Urman v Lustar Realty Corp
2021 NY Slip Op 32707(U)
December 10, 2021
Supreme Court, Kings County
Docket Number: Index No. 510242/2018
Judge: Ingrid Joseph
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At an I.A.S Term, Part 83 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 10th day of December 2021.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS
PRESENT: HON. INGRID JOSEPH, J.S.C

---X

Tatyana Urman

Plaintiff,

-against-

Lustar Realty Corp

Defendants.

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Index No.: 510242/2018

Decision/Order

2021 DEC 16 AM 9: 1_
KINGS COUNTY CLERK
FILED

Recitation, as required by CPLR §2219(a), of the papers considered in the review of the Motion(s):

Papers	Numbered
Order to Show Cause and Affidavits/Affirmations Annexed	1, 2
Answering Papers	3
Reply	4

Plaintiff commenced this action to recover damages for injuries sustained due to Defendant's alleged negligence.

Defendant, Lustar Realty Corp., ("Defendant") moves (Mot.Seq.6) for an order granting summary judgment dismissing Plaintiff's, Tatyana Urman, ("Plaintiff") complaint against it.

Defendant alleges that Plaintiff's action is barred by the three-year statute of limitations for claims on injuries arising out of exposure to toxic substances, namely lead poisoning. Defendant claims that Plaintiff discovered that her illness was caused by lead poison on July 11, 2013 and commenced this action in May of 2018. Defendant also claims that plaintiff's argument that the time for the Statute of Limitation began to run after the RTK Environmental Group inspected the apartment is without merit since the Third Department Appellate Division held in *Haynes v. Williams*, 162 A.D.3d 1377 (3d Dept. 2018) that the statute runs from the date the condition or symptom is discovered or reasonably should have been discovered and not the

discovery of the specific cause of the condition or symptom. Moreover, the Defendant states that this action is barred by Res Judicata since this claim was litigated in the Civil Court.

Defendant concedes the fact that this action is under a different legal theory, but states that it is predicated upon the same facts and arises out of the same series of transaction and is therefore barred by Res Judicata. Defendant, alternatively, argues that even if the Court finds that this action is not barred by the Statute of Limitation or Res Judicata a dismissal would still be warranted, since Plaintiff cannot show that Defendant had notice of the hazardous condition. Defendant highlights the fact that Plaintiff resided at the premises from 2004 until 2014 and Defendant did not have notice of the lead issue until the Civil Court ordered an inspection of the apartment that took place on January 26, 2017.

Additionally, Defendant asserts that Plaintiff cannot establish that Defendant created the hazardous condition since Plaintiff hired someone to repaint and replaster some of the walls in the apartment prior to any diagnosis. Defendant claims that the only condition Plaintiff alerted Defendant to is that paint was chipping prior to the lead diagnosis. Defendant alleges that Plaintiff complaining about chipped paint does not rise to notice of a dangerous defect based on the Applelate division second department's ruling that states chipping and peeling paint is not the equivalent of notice of a dangerous lead paint condition. Defendant also states that the RTK Environmental Group ("RTK") letter of the report of the lead inspection dated September 10, 2015 also does not constitute valid notice of lead infestation and that it is inadmissible hearsay since Plaintiff failed to attach the report that the RTK letter mentions. Defendant alleges that even if the letter was admissible it does not serve as proof of notice since Defendant did not know of the existence of RTK's report until, November 2020. Defendant also asserts that renovation to part of the building's roof does not establish notice of the alleged hazardous condition since it is speculative that the renovation work created the condition. Defendant states that the letter it received from the Department of Health dated, February 1, 2016, still does not amount to notice of the condition at or prior to the 2013 exposure. Moreover, Defendant states that the Department of Health letter was about a tenant's complaint of dust and debris in the air and not lead exposure. Defendant maintains that it only became aware of the lead infestation after the Civil Court ordered an inspection in 2017. Defendant states that the Plaintiff's argument that Defendant had constructive notice since Defendant retained right of entry to repair is also

unfounded because they could not enter the apartment unless Plaintiff gave them the right to do so.

