

**Washington v Soledad O'Brien & Brad Raymond  
Found. Inc.**

2022 NY Slip Op 31592(U)

May 17, 2022

Supreme Court, New York County

Docket Number: Index No. 152193/2016

Judge: Lyle E. Frank

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
 NEW YORK COUNTY**

**PRESENT: HON. LYLE E. FRANK PART 11M**

*Justice*

-----X

GLORIA WASHINGTON,

Plaintiff,

- v -

SOLEDAD O'BRIEN & BRAD RAYMOND FOUNDATION  
 INC.,SAPIR REALTY MANAGEMENT CORP., EAGLE  
 TRANSFER CORP., ARTHUR DIGIANNI, INC.,ARTHUR  
 DIGIANNI, INC.D/B/A ADI INSTALLATIONS, VJ  
 DELIVERY SERVICE, INC., 11 MADISON AVENUE  
 LLC,ALLIEDBARTON SECURITY SERVICES LLC,

Defendant.

-----X

INDEX NO. 152193/2016  
 MOTION DATE 11/09/2021  
 MOTION SEQ. NO. 007

**DECISION + ORDER ON  
 MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 007) 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, defendants Sapir Realty Management Corp. and 11 Madison Avenue LLC’s motion for summary judgment is granted<sup>1</sup>.

**Background**

On June 22, 2013, plaintiff, then an employee of non-party Credit Suisse First Boston Corporation (Tenant), sustained injuries after she was struck in the head and neck while volunteering at an event located at the premises owned and overseen by defendants Sapir Realty Management Corp. and 11 Madison Avenue (Sapir defendants). Neither plaintiff nor other event

<sup>1</sup> The Court would like to thank Joyce D. Campbell Priveterre, Esq. for her assistance in this matter.

attendees who subsequently claimed she had been hit by a conference room divider witnessed the impact or the object that hit plaintiff- variously described as piping and piping through drapery.

Plaintiff alleges that she was injured because the defendants were careless, reckless and negligent. The Sapir defendants aver that summary judgment is warranted because there are no triable issue of facts whether 1) they owed plaintiff a duty to repair/maintain the property, 2) they were an out-of-possession landlord and 3) there was notice of a defect at the subject premises. Plaintiff opposes the motion averring that issues of negligence, *inter alia*, preclude summary judgment insofar as she has alleged that the Sapir defendants had a right to inspect the premises and a duty to ensure the site was safe.

### **Summary Judgment Standard**

The Courts have held that summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue. *See Rotuba Extruders, Inc. v Ceppos*, 46 NY2d 223, 231 [1978] *citing Moskowitz v. Garlock*, 23 AD2d 943. However, only the existence of a *bona fide* issue raised by evidentiary facts and not conclusory allegations will suffice to defeat summary judgment. *See Mallad Constr. Corp. v County Fed. Sav. & Loan Assn.*, 32 NY2d 285, 290; *Rosenberg v Del-Mar Div., Champion Int. Corp.*, 56 AD2d 576, 577.

### **Out of Possession Landlord Liability**

It is well-settled that an out-of-possession landlord “is generally not liable for negligence with respect to the condition of a premises unless (1) the landlord is contractually obligated to make repairs or maintain the premises, or (2) the landlord has a contractual right to reenter, inspect and make needed repairs and liability is based on a significant structural or design defect that is contrary to a specific statutory safety provision” *See Matias v West 16th Realty LLC*, 189 AD3d 681 [1st Dept 2020], *citing, DeJesus v Tavares*, 140 AD3d 433, 433 [1st Dept 2016], *McDonald*

*v Riverbay Corp.*, 308 AD2d 345 [2003]; *Quinones v 27 Third City King Restaurant*, 198 AD2d 23, 24 [1993].

In the case at bar, the property was bought by the Sapir defendants subject to a Lease Agreement executed by their predecessor in interest, Metropolitan Life Insurance Company and Tenant. *See* NYSCEF Doc. 303 at page 52. Subsequently, Tenant and the Sapir defendants, 11 Madison Avenue LLC, executed a Sublease. *See* NYSCEF Doc. 151. A witness deposed on behalf of the Sapir defendants, Alex Sapir, heir to estate of the property's owner, Tamir Sapir, testified that the owner was responsible for maintaining the property's common areas, such as anything in the lobby, staircases and elevators but that "everything else was the responsibility of tenant." *See* NYSCEF Doc. 2453 at page 40, lines 11-17. Review of the record demonstrates that plaintiff adduced no facts that rebut this testimony.

