [1st Dept 2012]).

In addition, New York City Administrative Code Section 27-980 provides that:

Dwelling units shall be equipped with smoke detecting devices receiving their primary power from the building wiring and there shall be no switches in the circuit other than the over-current device protecting the branch circuit; provided, however, that dwelling units in existing buildings may, in the alternative, be equipped with battery-operated smoke detecting devices except where such buildings are substantially improved or altered on or after January first, nineteen hundred eighty two.

Section 28-01 (b)(4) defines "substantial improvement" as an "improvement or alteration of the building" [not apartment] that exceeds the sum of \$150,000.

Moreover, New York City Administrative Code Section 901.4.4. provides that:

It shall be unlawful to install or maintain any device that has the physical appearance of fire protection equipment but that does not perform the fire protection function, in any building, structure or premises where it may be confused with actual fire protection equipment.

Additionally, New York City Administrative Code Section 107.5 states that:

The owner shall be responsible at all times for the safe maintenance of a building, structure, and premises in accordance with this code. Correction and abatement of violations of this code and the rules shall be the responsibility of the owner. If an occupant creates, or allows to be created, hazardous conditions in

violation of this code or the rules, the occupant shall also be responsible for the abatement of such hazardous conditions.

In support of defendants Maxwell Kates, Inc. and The 315 Seventh Avenue Condominium motion, defendants herein submit, inter alia, the deposition testimony of plaintiff administrator Roxanne Hillman Parekh, Neil Levin, Senior Vice President and Account Manager for defendant Maxwell, Roman Vargas for 315 Seventh Avenue Condominium, Myles Horn for 315 Seventh Avenue Residential LLC, and the expert affidavit of Jonathan R. Lebow.

Roxanne Hillman Parekh, daughter of the decedent and administrator of her estate testified that her mother first moved into the aforementioned premises in 1979. She stated that she lived with her mother in the apartment at the time and moved out in 1988. Her mother has since lived in the same apartment. Roxanne testified that in 2014, the superintendent of the building was Ramon Vargas. She stated that Vargas' duties included repairs, fixing smoke alarms, dishwashers, and other appliances. She further attested that for years, her mother told her that she needed a smoke alarm and the outlets by her chair and table needed to be replaced. However, she testified that Vargas never fixed these issues. Roxanne was also asked, "At any time prior to March 11, 2014 was a smoke alarm installed or placed inside her apartment?" and she replied "no." She stated that her mother would tell Vargas in person that the alarm needed to be installed. With respect to the outlets, she explained that they needed to be fixed, since every time she tried to plug something in, it would spark. Roxanne also testified that her mother's door lock was broken and broke so often that the owners placed a camera above her door.

Roxanne was asked, "[f]rom the moment that you first moved into apartment 3D up until the last time you saw your mother prior to her passing, did you ever see any smoke detectors in her apartment?" and she replied "no." Also, she testified that she never saw any smoke detectors outside of her mother's apartment. With respect to the outlets, she testified that she knew they were defective for two or three years but were still being used. Roxanne stated that the outlets would cause appliances to burn and that a power strip may have been plugged into one of the defective outlets. She believed that the defective outlet was the cause of the fire since it would always spark. At the deposition, Roxanne was shown numerous photographs of her mother's apartment and recalled that there was a battery-operated smoke detector to the side of the dining room area. She stated that for three years her mother informed her that it was not operational and needed batteries, communicated same to Vargas, and he failed to address the issue. Roxanne further testified that even though the outlets and smoke alarms were defective, she herself, her son, nor her mother attempted to replace batteries or stopped using the outlets.

Neil Levin, Senior Vice President and Account Manager for Maxwell Kates, the management company for the condominium association, also testified. Levin stated that in 2014 he was an account manager, and managed approximately six or seven residential buildings, one of them being the aforementioned premises. He stated that his duties included visiting the properties and reporting back to his office. He testified that Ramon Vargas was the superintendent in the building and was employed by 315 Seventh Avenue Condominium. Levin attested that on the evening of the fire, he was contacted by Ramon Vargas and informed of the fire. He stated that when he arrived at the building, he asked the fire marshal as to the cause of the fire. Levin alleges that the fire marshal told him the cause of the fire was that one of the

deceased's extension cords, of which she had many, caught fire. He also claims that he was told by the fire department representative that there was a great deal of flammable material in the apartment, and that this was the reason why the fire was as bad as it was. He further stated that the decedent did not own her unit but was in a rent stabilized unit owned by the sponsor, either Nurture Nature Foundation or 315 Seventh Avenue Residential LLC.

