

Monterola v 2238 Hughes LLC
2022 NY Slip Op 35117(U)
August 8, 2022
Supreme Court, Bronx County
Docket Number: Index No. 33336/2018E
Judge: Marissa Soto
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 22-----X
TANYA MONTEROLA,

Plaintiff(s),

-against-

2238 HUGHES LLC, LUIGI LULAJ and
NIKOLA LULAJ,Defendant(s).
-----X

Marissa Soto, J.

DECISION AND ORDER

Motion Seq. 5

Index No. 33336/2018E

The following e-filed papers read herein:

Papers	NYSCEF Doc. Nos.
Notice of Motion and Affidavits/Affirmations Annexed:	162-188
Opposing Affidavits:	189-207
Reply Affidavits:	208-225

Plaintiff, Tanya Monterola, moves for an order seeking summary judgment pursuant to CPLR § 3212 on the issue of liability against Defendants 2238 Hughes LLC (hereinafter “2238 Hughes”), Luigi Lulaj and Nikola Lulaj (collectively hereinafter Defendant “Lujah”) and dismissing all affirmative defenses with respect to liability. Defendant Lulaj and Defendant 2238 Hughes oppose the Plaintiff’s summary judgment motion.

Summary judgment may be granted only when it is clear that no triable issue of fact exists. *Alvarez v. Prospect Hospital*, 68 NY2d 320 (1986). The function of the court on a motion for summary judgment is issue finding rather than issue determination, and the court must evaluate whether the alleged factual issues presented are genuine or unsubstantive. *Sillman v. Twentieth Century Fox Film Corp.*, 3 NY2d 394 (1957). Summary judgment should not be granted when there is any doubt as to the existence of a triable issue of fact. *Rotuba Extruders v. Ceppos*, 46

N.Y.2d 223 (1978); *Stone v. Goodson*, 8 N.Y.2d 8 (1960) (if the issue is fairly debatable summary judgment must be denied).

The burden is upon the moving party to make a *prima facie* showing that he or she is entitled to summary judgment as a matter of law by presenting evidence in admissible form demonstrating the absence of material facts. *Giuffrida v. Citibank Corp.*, 100 NY2d 72 (2003). “This burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party.” *Jacobsen v. New York City Health & Hosps. Corp.*, 22 N.Y.3d 824, 833 (2014) citing *William J. Jenack Estate Appraisers and Auctioneers, Inc. v. Rabizadeh*, 22 NY3d 470, 475, (2013). However, contrary to Defendant’s argument, “there is no requirement that evidence be submitted by affidavit to prevail on a motion for summary judgment.” *Muniz v. Bacchus*, 282 A.D.2d 387, 388 (1st Dep’t 2001). If the moving party is successful, then the burden shifts to the non-moving party to “establish the existence of material issues of fact which require a trial of the action” *Id. citing Vega v. Restani Construction Corp.*, 18 NY3d 499, 503 (2012).

In support of its motion, Plaintiff submits *inter alia* the following: (i) a copy of the pleadings and prior motion, (ii) the affirmation of Melissa A. Lenowitz, Esq., (iii) Plaintiff’s expert exchange, (iv) a copy of the deed, (iv) copy of the lease, (v) HPD Building Information, (vi) the Examination Before Trial transcripts of Plaintiff, Luis Castellano, Leonides Janete Brito, Luigi Lulaj, Nikola Lulaj (vi) discovery request and responses, (vii) text messages, (viii) Bronx County Housing Court transcript, (ix) Plaintiff’s photographs 1-25, and (x) Defendant’s photographs 1-5.

This action was commenced for personal injuries sustained by Plaintiff when she tripped and fell in her apartment due to Defendant’s negligence in failing to repair the existing substantial defect on the floor. Plaintiff claims that she came into contact with a significant vertical grade

differential of approximately 1 and 1/8 inch high, which was preceded by a floor surface with a significant downward slope of 11.4% in the direction of travel when her toe became caught causing her to trip and fall and sustain serious injuries.

Defendant argues that Plaintiff fabricated the alleged accident in her apartment. Defendant argues that any injuries Plaintiff sustained were the result of a car accident Plaintiff and her husband, Luis Castellanos, were involved in on February 22, 2018, in New Jersey State. Defendant Lulaj conducted a search on the New Jersey State Police & New Jersey Turnpike Authority, Crash Report Request and submits a potentially admissible New Jersey Police Crash Investigation Report (hereinafter "NJ Crash Report") pertaining to the February 22, 2018, car accident. The NJ Crash Report contains that Plaintiff was an occupant of Vehicle 1 and was taken to Christiana Hospital Newark Delaware. During the Plaintiff's deposition she responded that she was never involved in a car accident prior to June 18, 2018, and she was not an occupant in her husband's car accident on February 22, 2018. Plaintiff's EBT Pgs. 63-64.

Also, on June 21, 2021, Defendant's orthopedic surgeon Doctor Sheldon Manspeizer (hereinafter "Dr. Manspeizer"), prepared an Independent Medical Examination report (hereinafter "IME") based on his medical examination of the Plaintiff on June 1, 2021, and a review of the medical records of Plaintiff's accident. He states that Plaintiff "was being treated for an underlying spondylosis and/or arthritis of the spine." Dr. Manspeizer IME Pg. 13. Dr. Manspeizer concluded that Plaintiff had "a preexistent degenerative process of the lumbosacral spine with an associated calcified herniated disc," "this condition is considered pre-existing and not caused by the accident." Dr. Manspeizer Pg. 13.

Plaintiff claims that Defendant's assertions that Plaintiff was injured in the February 2, 2018, motor vehicle accident are irrelevant to the issue of liability and it goes to the issue of

damages. The Court disagrees with the Plaintiff. Contrary to the Plaintiff's claim, Defendants' arguments go to proximate cause and therefore liability.

Plaintiff also claims that she made multiple complaints directly to the superintendent and "nothing was done." Defendants argues that Plaintiff's claim is clearly disputed based on the testimony Nikola Lulaj the owner of the building, 2238 Hughes, and the superintendent of the building, Leonides Jenete Brito (hereinafter "Mr. Brito"). Nikola Lulaj testified that he did not recall any verbal complaints from Plaintiff about the floors prior to June 18, 2018. EBT of Nikola Lulaj Pg 72. Affiant testified that repairs to the floors within plaintiff's apartment were done between January 2018 and June 2018 by the superintendent of the building pursuant to court orders. EBT of Nikola Lulaj Pgs. 36-40. Also, Mr. Brito testified that any time a complaint was made by Plaintiff, he made repairs on the same day or the next day by himself. EBT of Mr. Brito Pgs. 24-31. The Court notes that there are also questions of fact as to notice that require the jury to decide based on its credibility determinations.

Therefore, Plaintiff's motion for summary judgment against Defendants 2238 Hughes LLC, Luigi Lulaj and Nikola Lulaj, and dismissing all affirmative defenses with respect to liability is denied.

Accordingly, after consideration of the foregoing, it is hereby:

ORDERED that Plaintiff's motion for summary judgment as to liability is denied; and it is further

ORDERED that Plaintiff is directed to serve a copy of this Order/Decision with Notice of Entry within thirty (30) days of the date of entry hereof.

This constitutes the decision and order of the Court.

Dated: August 8, 2022



Marissa Soto, J.S.C.