

Crowe v City of New York
2022 NY Slip Op 31201(U)
April 11, 2022
Supreme Court, New York County
Docket Number: Index No. 159156/2021
Judge: J. Mabelle Sweeting
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. J. MACHELLE SWEETING PART 62

Justice

-----X

ERICKA CROWE,

Plaintiff,

- v -

CITY OF NEW YORK, NEW YORK CITY HOUSING
AUTHORITY

Defendants.

-----X

INDEX NO. 159156/2021

MOTION DATE 12/27/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 26, 29, 30, 31

were read on this motion to/for DISMISS.

In the underlying action, plaintiff alleges that she was injured on March 11, 2021, while inside her apartment located at 2453 Adam Clayton Powell Jr. Blvd, Apt 3B in New York County. When her bathroom ceiling collapsed on her while she was showering.

Pending before the court is a motion wherein defendant The City of New York (the "City") seeks an order, pursuant to CPLR 3211 (a)(1), dismissing the complaint based on documentary evidence and dismissing the complaint, pursuant to CPLR 3211 (a)(7), for failure to state a cause of action.

Arguments Made by Parties

In its motion, the City argues that it is an improper party to this action because it did not own, operate, maintain or control the premises on the date of the alleged incident. The City argues that in fact, in the Verified Answer (NYSCEF Document #13) submitted by the defendant New York City Housing Authority (“NYCHA”), NYCHA explicitly admits that it “owns,” “operates and maintains” the premises located at 2453 Adam Clayton Powell Jr. Boulevard, New York, New York.

In support of its motion, the City also submitted the sworn affidavit of David Schloss (NYSCEF Document #14), which states, in part:

1. I am a Senior Title Examiner with the New York City Law Department. My duties as a Senior Title Examiner include the examination and certification of real estate titles in New York County.
2. I have conducted a title search for 2453 ADAM CLAYTON POWELL JR., BOULEVARD, NEW YORK, NEW YORK, designated on the tax map as Block 2011, Lot 61.
3. Record title for New York Block 2011, Lot 61 on MARCH 11, 2021, was in THE NEW YORK CITY HOUSING AUTHORITY, pursuant to a deed recorded FEBRUARY 2, 2010, in CRFN 2010000037699.

In opposition, plaintiff argues that this motion is premature, because a preliminary conference has not yet been held, and no depositions have yet been taken. Plaintiff argues that she should have the right to conduct depositions to determine the responsibilities and obligations the City had with co-defendant New York City Housing Authority at the time of the subject accident.

Analysis and Conclusions of Law

“On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction [...] We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (Leon v Martinez, 84 NY2d 83 [NY Ct. of Appeals 1994]).


Here, at a minimum, plaintiff is entitled to a preliminary conference to explore the City’s central contention that it did not own, operate, maintain or control the premises on the date of the alleged incident. *See* Belziti v. Langford, 105 A.D.3d 649 (Sup. Ct. App. Div, 1st Dept. 2013) (“Green’s motion for summary judgment was properly denied as premature, since limited discovery has taken place and Green himself has not yet been deposed in this matter”); Weinstein v. WB/Stellar IP Owner, LLC, 125 A.D.3d 526 (Sup. Ct. App. Div, 1st Dept. 2015) (“Plaintiff opposed the motion on the ground that it was premature since ‘facts essential to justify opposition may exist but cannot then be stated’ [...] Stellar’s motion should have been denied as premature, since plaintiff had no opportunity to depose Stellar, codefendant Friends, or nonparty EDC concerning, among other things, the project and maintenance of the extended sidewalk area following its completion”).

Accordingly, it is hereby:

ORDERED that this motion is denied as premature; and it is further

ORDERED that plaintiff shall email SFC-CITY-DCM@nycourts.gov (and cc all counsel) with respect to his request for a preliminary conference; and it is further

ORDERED that the City is given leave of court to re-file or renew this motion after discovery has commenced.

4/11/2022		
DATE		J. MACHELLE SWEETING, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> DENIED
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> SUBMIT ORDER
		<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> OTHER
		<input type="checkbox"/> REFERENCE