While the record is bereft of any evidence that the Sapir defendants were contractually obligated to maintain the demised premises, the Lease does provide for the Landlord's right "to inspect to ensure compliance with the covenants contained herein." *See* NYSCEF Doc. 305 at page 16. Plaintiff argues that by reserving their right to inspect the property, the Sapir defendants *ipso facto* assumed a duty to ensure that the property was safe.

However, New York caselaw holds that this duty attaches only where a plaintiff has adduced evidence that her injuries were as a result of a significant structural or design defect that is contrary to a specific statutory safety provision. *See Johnson V Urena Serv. Ctr.*, 227 AD2d 325, 326 [1st Dept 1996]. *See also Vasquez v The Rector*, 40 AD3d 265 [1st Dept 2007]. The opposing motion duly references the applicable caselaw while eliding any allegations or facts at bar which suggest the object that hit plaintiff was caused by a design or structural defect that is contrary to a specific statutory safety provision.

Moreover, a witness on behalf of defendant Eagle Transfer Corp. (Eagle), the entity responsible for providing Tenant with the room dividers that are purported to have caused plaintiff's injury, testified that the dividers, comprised of piping through drapery, were maintained in Tenant's storage room. *See* NYSCEF Doc. 246 at page 28, 16-25, page 29, lines 1-10. *See* NYSCEF Doc. 246 at page 50, lines 22-25, page 51, lines 1-19. Moreover, Eagle's witness testified that the room dividers are collapsed in storage and assembled at the location. *See* NYSCEF Doc. 246 at page 63, lines 10-15.

Taken in the light most favorable to plaintiff, and assuming, *arguendo*, that plaintiff had demonstrated that it was the room divider that hit her, she has proffered no evidence which demonstrates that the divider could have fallen because of any design or structural defect at this premises nor has plaintiff posited any specific statutory safety provision violated by any structural or design defect suggestive of a triable issue of fact concerning the Sapir defendants' liability as an out of possession landlord.

#### **NYC Administrative Code 28-117**

While neither the complaint nor plaintiff's Bill of Particulars allege that her injuries were caused by a violation of Administrative Code 28-117, plaintiff's opposition argues that the Sapir defendants violated the code because "there is no evidence that Defendant ever obtained a Certificate of Authority of Public Assembly for the auditorium and use of the Ante room as places of public assembly," referring to the conference room where plaintiff was injured. *See* NYSCEF Doc. 317 at page 4. It is further argued but was never alleged that the Sapir defendants' failure to secure this permit in violation of Administrative Code 28-117 resulted in overcrowding at the building which in turn caused the divider to fall on plaintiff.

As an initial matter, an Administrative Code is not a safety statute enacted by the legislature, the violation of which could support a finding that an out of possession landlord may be found liable for a structural or design defect. *See, Velasquez v Tyler Graphics, Ltd.*, 214 AD2d 489, 539. Secondly, even if, *arguendo*, an out of possession landlord's liability were based upon a violation of Administrative Code 28-117, plaintiff's bare supposition that the Sapir defendants failed to obtain the requisite paperwork for the assembly where plaintiff was injured is wholly unsupported by any allegation or evidence that they had notice of Tenant's event. *See, Velasquez, supra*, at 539 [1st Dept 1995]. Nor has plaintiff established any triable issue of fact that the Sapir defendants had notice that any permits relating to Tenant's event were required, or advisable.

### **Conclusion**

It is axiomatic that where a defendant has no duty to a plaintiff, nor any notice of the purported defect that caused plaintiff's injury, an action for negligence cannot stand. *Gilson v Metropolitan Opera*, 5 NY3d 574, 590 [2005]. Accordingly, the Sapir defendants sustained their initial burden of establishing their entitlement to judgment as a matter of law dismissing the complaint as against them.

Further, it is a settled precept where the moving party has demonstrated its entitlement to summary judgment, the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for her failure so to do. *See Zuckerman v City of New York*, 49 NY2d 557, 560 [1980].

However, plaintiff has failed to identify the facts essential to support her opposition to the motion which were within the Sapir defendants' exclusive knowledge and control *See Merisel, Inc. v Weinstock*, 117 AD3d 459, 460 [1st Dept 2014].

ORDERED that the Sapir defendants' motion for summary judgment pursuant to CPLR §3212 is granted and plaintiff's amended verified complaint and all cross claims against Sapir Realty Management Corp. and 11 Madison Avenue LLC are dismissed.

20220517145523LFR/NKCC4FBD/5845B14A7491895A2CD1FC5BDF

5/17/2022

DATE

LYLE E. FRANK, 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