

Metromotion Prods., Inc. v Good Light Studio, Inc.
2022 NY Slip Op 30081(U)
January 11, 2022
Supreme Court, New York County
Docket Number: Index No. 150804/2018
Judge: Sabrina B. Kraus
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 57

METROMOTION PRODUCTIONS, INC., and
DAYLIGHT STUDIO LLC, and Individual and as
Assignee of Fireman’s Fund Insurance Company

Plaintiffs,

-against-

GOOD LIGHT STUDIO, INC., and GOOD LIGHT
STUDIO 2, LLC, JAMES GALLOWAY, STUDIO
WITH A VIEW INC., ROBERT R. STUART & CO.,
INC., and 450 WEST 31ST OWNERS CORP.

Defendants.

DECISION & ORDER

Index No.: 150804/2018

Motion Seq No 9

HON. SABRINA KRAUS

The following e-filed documents, listed by NYSCEF document number were read on this motion to compel (Motion Seq No 9): 200, 201, 202, 203, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217,218, 220, 221, 222, and 223.

BACKGROUND

Plaintiffs commenced this action seeking six million dollars in damages as the result of a frozen pipe that burst on February 1, 2015, and caused damages to a space they occupied on the 8th floor of 450 West 31st Street, New York, New York 10001 (Building). Plaintiffs allege property damage and loss of income.

THE PENDING MOTION

On September 10, 2021, Good Light Studio, Inc., and Good Light Studio 2 (collectively “Good Light”) moved for dismissal and/or summary judgment. On January 10, 2022, the motion was fully briefed, the court heard oral argument and reserved decision.

For the reasons stated below the motion is granted and the action against Good Light is dismissed.

FACTS

The court finds the following facts to be undisputed based on the motion papers submitted.

450 West 31st Street Owners Corp is the commercial cooperative which collectively owns and operates the building in which the Subject Premises is located.

Metromotion Productions, Inc. and Daylight Studio LLC (plaintiffs) are the proprietary lessee and occupant of units on the eight and ninth floor of the Building.

James Galloway (Galloway) is the proprietary lessee of unit 9C in the Building. Good Light subleased unit 9C from Galloway. On February 1, 2015, the pipe burst in unit 9C causing damage to plaintiffs' unit below.

The proprietary lease agreement between 450 West 31st and Galloway provides that Galloway is not responsible for maintenance repair and replacement of water pipes within the walls ceilings or floors.

Specifically Article 18 of the lease provides:

The Lessee shall keep the interior of the Unit (including interior walls, floors and ceilings but excluding windows, window panes, window frames, sashes, sills, entrance and terrace doors, frames and saddles) in good repair, shall do all the painting and decorating required for his Unit, including the interior of window frames, sashes and sills, and shall be solely responsible for the maintenance, repair, and replacement of plumbing, gas and heating fixtures and equipment and such immovable equipment and fixtures which may be in the unit. Plumbing, gas and heating fixtures as used herein shall include exposed gas, steam and water pipes attached to fixtures, appliances and equipment and the fixtures, appliance and equipment to which they are attached, and any special pipes or equipment which the Lessee may install within the wall or ceiling, or under the floor, but shall not include gas, steam, water or other pipes or conduits within the walls, ceilings or

floors or air conditioning or heating equipment which is part of the standard building equipment.

The sublease between Galloway and Good Light is subordinate to the prime lease and incorporates by reference all of the provisions of the prime lease.

The pipe that burst was within the walls of Unit 9C, and could only be accessed after the wall had been removed.

After the pipe burst, plaintiffs filed an action in Federal Court against their insurer Fireman's Fund Insurance Company. That action resulted in a settlement pursuant to which Fireman's paid plaintiff's \$762,527.70, which was broken down as: \$656,993.15 for Tenant Improvements; \$20,534.55 for Property damage; and \$85,000.00 for Business Income loss and additional expenses. Fireman's also assigned plaintiffs all rights of subrogation and interest under the policy and any claims to recover the amounts paid in connection with the loss.

DISCUSSION

"The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case." *Winegrad v. New York University Medical Center*, 64 NY2d 851, 853 (1985). The moving party has the burden of submitting evidence, in admissible form, to support its motion. *Zuckerman v. City of New York*, 49 NY2d 557, 562 (1980). To defeat a motion for summary judgment the opposing party must show facts sufficient to require a trial (CPLR 3212, subd [b]).

A Court will grant summary judgment if the movant sets forth a *prima facie* showing of entitlement to judgment as a matter of law by tendering evidence sufficient to eliminate any material issue of fact from the case. *Id.* "Once the movant has made the required showing, the

burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of a material issue of fact that precludes summary judgment and requires a trial of the action.” *J.E. v. Beth Israel Hosp.*, 295 AD2d 281, 282 (2d Dept. 2002). “Mere conclusory allegations, expressions of hope, or unsubstantiated assertions may not defeat a motion for summary judgment.” *Carleton Studio, Ltd. v. MONY Life Ins. Co.*, 18 AD3d 491 (2d Dept. 2005)

In the case at bar Good Light has met its *prima facie* burden in establishing the right to judgment as a matter of law. The Proprietary Lease for Galloway and the sublease between Galloway and Good Light establish that Good Light had no responsibility to maintain or repair the water pipes that were inside the walls of the demised premises. The only admissible evidence is that said pipe was not installed by Good Light, and that Good Light made no improvements or renovations to the area where the leak occurred. Good Light never serviced or repaired the subject pipe. 1

Plaintiff asserts two causes of action against Good Light one for negligence and one based on the theory of *respondeat superior*.

