

Rodriguez v New York City Hous. Auth.
2022 NY Slip Op 31142(U)
April 8, 2022
Supreme Court, New York County
Docket Number: Index No. 159289/2020
Judge: Barbara Jaffe
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. BARBARA JAFFE PART 12

Justice

-----X

JOHN RODRIGUEZ,

Plaintiff,

- v -

THE NEW YORK CITY HOUSING AUTHORITY, *et al.*,

Defendants.

-----X

INDEX NO. 159289/2020

MOTION DATE _____

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 19- 52 were read on this motion to dismiss.

Defendant MDG Design & Construction, LLC (MDG) moves pursuant to CPLR 3212 for an order dismissing all of plaintiff’s claims against it. Plaintiff opposes, as do defendants New York City Housing Authority (NYCHA), NYCHA Ocean Bay, LLC, RDC Development, LLC, RDC Ocean Bay, LLC, Ocean Bay GP, LLC, Ocean Bay Rad, LLC, Wavecrest Ocean Bay LLC, and Wavecrest Management Group, LLC (collectively, Ocean Bay defendants).

I. PERTINENT FACTS

This action arises from an accident that occurred on June 29, 2019 at 430-440 Beach 54th Street, Arverne, NY, known as the Ocean Bay Apartments (premises). Plaintiff was injured in the course of his employment as a maintenance worker when he fell while traversing a concrete staircase located in building 23. Plaintiff alleges that the “stairs were broken, cracked, in disrepair and gouged, thereby constituting a hazardous, dangerous condition.” He asserts causes of action for negligence against all defendants. (NYSCEF 1, 32)

II. CONTENTIONS

MDG submits an affidavit of its vice president, who states that while MDG was

contracted to perform construction work on the premises, including building 23, it had completed the work several months before plaintiff's accident. He also states that MDG did not create, nor was it aware of, any dangerous conditions at the jobsite, and that at no point did it control plaintiff's work. (NYSCEF 30).

MDG relies on the vice president's affidavit to argue that, as it had completed its work on the premises before the accident, did not direct or control plaintiff's work, and did not create or have notice of any dangerous condition, there is no basis on which to hold it liable for plaintiff's injuries. (NYSCEF 20). It submits certificates and letters of completion as additional proof that it had completed construction before the accident, the last of which was issued on May 21, 2019. (NYSCEF 26-29). It also submits its contract with Ocean Bay RAD, LLC to perform construction work on the premises. (NYSCEF 31)

In opposition, Ocean Bay defendants argue that summary judgment is premature, as discovery is in its early stages and no depositions have been taken. They contend that MDG's affidavit is self-serving, and that they should have the opportunity to question it about its jobsite responsibilities and unsubstantiated denial of having created a dangerous condition, among other things. (NYSCEF 38).

In separate opposition, plaintiff also contends that defendant's motion is premature, and that he should have an opportunity to ask MDG questions. Additionally, he argues that the contract submitted by MDG creates questions of fact as to the extent of the work performed by MDG at the premises and what work it should have performed, as it suggests that MDG had a duty to repair and/or maintain the concrete staircase in issue. Also, he argues that the certificates and letters of completion submitted by MDG were not properly authenticated by someone with personal knowledge, and thus MDG fails to offer admissible evidence sufficient to support

summary judgment. (NYSCEF 50).

In reply, MDG contends that its supporting documents were properly authenticated by its vice president and it denies that it was hired to perform work on the stairs at issue. And, as it was not involved in plaintiff's accident, it need not be deposed. (NYSCEF 52).

III. ANALYSIS

To prevail on a motion for summary judgment, the movant must establish, *prima facie*, its entitlement to judgment as a matter of law, providing sufficient evidence demonstrating the absence of any triable issues of fact. (*Matter of New York City Asbestos Litig.*, 33 NY3d 20, 25-26 [2019]). If this burden is met, the opponent must offer evidence in admissible form demonstrating the existence of factual issues requiring a trial; “conclusions, expressions of hope, or unsubstantiated allegations or assertions are insufficient.” (*Justinian Capital SPC v WestLB AG*, 28 NY3d 160, 168 [2016], quoting *Gilbert Frank Corp. v Fed. Ins. Co.*, 70 NY2d 966, 967 [1988]). In deciding the motion, the evidence must be viewed in the “light most favorable to the opponent of the motion and [the court] must give that party the benefit of every favorable inference.” (*O'Brien v Port Auth. of New York and New Jersey*, 29 NY3d 27, 37 [2017]).

While MDG submits sufficient proof that it completed construction before plaintiff's accident, its vice president's assertions that it did not create and was not aware of any dangerous conditions at the jobsite are insufficient to support plaintiff's *prima facie* burden. (*Bartee v D & S Fire Protection Corp.*, 79 AD3d 508 [1st Dept 2010] [conclusory statement in affidavit that defendant did not remove grating that caused plaintiff's injury or have any responsibility for it insufficient to satisfy defendant's *prima facie* burden]).

As MDG thereby fails to establish that it was not negligent and/or that its acts or omissions did not cause or contribute to plaintiff's accident, there is no basis on which to dismiss

plaintiff's claims against it. In any event, the opposing parties establish that discovery as to the scope of MDG's work at the jobsite is warranted. (See e.g., *Sparks v Focus 1 LLC*, 162 AD3d 1565 [4th Dept 2018] [summary judgment motion premature as information necessary to oppose motion, including whether defendant created and contributed to dangerous condition, was within defendant's exclusive knowledge]).

IV. CONCLUSION

Accordingly, it is hereby

ORDERED that defendant MDG Design & Construction, LLC's motion for summary judgment is hereby denied; and it is further

ORDERED, that the parties are directed to submit a preliminary conference stipulation, by email to cpaszko@nycourts.gov, on or before May 25, 2022.

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BARBARA JAFFE, J.S.C.

4/8/2022
DATE

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: