

**Wilson v City of New York**

2022 NY Slip Op 32154(U)

July 7, 2022

Supreme Court, New York County

Docket Number: Index No. 450737/2021

Judge: J. Machelle Sweeting

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. J. MACHELLE SWEETING PART 62**

*Justice*

-----X

WENDELL WILSON,

Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY HOUSING  
AUTHORITY, NEW YORK CITY DEPARTMENT OF  
HOUSING PRESERVATION AND DEVELOPMENT,  
STELLAR MANAGEMENT

Defendants.

-----X

**INDEX NO.** 450737/2021

**MOTION DATE** 10/29/2021

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 18, 19, 20, 21, 32, 33, 39, 40, 41, 42, 43, 44, 45, 46, 47

were read on this motion to/for DISMISSAL.

In the underlying action, plaintiff claims that he sustained personal injuries on January 20, 2020, due to an allegedly dangerous condition, namely, a hot pipe within Apartment 14 in the building located at 540 West 143rd Street, County, City and State of New York (the “premises”).

Pending before the court is a motion filed by defendant NEW YORK CITY HOUSING AUTHORITY (“NYCHA”) seeking an order, pursuant to Civil Practice Law and Rules (“CPLR”) Section 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.

The New York Court of Appeals has held that “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]).

### Arguments Made by the Parties

In this motion, NYCHA argues that it did not own, the property located at 540 West 143<sup>rd</sup> Street and it did not manage, maintain or operate the building, apartments, or pipes therein. NYCHA argues that because it did not own, operate or manage the property where the accident occurred, as a matter of law, NYCHA owed no duty to plaintiff to maintain the property and cannot be liable for plaintiff’s injuries.

In support of its argument, NYCHA submitted the sworn Affidavit of Miguel Angel Ballena (NYSCEF Document #18) which states, in part:

1. I am the Assistant Director, Department of Performance Tracking & Analytics Department of the New York City Housing Authority (hereinafter "NYCHA") one of the defendants in the above entitled action.

[...]

4. I was requested by NYCHA’s Law Department to verify the ownership of the property described as 540 West 143<sup>rd</sup> Street, New York, New York in the Notice of Claim and in the Summons and Complaint, in the County of New York, City and State of New York, as same existed on **January 1, 2020**.
5. I searched and cross-referenced a number of sources to determine that NYCHA does not presently, nor did it on the date of the alleged accident **January 1, 2020**, own, manage, maintain or control the property described as 540 West 143<sup>rd</sup> Street, New York, New York in the Notice of Claim and in the Summons and Complaint, in the County of New York, City and State of New York. Set forth below is a description of the steps taken:
  - a. I searched NYCHA's computerized records and determined that the property described as 540 West 143<sup>rd</sup> Street, New York, New York in the Notice of Claim and in the Summons and Complaint, in the County of New York, City and State of New York, is neither presently owned, managed, maintained, or controlled by NYCHA; nor was it owned, managed, maintained or controlled by NYCHA on **January 1, 2020**, the date of the plaintiff’s alleged accident.

- b. checked the Open Accessible Space Information System (OASIS) and determined that the property described as 540 West 143<sup>rd</sup> Street, New York, New York in the Notice of Claim and in

the Summons and Complaint, County of New York, and found it corresponds to New York Block 2074, Lot 61. Attached hereto as Exhibit "A" is a copy of the page disclosing this information.

c. Upon obtaining the Block and Lot numbers, I once again examined NYCHA's computerized records and determined that NYCHA does not own, manage, maintain or control New York County Block 2074, Lot 61, nor did NYCHA own it on **January 1, 2020**.

d. Finally, I accessed the Automated City Register System (ACRIS) operated by the New York City Department of Finance to determine the owner of this property as of **January 1, 2020**. When I queried New York County Block 2074, Lot 61 in the borough of Manhattan, the database revealed that Block 2074, Lot 61 is not owned by NYCHA. Annexed hereto as Exhibit "B" is a printout of this information.

6. Based on the steps taken and my searches described above, I conclude in good faith that the property described as 540 West 143rd Street, New York, New York in the Notice of Claim and in the Summons and Complaint, in the County of New York, City and State of New York, was not owned, managed, maintained or controlled by NYCHA on **January 1, 2020**, the date of the alleged accident.

(emphasis added).

In opposition, plaintiff argues that this motion is premature, as NYCHA has not yet been deposed. Specifically, with respect to the searches performed by Mr. Ballena, plaintiff argues that he has a right to cross-examine and inquire as to “the full results of those searches, what searches were not done, if there are any searches that need to be performed, about violations issued or received, or complaints, or applications and/or any correspondence relevant to the ownership or management of the building.” Plaintiff also argues that there are photographs, (NYSCEF Document #33), that show that “the City of New York in general and possibly Defendant, NEW YORK CITY HOUSING AUTHORITY, has had some relationship with this building during the time of the incident,” and that plaintiff “has the right to examine a qualified witness from the Defendant, NEW YORK CITY HOUSING AUTHORITY, to determine their relationship with these signs, the building in question, the management company, and the Department of Buildings, New York City as illustrated on the photographs.”


Conclusions of Law

Here, NYCHA’s primary argument is that it did not own, manage, maintain or operate the subject premises on the date of plaintiff’s accident, and NYCHA’s central piece of evidence in support of this argument is the Affidavit of Mr. Ballena.

The Affidavit of Mr. Ballena however, specifically refers to searches performed on the date of **January 1, 2020**. However, plaintiff’s Complaint (NYSCEF Document #1) and Amended Complaint (NYSCEF Document #10) each allege that the incident occurred on **January 20, 2020**. While the date in Mr. Ballena’s affidavit may be a mere clerical error, in Goshen v Mut. Life Ins. Co. of New York, 98 NY2d 314 (2002), the New York Court of Appeals held that “[a motion to dismiss based on] documentary evidence [...] may be appropriately granted only where the documentary evidence utterly refutes plaintiff’s factual allegations, conclusively establishing a defense as a matter of law.” Here, whether NYCHA owned, managed, maintained or operated the subject premises on the date of plaintiff’s accident is a key question in dispute. Throughout his affidavit and the related searches, Mr. Ballena refers only to the date of January 1, 2020 and not to the alleged incident date of January 20, 2020.

Accordingly, it is hereby

**ORDERED** that NYCHA’s motion is **DENIED**.

<p><u>7/7/2022</u> DATE</p>		 <hr/> <p>J. MACHELLE SWEETING, J.S.C.</p>
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED <input type="checkbox"/> GRANTED <input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION <input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> SUBMIT ORDER <input type="checkbox"/> FIDUCIARY APPOINTMENT
APPLICATION:	<input type="checkbox"/> SETTLE ORDER <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> OTHER <input type="checkbox"/> REFERENCE