With respect to maintaining the smoke detectors in the hallway, Levin testified that Vargas would be responsible, however, if the smoke detectors were located inside the individual unit, the responsibility would fall on the condominium unit holder. As to the electrical supply, the building is responsible, however the circuit breaker panel inside of the apartment is the responsibility of the unit owner. Levin further testified that after the fire, a public adjuster determined the cause of the fire. He averred that the public adjuster agreed with the FDNY fire marshal that the fire was caused by an extension cord. He was also asked if in March of 2014, decedent's apartment was equipped with a smoke detector at the time of the fire and answered in the affirmative. Levin was also shown a compliance document confirming that in August of 2013 there was a smoke alarm in the decedent's apartment. Additionally, Levin stated that if the smoke alarm were to no longer work, it is the apartment owner's responsibility to change the batteries.

Myles Horn, testified on behalf of 315 Seventh Avenue Residential LLC, as a member of the LLC. He stated that the LLC purchased nineteen unsold condominium units from the Nature Nurture Foundation in August of 2013. Horn stated that as part of the process of acquiring these units, the LLC inspected them where they could gain access. He further averred that they could not gain access to any of the rent stabilized apartments but, inspected vacant or free market apartments. As to the rent stabilized units, Horn explained that they did not issue new lease agreements, but they accepted the leases that were in place. Moreover, he testified that when the LLC acquired the apartments from the Nature Nurture Foundation, they notified all the tenants of the nineteen units. He opined that the rent would either be payable to ABC Properties or 315 Seventh Avenue Residential LLC. Horn also averred that ABC Properties was the managing agent for 315 Seventh Avenue Residential LLC for the nineteen aforementioned units. He stated that ABC Properties would collect the rent, take care of repairs, and handle tenant complaints. As to the maintenance of the electrical wiring in each condominium unit, Horn stated that the electrical systems and wiring are the responsibility of the condominium association.

Horn testified that he spoke with Vargas as to the decedent's apartment and was told that she was a hoarder, and that the LLC attempted access on numerous occasions and was denied. He was asked if anybody communicated to him any other possible causes of the fire, and he replied that he was unsure where he heard it, but it was said that it may have been an electrical fire. Horn also averred that 315 Seventh Avenue Residential LLC was the owner and landlord of the decedent's unit on the date of the accident and was provided with a smoke detector affidavit as part of the initial transfer and purchase of the unit. He further explained that pursuant to the affidavit it was the prior owner's responsibility to install smoke detectors in the decedent's unit. Horn explained that the basis of attestation of knowledge of the individual who signs the affidavit is stating that they know there are smoke detectors, but it does not state whether they have seen the detectors or if they have ever been inside of the unit. As to the maintenance of extension cords, he stated that they are the responsibility of the individual tenant. Moreover, he

attested that if a tenant made 315 Seventh Avenue Residential LLC or ABC Properties aware that a smoke detector was out of order, they would replace it.

Ramon Vargas, the superintendent employed by The 315 Seventh Avenue Condominium, also testified. He stated that in 2014, he was the superintendent for Maxwell Kates. His duties included maintaining the cleanliness of the building and making sure everything functions well. Vargas averred that if someone in the condominium had a complaint, they would either come to him or the managing agent, ABC Properties. He claimed that once the rentals were converted into condominiums, he would not be responsible for repairs inside the unit, the unit owner would be responsible. Vargas stated that if the owner of a sponsored apartment approached him to repair something, he would report same to ABC Properties. With respect to the electrical sockets in each condominium owned by 315 Seventh Avenue Residential LLC, Vargas averred that the circuit breaker inside and throughout the apartment is the responsibility of the owner. If Vargas received complaints from any of the rental stabilized apartments, he stated that he would contact Debbie Skylar from ABC Properties who would either hire someone to take care of an issue, or direct Vargas to handle the issue. Vargas testified that he knew the decedent since the late 1970's when she lived in another apartment in the building. He described the decedent as a hoarder and found it difficult to walk through her apartment. He stated that approximately ten years ago, he spoke to the Nature Nurture Foundation regarding the condition of the decedent's apartment but, was not sure if they did anything about the condition. Additionally, he testified that neither the decedent nor her grandson reported that the outlet near the decedent's chair was sparking.

Vargas further stated that the owner of the decedent's apartment, ABC Properties, was responsible to have carbon monoxide and smoke detectors in the unit. He also explained that he installed the detectors in all the rent stabilized apartments and the renter acknowledged the work by signing a document after the detectors were installed. Vargas testified that two to three years prior to the accident, he personally installed two smoke detectors in the decedent's apartment, one in the foyer near the kitchen and the other in the bedroom. Prior to the accident, he also placed batteries in each of the detectors and tested them to confirm that they were working. He also stated that it was not his responsibility to repair the detectors, however, if they were not working, he would have to report same to the owner. Vargas testified that neither the decedent nor her grandson informed him that either smoke detector was not working or that an outlet was sparking. If the batteries stop working, Vargas explained that it is the tenant themselves that have to replace them.