Good Light is entitled to summary judgment on plaintiff's first cause of action for negligence

To establish a claim for negligence, a plaintiff must show: (1) that the defendant owed the plaintiff a duty; (2) that the defendant breached that duty; and (3) that the breach proximately caused harm to the plaintiff. *Katz v. United Synagogue of Conservative Judaism*, 135 AD3d 458 (1st Dept. 2016).

1 Plaintiffs argue in their memorandum of law that there is evidence to show that the pipe was installed by Good Light but the court finds no such admissible evidence in the record.

The existence and scope of a tortfeasor's duty is a question of law to be determined by the Courts. *See 532 Madison Ave. Gourmet Foods v. Finlandia Ctr.*, 96 NY2d 280, 289 (2001). Foreseeability, alone, does not define duty, it merely determines the scope of the duty once it is determined to exist. *Hamilton v Beretta USA Corp*, 96 NY2d 222, 232. To establish a duty giving rise to liability in tort, the injured party must show that a defendant owed not merely a generally duty to society but a specific duty to him or her. *Id.* Moreover, "[a]bsent a duty running directly to the injured person there can be no liability in damages, however careless the conduct or foreseeable the harm." *532 Madison Ave. Gourmet Foods*, 96 NY2d 280, 289.

There is ample authority establishing that lease provisions, such as those in the case at bar, are unambiguous and a proper basis for summary determinations [*see eg Goldenberg v 425 Park-S Tower Corp.*, 151 AD3d 522 (1st Dept 2017); *Machado v Clinton Hous. Dev. Co.* (20 AD3d 307 [1st Dept 2005])];

Even if plaintiffs could have established a contractual duty pursuant to pursuant to the proprietary lease and the sublease, plaintiffs acknowledge that said obligation alone would be insufficient to impose liability on Good Light.

Plaintiff concedes that contractual obligations are insufficient to impose tort liability on non-contracting third parties, unless: (1) the contracting party, in failing to exercise reasonable care in the performance of his duties, launches a force or instrument of harm; (2) the plaintiff detrimentally relies on the continued performance of the contracting party's duties; or (3) the contracting party has entirely displaced the other party's duty to maintain the premises safely. *See Espinal v. Melville Snow Contrs., Inc.*, 98 NY2d 136, 140 (2002). None of the three exceptions apply to Good Light in this case.

Similarly, plaintiff's argument that MDL § 78(1) imposes a duty of care on Good Light is unavailing. MDL § 78(1) provides "(e)very multiple dwelling ... shall be kept in good repair. The owner shall be responsible for compliance with the provisions of this section; but the tenant also shall be liable if a violation is caused by his own wilful act, assistance or negligence or that of any member of his family or household or his guest." It is undisputed that Good Light committed no willful acts and as established above plaintiff is unable to establish a claim of negligence as against Good Light. Nor is there a basis to find that Good Light had notice of any alleged defect in the pipes. Plaintiff's argument that Good Light was aware of a problem with the sink, does not constitute notice of a defect to a pipe behind the walls.

***Res Ipsa Loquitur Is Not Applicable to Good Light Because
the Pipes Behind the Wall Were Not in the Exclusive Control of Good Light***

Res Ipsa Loquitur may be applied where "(1) the event must be of a kind which ordinarily does not occur in the absence of negligence; (2) it must be caused by an agency or instrumentality within the exclusive control of the defendant; and (3) it must not have been due to any voluntary action or contribution on the part of the plaintiff." *Payless Discount Centers, Inc. v. 25-29 North Broadway Corporation*, 83 AD2d 960, 960 (2d Dept. 1981).

While this doctrine has been applied against building owners in the case of ruptured pipes, in the case at bar Good Light was not the party charged contractually with maintenance of the pipes and did not have exclusive control of the pipes behind the walls of its premises.

The Second Cause of Action Based on the Theory of Respondeat Superior Fails to State a Cause of Action as Against Good Light

The second cause of action sounds in *respondeat superior*, claiming that Galloway and Studio With A View, Inc. are vicariously liable for the negligent acts and omissions of their ‘authorized agent’, Good Light. A defendant can not be both directly and vicariously liable for its own alleged negligence, and therefore the second cause of action is based on a theory of negligence which may only be applied as against Galloway and cannot be asserted against Good Light.

CONCLUSION

Accordingly it is hereby:

ORDERED that plaintiff’s first and second causes of action asserted against Good Light Studio, Inc. and Good Light Studio 2, LLC are dismissed; and it is further

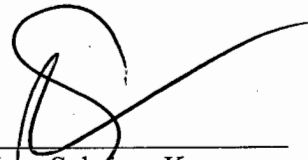
ORDERED that the cross-claim asserted by ROBERT F. STUART & CO., INC and 450 WEST 31ST OWNERS CORP against GOOD LIGHT STUDIO INC and GOOD LIGHT STUDIO 2, LLC is dismissed as no opposition was submitted to that portion of Good Light’s motion seeking dismissal of the cross-claims; and it is further

ORDERED that service of this order upon the County Clerk 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), and it is further

ORDERED that any relief sought not expressly addressed herein has nonetheless been considered and is denied.

This constitutes the decision and order of the court.

Dated: January 11, 2022

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a horizontal line extending to the right.

Hon. Sabrina Kraus
ASCJ