Plaintiff in opposition alleges that she learned about her condition in September 2015 when her doctor suggested that she check her apartment for any exposure to dangerous substances. Plaintiff states that she began feeling ill in 2013 but was not diagnosed with lead poisoning until September 2015. Plaintiff claims that Defendant is misinterpreting her testimony and that the urine test results of 2013 showed that she had above average levels of lead amongst other minerals and that the doctor could not pinpoint exactly what was causing her symptoms. Plaintiff avers that her diagnosis of lead poisoning and suspicion that it was caused by lead in the apartment was confirmed by the September 10, 2015 RTK report after the appointment with her doctor in 2015. Plaintiff states that she made a complaint with NYC Department of Health who then sent a letter dated, February 1, 2016 to Defendant regarding Plaintiff's complaint and the Defendant responded with a letter dated, February 8, 2016 acknowledging that they were performing work on the roof. Plaintiff asserts that Res Judicata does not apply here because the former action was in landlord and tenant court which has limited jurisdiction to hear certain claims. Additionally, in response to Defendant's lack of notice claim Plaintiff alleges that the building manager, Dora Gallus, at her EBT on October 22, 2020 admitted to receiving the complaint from New York City Department of Health, and that she received complaints from the super on behalf of Plaintiff of the peeling and chipping paint. Moreover, Plaintiff states that Ms. Gallus also admitted that they hired contractors to perform renovations and work on the roof that spread dust and debris throughout the building. Plaintiff asserts that aside from a common law duty there is a statutory duty by Administrative Code and Multiple Dwelling Law §78 that imposes liability on Defendant.

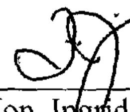
Generally, actions to recover damages for an injury to property or for a personal injury are governed by the three-year statute of limitations found in CPLR 214 (*Kamath v Bldg. New Lifestyles, Ltd.*, 146 AD3d 765, 767 [2d Dept 2017]). There is, however, an exception to that rule: "[a] plaintiff's cause of action for damages resulting from exposure to toxic substances accrues when the plaintiff begins to suffer the manifestations and symptoms of his or her physical condition, i.e., when the injury is apparent, not when the specific cause of the injury is identified (*Kamath v Bldg. New Lifestyles, Ltd.*, 146 AD3d 765, 767 [2d Dept 2017]). Notably, an injury refers to "an actual illness, physical condition or other similarly discoverable objective

manifestation of the damage [or symptoms] caused by previous exposure to an injurious substance" (Pompa v Burroughs Wellcome Co., 259 AD2d 18, 22 [3d Dept 1999]).

In this matter Defendant has demonstrated that Plaintiff discovered or manifested symptoms of the primary condition on which the claim is based in 2013, five years before the commencement of this action. Defendant submitted testimony from Plaintiff's examination before trial where she testified that she started to experience symptoms such as stomach pain, difficulty breathing, and abnormal sensation of smell starting in 2013 which prompted her to visit a medical professional. Plaintiff also testified that two doctors, her primary care physician Dr. Larissa Veksman and another doctor Dr. Stella Ilyaev both diagnosed her with lead poisoning in 2013. Additionally, there are medical records that show Plaintiff had high levels of lead in her urine in 2013. Upon a review of all documents submitted and arguments presented the Court finds that Plaintiff's action is barred by the Statute of Limitations pursuant to CPLR § 214-c since she started experiencing symptoms of the conditions on which the claims in this matter is based in 2013.

Accordingly, Defendant's motion for summary judgment dismissing the complaint is granted. All other claims and arguments are either moot or without merit.

This constitutes the decision and order of the court.



Hon. Ingrid Joseph, J.S.C.
Hon. Ingrid Joseph
Supreme Court Justice

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