He averred that on the date of the fire, he was informed by the fire marshal or the FDNY, that an overloaded extension cord caught fire. Even though there was clutter in the decedent's apartment, Vargas stated that he never refused to go to her apartment. He explained that he would go there to change a light bulb or unclog a toilet, nothing electrical related. Even though he worked for The 315 Seventh Avenue Condominium, the Nature Nurture Foundation would ask him to check on their apartments for a monthly fee and same for ABC Properties, when they replaced the Nature Nurture Foundation.

According to the Fire Incident Report, the owner of the structure is Miles Horn, for 315 Seventh Avenue Residential, LLC. The cause of the fire is listed as "electrical" with a description stating, "multiple points of origin" and "NFA electrical in the area of assorted

electrical wiring (power strip).” The report also states under Origin and Extension, “Examination showed fire originated inside the subject premises, on the 3rd floor, in apartment 3D, in the TV room, approximately 12 feet west of the main entrance...in combustible material (electrical wiring, plastic, cloth) in heat sufficient to sustain combustion. Fire extended to the floor, walls, ceiling, and contents of the TV room.”

Defendants herein also submit the affidavit of Jonathan R. Lebow, a fire investigations expert. In his report, he stated that he physically went to the building on March 12, 2014 and met with the superintendent Vargas. Additionally, he returned on March 31, 2014 to determine the origin of the fire and conduct a physical examination of the fire scene. He stated that the building is 22 stories and consists of ninety-four condominium units. He opined that there was no evidence of any type of electrical malfunction between the main circuit breaker panel and the decedent’s apartment circuit breaker panel. Lebow observed that outside of decedent’s apartment, there were two “smoke detectors” but learned that they were in fact covert cameras monitoring the hallway. As to the interior of the apartment, Lebow stated that after speaking with Vargas, the door to the apartment was unlocked at the time of the fire. He observed the “melted remains of a smoke detector...on the ceiling dividing the dining area from the living room.” Additionally, he noticed that at the entryway to the bedroom there was a melted smoke detector still hanging from the ceiling. Moreover, “a carbon monoxide detector, with no batteries was observed in the bedroom, lying on top of some contents.”

As to the extension cords, Lebow stated that in the foyer/dining area there were several extension cords one of which was connected to a power strip which was in the “on” position. Also, he observed that some of the wiring was inside a melted mass of plastic. He opined that the flexible wiring that was examined showed no evidence of adverse electric activity at the receptacle or within the walls of the apartment. This wiring, which was isolated to the extension cords, appears to have frayed and melted as observed by Lebow. He opined that the decedent’s recliner was examined, and it appeared that the fire came up from behind it. Lebow determined that, “the fire originated on the third floor in the apartment, in the foyer/dining area, approximately ten feet west of the front entrance door and two feet south of the north wall in combustible material, in the area of the tenant’s flexible electrical wiring.” Lebow also determined that, “the most probable cause of the fire was heat due to an unknown failure, such as a short circuit in the flexible electrical wiring (extension cords) igniting nearby combustible materials. He further stated that it “did not start as a result of a condition associated with the building’s electrical system” and there were carbon monoxide and smoke detectors present in the apartment.

Here, the defendants Maxwell Kates, Inc. and The 315 Seventh Avenue Condominium met their prima facie burden and established that they did not breach a duty to plaintiff with respect to the operation and maintenance of the smoke detectors. Thus, the defendants Maxwell Kates, Inc. and The 315 Seventh Avenue Condominium met their prima facie burden and it is incumbent upon plaintiff to raise a triable issue of fact (*see Fishman v Bunty and Jyoti, Inc.*, 2019 WL 5309791 [Sup Ct, New York County, 2019]) and (*see E.G. ex rel. E.R. v Medical Exp. Corp.*, 2006 WL 549939 [Sup Ct, Bronx County, 2006]).

In opposition to the motion, plaintiff submits, inter alia, the deposition transcript of Anil Parekh, the affidavits of Michael M. Dugan, retired Captain of the FDNY and James Pugh, who has a PhD. in professional engineering

Anil Parekh, decedent's grandson, also testified. He stated that from 1990 until the date of the fire, he lived with the decedent. Anil claimed that at the time of the decedent's death, she could not walk without the assistance of a cane, and since 2012 she was wheelchair bound outside of the apartment. Anil testified that as a result, he would help his grandmother with the household chores, however, she prevented him from cleaning the apartment and remedying the hoarder situation. In March of 2014, he stated that there were three extension cords in the living room of the apartment where the fire occurred. He testified that before the night of fire, sparks would emit from the extension cords next to his grandmother's chair, where the fire occurred. Anil explained that each time he tried to remove the plugs or extension cords from the outlet, his grandmother would plug it back in and wanted the superintendent to fix it. Anil averred that in April of 2010, he complained to Vargas about the spark emitting from the outlet in the living room and he never came to look at the outlet. Although Anil admitted that his grandmother would refuse access to her apartment, she would not refuse access to the superintendent.

