

AIG Prop. Cas. Co. v Miwa Yoshida
2022 NY Slip Op 31511(U)
May 10, 2022
Supreme Court, New York County
Docket Number: Index No. 156734/2018
Judge: Sabrina Kraus
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS **PART** **57TR**

Justice

-----X

AIG PROPERTY CASUALTY COMPANY A/S/O ANDREW
ROBERTS AND AMBER ROBERTS,

Plaintiff,

- v -

MIWA YOSHIDA,

Defendant.

-----X

MIWA YOSHIDA

Plaintiff,

-against-

MATTHEW FUHR, MELODY FUHR

Defendant.

-----X

INDEX NO. 156734/2018

MOTION DATE May 10, 2022

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595799/2019

The following e-filed documents, listed by NYSCEF document number (Motion 003) 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 89, 90, 91, 92, 93

were read on this motion to/for SUMMARY JUDGMENT.

BACKGROUND

This subrogation action alleging property damage arises out of an alleged flooding condition that occurred on July 9, 2017 at 79 Laight Street, New York, New York. It is alleged that there was a leak from a Water Filtration System located in apartment 5E of the residential building located at 79 Laight Street that resulted in damage to the apartment below owned by plaintiff's insureds. At the time of the flood, Apt 5E was owned by Miwa Yoshida (Yoshida).

Yoshida had purchased apartment 5E from Matthew S. Fuhr And Melody B. Fuhr (the Fuhrs) in 2006.

PENDING MOTION

On August 27th, 2021, the Fuhrs moved for an order pursuant to CPLR § 214(4) and CPLR §3211(a) (5) dismissing plaintiff's claims and any cross-claims against them on the grounds that plaintiff failed to commence this action within the applicable three-year statute of limitations; or alternatively pursuant to CPLR §3212(a), granting them summary judgment on all claims and cross-claims, on the grounds that the Fuhrs did not owe a duty to the plaintiff's insured, were not negligent, and did not proximately cause the damages that plaintiff alleges.

On the same date plaintiff cross-moved for an order for relief pursuant to CPLR §3126.

On May 10, 2022, this court heard oral argument and reserved decision.

For the reasons stated below, the motion for summary judgment is denied and the motion for relief pursuant to CPLR §3126 is granted only to the extent of directing the parties to proceed with discovery.

ALLEGED FACTS

On July 9, 2017, at approximately 10:50 p.m., water was "released" and entered the apartment of the plaintiff's insureds. The loss originated in Unit 5E in a building located at 79 Laight Street, New York, New York, which was owned and occupied by the Fuhrs from 2002 to 2006.

Plaintiff alleges that the flood was caused by a water filtration system located in the kitchen of Unit 5E that was installed by the Fuhrs and/or their agents, representatives, employees and/or servants, while the Fuhrs were occupying Unit 5E. Plaintiff further alleges that a portion of the water filtration system was negligently overtightened when it was installed and then

cracked over time which caused water to be released and enter into the apartment Apt 4D located in the Building.

DISCUSSION

The Action is Timely

It is well established law that negligence in New York has a three-year statute of limitations which accrues from the date of the occurrence. CPLR 214(4); *Kamath v. Building New Life Styles, Ltd*, 146 A.D.3d 763 (2nd Dept. 2017)

Here, the loss occurred on July 9, 2017. Thus, plaintiff had until July 9, 2020 to timely file a claim of negligence action against the Fuhrs. Since plaintiff filed its complaint on September 4, 2019, the complaint is timely and defendants' motion to dismiss based on statute of limitations must be denied.

The Fuhrs deny that they installed or caused to be installed the water filtration system. However, accepting plaintiff's theory of the case for the purposes of argument – that the Fuhrs installed the water filtration system - the Fuhrs argue that the time to sue ran from the alleged installation, which had to have occurred between 2002 and 2006. The Fuhrs rely on *Manhattanville College v. James John Romeo Consulting*, 5 A.D.3d 637, 640-641 (2nd Dept. 2004) where the court held that the negligent installation claim asserted, whether sounding in contract or in tort, accrued upon completion of the installation.

However, the holding in *Manhattanville College* is not applicable to the case at bar.

