

Goodwin v 957 Greene Ave LLC
2021 NY Slip Op 32882(U)
September 27, 2021
Supreme Court, Kings County
Docket Number: Index No. 521351/2019
Judge: Carl J. Landicino
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At an IAS Term, Part 81 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 27th day of September, 2021.

PRESENT:

CARL J. LANDICINO, J.S.C.

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MICHELE GOODWIN,

Plaintiff,

-against-

957 GREENE AVE LLC, RUSSELL REALTY GROUP LLC, and MOHAMMAD T BHALLI D/B/A S&B FIRST CONTRACTING CO.,

Defendants.

Index No.: 521351/2019

DECISION AND ORDER

Motion Sequence #1

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Recitation, as required by CPLR 2219(a), of the papers considered in review of this motion:

Papers Numbered (NYSCEF)

Notice of Motion/Cross Motion and Affidavits (Affirmations) Annexed	28-40,
Opposing Affidavits (Affirmations).....	48-54,
Reply Affidavits (Affirmations)	56-59,
Memorandum of Law	41, 60,

After a review of the papers and oral argument on the motion the Court finds as follows:

The instant action concerns an alleged slip and fall incident that occurred on August 30, 2018. On that day the Plaintiff, Michele Goodwin (hereinafter “the Plaintiff”) allegedly injured herself when she slipped and fell on stairs located in the premises known as 957 Greene Avenue Brooklyn, New York (hereinafter “the Premises”). As part of her Verified Complaint the Plaintiff alleges “[t]hat on the August 30, 2018, and for an unreasonably long period of time prior thereto, the aforementioned staircase/stairway at the aforesaid premises remained in its dangerous,

defective, lacking proper handrails, hazardous, dusty and with a slipping hazard present thereat.”

(See Defendant’s Motion, Complaint, Paragraph 87).

Defendant Russell Realty Group LLC (hereinafter referred to as “Defendant Russell”) moves for an order pursuant to CPLR 3212 granting summary judgment dismissing Plaintiff’s Amended Complaint and dismissing the cross-claims of Defendant 957 Greene Ave LLC (hereinafter “Defendant Greene”) and Defendant Mohammad T Bhalli (hereinafter “Defendant Bhalli”) as against it. Defendant Russell contends that summary judgment should be granted as it did not have a duty to maintain the Premises at the time of the alleged incident because it had sold and transferred the Premises to Defendant Greene on July 9, 2018, almost two months prior to the date of Plaintiff’s alleged accident. Defendant Russell contends that Defendant Greene’s cross-claims for indemnification must also be dismissed as Defendant Russell was not obligated (through contract or otherwise) to provide insurance for and to indemnify and defend Defendant Greene, the current owner.

The Plaintiff opposes the motion and argues that it should be denied. Specifically, the Plaintiff contends that Defendant Russell’s motion is premature. The Plaintiff contends that her injuries resulted from slipping on construction debris and being unable to regain her balance due to the absence of a handrail. The Plaintiff contends that discovery should be completed to determine whether a reasonable time elapsed from the time Defendant Russell transferred the property to Defendant Greene for Defendant Greene to have discovered and addressed the alleged defective and dangerous conditions that purportedly caused the Plaintiff to fall. The remaining parties have not opposed this motion.

“Summary judgment is a drastic remedy that deprives a litigant of his or her day in court, and it should only be employed when there is no doubt as to the absence of triable issues of

material fact.” *Kolivas v. Kirchoff*, 14 AD3d 493 [2d Dept 2005], citing *Andre v. Pomeroy*, 35 N.Y.2d 361, 364, 362 N.Y.S.2d 131, 320 N.E.2d 853; see also *Akseizer v. Kramer*, 265 A.D.2d 356 [2d Dept 1999]. Moreover, the proponent must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate absence of any material issues of fact. See *Sheppard-Mobley v. King*, 10 AD3d 70, 74 [2d Dept 2004], citing *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572 [1986]; *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642 [1985].

Once a moving party has made a *prima facie* showing of its entitlement to summary judgment, “the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action.” *Garnham & Han Real Estate Brokers v Oppenheimer*, 148 AD2d 493 [2d Dept 1989]. Moreover, as the Court of Appeals made clear in *Andre v. Pomeroy* “when there is no genuine issue to be resolved at trial, the case should be summarily decided, and an unfounded reluctance to employ the remedy will only serve to swell the Trial Calendar and thus deny to other litigants the right to have their claims promptly adjudicated.” *Andre v. Pomeroy*, 35 N.Y.2d 361, 364, 362 N.Y.S.2d 131, 320 N.E.2d 853 [1974]; see also *McElwain v. Olashansky*, 220 A.D.2d 394, 395, 631 N.Y.S.2d 886, 886 [2d Dept 1995].

Although liability for a dangerous condition does not generally extend to prior owners, “[a] narrow exception exists, however, and liability may be imposed [on a prior owner] 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.” *Mullen v. Zoebe, Inc.*, 205 AD2d 597, 613 N.Y.S.2d 272 [2d Dept 1994], quoting *Bittrolff v. Ho's Dev. Corp.*, 77 N.Y.2d 896, 898, 571 N.E.2d 72 [1991]; see also *Fisher v. Braun*,

227 AD2d 586, 587, 643 N.Y.S.2d 205, 206 [1st Dept 1996]; *Sarfowaa v. Claflin Apts. LLC*, 284 AD2d 228, 727 N.Y.S.2d 82 [1st Dept 2001]. Accepting the Plaintiff's allegations as true, and without any dispute by the remaining Defendants as to the time that elapsed between the transfer of the property and the alleged accident, it would be improper under these facts to hold Defendant Russell responsible for any alleged injury to the Plaintiff. This holding, however, does not make a finding that the alleged defects existed, were dangerous or that Defendant Greene did not properly address them.

In *Mullen v. Zoeb, Inc.*, the Court granted summary judgment in favor of the prior owners who had recently sold a property in a matter that involved a firefighter who was injured while responding to a fire in a building with several building code violations that the firefighter was unaware of when he entered the building. Similarly, in *Bittrolff v. Ho's Dev. Corp.*, the Court granted summary judgment in favor of a prior owner that had sold their property nine months prior to the alleged accident. While the Court found issues of fact preventing summary judgment in *Sarfowaa v. Claflin Apts. LLC*, that matter involved a concealed gas leak and a prior owner that had sold the property just eleven days prior to the resulting explosion and purported injuries. As indicated above, the exception is a narrow one.

In this case, the period between the transfer of the Premises and the alleged accident was 51 days. Plaintiff, in her affidavit, states that the handrail had always been missing and that renovation/construction work had been ongoing since the middle of July 2018 (the property was conveyed on July 8, 2019). Considering that activity, stated by a person with knowledge who was present at the Premises at the relevant time, Defendant Greene would have had sufficient access to the Premises and time to observe the alleged conditions in order to adequately address them, by repair or warning. The defects, as alleged, were not concealed.

Based upon the foregoing, it is hereby ORDERED as follows:

The motion by Defendant Russell Realty Group, LLC (motion sequence #1) for summary judgment is granted. The complaint and any cross-claims as against Russell Realty Group, LLC shall be dismissed. As such the new caption shall read as follows:

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MICHELE GOODWIN,

Plaintiff,

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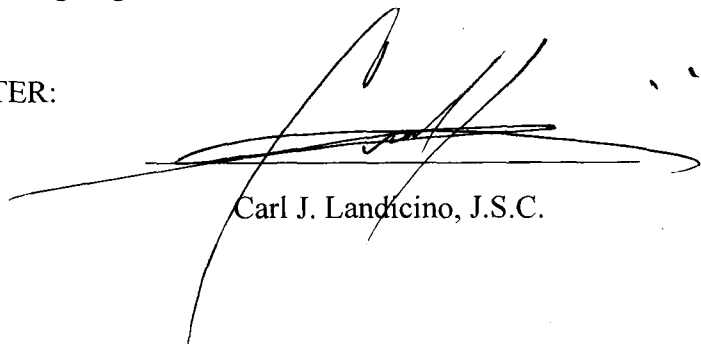
-against-

957 GREENE AVE LLC, and MOHAMMAD T
BHALLI D/B/A S&B FIRST CONTRACTING CO.,

Defendants.
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The foregoing constitutes the Decision, Order and Judgment of the Court.

ENTER:



Carl J. Landicino, J.S.C.

KINGS COUNTY CLERK
FILED
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