As to the smoke detectors, he stated that they were battery-powered and stopped working in 2012. Anil testified that he attempted to replace the batteries, but his grandmother prevented him from doing so from 2012 up until the date of the fire. Additionally, he claimed that he purchased a new smoke detector in 2014 prior to the fire, but his grandmother would not permit him to install it. Anil averred that a week prior to the accident, his grandmother asked him to test the detectors and they did not emit any audible alarm. He stated that he reminded Vargas numerous times of issues with the alarms and outlets, but he never came to the apartment to address either concern.

Michael M. Dugan testified in his affidavit, that according to the FDNY investigative file, the fire originated in the decedent's apartment, where there were combustible materials and heat sufficient to sustain combustion. He also referenced the report which stated that there were "multiple points of origin" and the code placed for "cause of fire" was "electrical," while the fire cause was deemed "undetermined." The file also stated that smoke alarms were present, but the type, including its mode of power, was "undermined." Moreover, it was noted that the FDNY found two covert cameras in the third-floor public hallway. Dugan opined that the fire and/or its spreading had multiple causes, including an electrical component, and excessive amounts of clutter in the apartment. As to the origin of the fire, he further averred that it was either a defective outlet or a defective power cord/power strip that was being overloaded, both being independent fire hazards. He further opined that if the building superintendent was aware of the defective outlet or aware of the manner in which the extension cords were being utilized, then the owner of the building had an independent obligation to address and remove said fire hazards.

Dugan also stated that failure to use "building-powered" smoke detectors was the likely proximate cause to the smoke detectors in the apartment being nonfunctional. He referenced the fact that Vargas stated that he installed smoke detectors that utilized only standard batteries, and based on his experience, would require changing within two to three years from the time of installation to the date of the fire. Additionally, he opined that had functional smoke detectors

been in the decedent's apartment or in the hallway where the covert cameras were located, the decedent would have been alerted in sufficient time as to safely exit the apartment and escape death. It is Dugan's opinion that the code violations and negligent acts of the owner/owner's agents were substantial factors in causing the fire. It was also his opinion that the code violations and negligent acts of the owner/owner's agent were a factor and/or a substantial factors in allowing the fire to spread and deprived the decedent of a substantial opportunity for survival. Moreover, he averred that if the building superintendent was aware of the excessive clutter, then the owner of the building had an independent obligation to address and remove any fire hazard.

James Pugh, PhD., P.E. also opined that the extension cords/power strips in the decedent's apartment violated New York City Administrative Code and were applicable to the building on the date of the fire. He also averred that the failure to utilize power-operated smoke detectors in the apartment created a fire hazard and/or were a code violation. Additionally, he opined that the failure of the landlord to inspect the premises regularly as required by the codes, to ensure a habitable and safe space for a tenant, should have revealed the disarray of the apartment, and put the landlord on notice that there was a likelihood that overloaded circuits, and other hazards could cause the fire that ultimately led to the fatality. He concluded that proper and necessary inspection as required would have identified the many hazardous conditions in the subject apartment and would have led to the mandate for corrective and pre-emptive fire hazard elimination.

As a result of conflicting expert reports, the FDNY Incident Report, and the deposition testimony of Anil Parekh and Roxanne Hillman Parekh, there are questions of fact, including, whether the fire occurred as a result of faulty electrical outlets and whether defendant's had notice of the potentially hazardous condition.

Accordingly, it is

ORDERED that, defendants Maxwell Kates, Inc. and The 315 Seventh Avenue Condominium's motion for summary judgment is denied in its entirety; and it is further

ORDERED that, plaintiff's cross motion to amend their bill of particulars is granted to the extent that the bill of particulars be amended to include additional code violations.

Plaintiff shall serve a copy of this order upon defendants within thirty (30) days of the date of this order, together with notice of entry.

This constitutes the decision and order of this Court.

4/27/2021
DATE


RICHARD G. LATIN, J.S.C.

| | | |
|-----------------------|---|---|
| CHECK ONE: | <input type="checkbox"/> CASE DISPOSED | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION |
| | <input type="checkbox"/> GRANTED | <input type="checkbox"/> GRANTED IN PART |
| | <input checked="" type="checkbox"/> DENIED | <input type="checkbox"/> OTHER |
| 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"/> REFERENCE |