Under New York law, only a party who hires a contractor to perform work and then seeks to sue that contractor for defective work must sue in breach of contract, which is governed by a six-year statute of limitations which accrues on the date that the work is substantially completed *Mogul Media, LLC v. Ramsburgh*, 150 A.D.3d 487 (1st Dept. 2017).

A party who is a stranger to that construction contract, i.e., one that that does not hire that contractor or one who is not an intended beneficiary of the that contract, and seeks to sue that contractor for defective work may sue in negligence, which is governed by a three-year statute of limitations, which accrues on the date of the occurrence *See, Town of Oyster Bay v. Lizza Industries, Inc.* 22 N.Y.3d 1024 (2013); *City School District of City of Newburgh v. Hugh Stubbings & Associates, Inc.*, 85 NY.2d (1995); *Omega Diagnostic Imaging PC v. Attica Construction Corp.*, 190 A.D.3d 617 (1st Dept. 2021).

Based on the foregoing, the three year statute of limitations ran from the time of the loss and the motion to dismiss pursuant to CPLR §3211(a)(5) is denied.

Summary Judgment is Premature as Discovery is Still Outstanding

Plaintiff alleges that the Fuhrs' liability is not based upon their status as a former owner of Unit 5E, but rather is based upon whether they were the individuals that actually installed the failed water filtration system in Unit 5E. While plaintiff acknowledges even if the Fuhrs installed the system they generally would owe no duty to a third party, plaintiff asserts this case comes under an *Espinal* exception, alleging that by the negligent installation the Fuhrs launched a force or instrument of harm. *Espinal v. Melville Snow Contrs.*, 98 N.Y.2d 136 (2002).

Plaintiff alleges that there are issues of fact as to whether the Fuhrs negligently installed the water filtration system in Unit 5E and caused the damage to the apartment below, and that said knowledge is within the Fuhrs' exclusive possession.

As noted above the Fuhrs have submitted sworn statements that they did not install a water filtration system. To rebut these sworn statements plaintiff submits only an email from Alex Balbona, a current property manager for the building who states, based presumably on a review of documents and not from any actual personal knowledge, that there is no record of who

installed the water filtration system in 5E. This was not an installation that the management of the condo would oversee. The condo does have an alteration agreement package, but 5E has not had an alteration on file. 5E is one of the only units in the condo that still has its original finishes, and that no water filtration systems were installed by the sponsor when the units were converted to condos.

Plaintiff also relies on the deposition testimony of the broker and a photograph purporting to show that the water filtration system was in place at the time the Fuhrs sold the unit.

Plaintiff's claims against the Fuhrs appears to be highly speculative. The broker really had no recollection of the fact that there was a system and could not lay a foundation for the admission of the photograph. The broker could only say these photos were included in her records from the sale.

Moreover, plaintiff offers no support for its allegation that the Fuhrs themselves installed the water filtration system, or for the allegation that a defective installation is what caused the flood. Even if the plaintiff could establish that the Fuhrs installed the system between 2002 and 2006, it is impossible to know who would have worked on the system or adjusted it between 2006 and the flood some eleven years later. Presumably Yoshida would have had to do some maintenance on the system between the time they purchased the unit in 2006 and the time of the flood in 2017.

However, the affidavits submitted by the Fuhrs are not very detailed. They do not state who installed the water filtration system or whether it was in place at the time they purchased the unit. Thus, while the court finds it unlikely that plaintiff will ultimately be able to establish liability on the part of the Fuhrs, the court agrees that plaintiff is entitled to discovery to further explore the claim, prior to a summary determination.

As such the motion for summary judgment is denied without prejudice to renewal after the Fuhrs have been deposed and complied with outstanding discovery demands.

Plaintiff's cross motion is granted only to the extent of directing the Fuhrs to appear for depositions and comply with any outstanding document demands within 90 days of the date of this order.

CONCLUSION

WHEREFORE it is hereby:

ORDERED that the motion for summary judgment and dismissal is denied without prejudice to renewal after completion of discovery for the reasons set forth above; and it is further

ORDERED that the parties appear for a virtual status conference on June 7th, 2022 at 12 pm; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk 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 at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that any relief not expressly addressed has nonetheless been considered and is hereby denied; and it is further

ORDERED that this constitutes the decision and order of this court.



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5/10/2022

DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE