

Green v New York City Hous. Auth.
2021 NY Slip Op 32570(U)
December 6, 2021
Supreme Court, New York County
Docket Number: Index No. 155948/2018
Judge: William Perry
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. WILLIAM PERRY **PART** **23**

Justice

-----X

DUSHAWN GREEN

Plaintiff,

INDEX NO. 155948/2018

MOTION DATE 06/24/2021

MOTION SEQ. NO. 001

- v -

THE NEW YORK CITY HOUSING AUTHORITY,

Defendant.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37

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

Plaintiff Dushawn Green alleges that he suffered injuries when a window closed on his hand due to the negligence of Defendant New York City Housing Authority. In motion sequence 001, Defendant moves for summary judgment. The motion has been fully submitted.

Background

Plaintiff resides in an apartment owned by Defendant and alleges that at approximately 2 AM on December 2, 2017, a window in the living room closed on his hand, causing him injuries. He commenced this action on June 25, 2018. (NYSCEF Doc No. 1, Complaint.)

Defendant moves for summary judgment dismissal, on the grounds that it had no notice of the allegedly defective window and thus cannot be liable for Plaintiff's injury. (NYSCEF Doc No. 25, Def.'s Memo, at 3-5.) In support, Defendant submits the affidavit of Danny Matos, a superintendent employed by Defendant, who avers Defendant received no work requests or complaints regarding the windows at issue for at least two years prior to the accident. (NYSCEF Doc No. 32, Matos Affidavit, at ¶¶ 3-4.) Matos also avers that a move out inspection was performed at the apartment on May 31, 2016. (*Id.* at ¶¶ 5-7.) Additionally, Defendant argues that

Plaintiff's deposition testimony establishes that his own inaction of leaving his hand on the windowsill for 5 seconds after the window started closing while attempting to place an object in the window was an intervening and superseding cause. (Def.'s Memo at 5-7.)

In opposition, Plaintiff argues that, although Defendant may not have had actual notice, Defendant "has submitted no evidence as to the last time the window in question was inspected or maintained by admit [sic] it was not done so in the two year period preceding the accident despite the testimony [of Danny Matos] that stated it should be done on an annual basis." (NYSCEF Doc No. 35, Opposition, at ¶¶ 9-16.) Further, Plaintiff argues that his conduct of attempting to prop the window open was reasonable and foreseeable and not an intervening cause of his injury. (*Id.* at ¶ 17.)

In reply, Defendant argues that it has met its burden for summary judgment and that Plaintiff fails to submit evidence establishing that Defendant had constructive notice of the allegedly defective window. (NYSCEF Doc No. 36, Reply.)

Discussion

"The proponent of a motion for summary judgment must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law." (*Dallas-Stephenson v Waisman*, 39 AD3d 303, 306 [1st Dept 2007], citing *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985].) Granting a motion for summary judgment is the functional equivalent of a trial, therefore it is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue. (*Rotuba Extruders v Ceppos*, 46 NY2d 223 [1977].) The court must view the evidence in the light most favorable to the nonmoving party and must give the nonmoving party the benefit of all reasonable inferences that can be drawn from the evidence. (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492 [1st Dept 2012].)

“It is settled that negligence cases by their very nature do not lend themselves to summary dismissal since often, even if all parties are in agreement as to the underlying facts, the very question of negligence is itself a question for jury determination.” (*McCummings v New York City Transit Auth.*, 81 NY2d 923, 926 [1993], quoting *Ugarrizza v Schmieder*, 46 NY2d 471, 474 [1979].) “An out-of-possession landlord that has assumed the obligation to make repairs to its property cannot be held liable for injuries caused by a defective condition at the property unless it either created the condition or had actual or constructive notice of it.” (*Cotto v New York City Hous. Auth.*, 155 AD3d 937, 938 [2d Dept 2017]; see also *Tejeda v 750 Gerard Props. Corp.*, 272 AD2d 124, 124-25 [1st Dept 2000].)

Once a defendant has made a prima facie showing, the burden shifts to the opposing party to “produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim or must demonstrate acceptable excuse for his failure to meet the requirement of tender in admissible form; mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient.” (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980].)

Here, Defendant has established its prima facie entitlement to summary judgment dismissal, as it submits evidence that it had neither actual nor constructive notice of the allegedly defective window. (Matos Affidavit.) Plaintiff’s argument that Defendant has not submitted evidence that the apartment was inspected within the two-year period preceding the accident (Opposition at ¶ 15) is inapposite and does not create an issue of fact requiring denial of the motion. Plaintiff fails to submit evidence that Defendant was under a specific duty to conduct inspections within such a time period. (*Ayers v Dormitory Auth. of the State of NY*, 165 AD3d 441, 442 [1st Dept 2018] [dismissal appropriate where plaintiff failed to demonstrate that defendant had an

affirmative duty to conduct reasonable inspections where it had no actual or constructive notice of the dangerous condition].) Thus, it is hereby

ORDERED that Defendant's motion sequence 001 for summary judgment dismissal is granted in its entirety; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

12/6/2021

DATE



WILLIAM PERRY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE