

Shakir v Convent 1 LLC

2023 NY Slip Op 30518(U)

February 21, 2023

Supreme Court, New York County

Docket Number: Index No. 154991/2017

Judge: Eric Schumacher

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

PRESENT: HON. ERIC SCHUMACHER

PART

Justice

-----X

ABDULKAREEM SHAKIR,

INDEX NO. 154991/2017MOTION DATE 2/21/2023

Plaintiff,

MOTION SEQ. NO. 003

- v -

CONVENT 1 LLC and CHESTNUT HOLDINGS OF NEW
YORK, INC.,**DECISION + ORDER ON
MOTION**

Defendants.

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NYSCEF Doc Nos. 33-39 were read on this motion to compel.

Motion by plaintiff Abdulkareem Shakir pursuant to CPLR 3124 to compel is granted as described herein.

BACKGROUND

Plaintiff alleges personal injuries sustained on January 14, 2017, when the dining room ceiling collapsed in plaintiff's residence, a rental apartment located at 310 Convent Avenue, Apartment 1F, New York, New York 10031 (hereinafter the premises), due to the negligence of defendants Convent 1 LLC and Chestnut Holdings of New York, Inc., the owner and managing agent, respectively, of the premises on the date of the alleged incident (plaintiff's affirmation in support, exhibit A, complaint ¶¶ 1, 25, 27 and answer ¶¶ 3, 6).

Plaintiff stated at his examination before trial (hereinafter EBT), and there is no dispute for the purposes of this motion, that he had been living at the premises for "approximately over forty years" as of January 23, 2020 (*id.*, exhibit E, plaintiff's deposition tr at 7, lines 16-18). Plaintiff indicated that the premises are a one-bedroom, one-bathroom apartment with a kitchen, dining room, and living room (*id.* at 20, lines 3-11). Plaintiff further stated that he had previously complained to the building superintendent and 311 "constantly" about "water damage" and specifically water "coming down" in the bathroom and kitchen for "years", as well as about a "jagged crack that was very exposed where it had a peak in it where you could see where it could probably fall or something" in the living room ceiling between one and five times, but no repair work was done in response (*id.* at 27, lines 6-7, 10-18; at 31, lines 9-15; at 32, lines 19-25; at 33, lines 2-8; at 36, lines 4-19).

Plaintiff stated that the dining room is "right next to [the living room], that the two rooms "share a common wall and [] French doors," and that "the crack ran parallel to where the wall is in the dining room" (*id.* at 34, lines 19-25; at 35, lines 2-4). Plaintiff further stated that, prior to

the incident, the dining room ceiling looked “a little flakey, but it didn’t look as bad as the living room” (id. at 36, lines 20-24).

On or about October 19, 2017, plaintiff served defendants with a demand for “[a]ll work orders, service tickets and maintenance records of [plaintiff’s] apartment for three years prior to accident/incident” (id., exhibit B, combined demands ¶ 13 [hereinafter demand 13]). On or about January 29, 2020, defendants objected to demand 13 as “overly broad and unduly burdensome” and stated that they “are not in possession of any work orders, service tickets or maintenance records relating to the subject dining room ceiling for 3 years prior to the date of accident” (id., response to combined demands ¶ 13).

On January 13, 2023, plaintiff filed this motion pursuant to CPLR 3124 to compel defendants to produce a complete response to plaintiff’s October 19, 2017 combined demands, and specifically demand 13 (NYSCEF doc no. 33). Plaintiff argues that the records are relevant to what actions defendants undertook to correct violations and whether defendants acted appropriately in attempting to correct the defective condition prior to the incident. Plaintiff further argues that records for all rooms within the premises are material and necessary to the plaintiff’s case because water damage in any of the rooms could impact the ceilings in the entirety of the premises.

Defendants argue in opposition, as is relevant here, that records for rooms other than the dining room and going back more than one year from the date of the incident are not material and necessary, citing to Robinson v Highbridge House Ogden (124 AD3d 472 [1st Dept 2015]). Defendants further argue that plaintiff has failed to establish that a leak in one room can affect the integrity of a ceiling in an adjoining room.

Plaintiff argues in reply that courts should interpret the “material and necessary” clause of CPLR 3101 liberally and that court jurisprudence evidences a strong presumption toward the disclosure of all relevant information that sufficiently relates to the issues. Plaintiff further argues, in sum and substance, that the submitted EBT testimony of plaintiff as to water leaks and visible damage throughout the premises establishes the necessary nexus between demand 13 and the alleged incident. Plaintiff further argues that Robinson is readily distinguishable.

DISCUSSION

CPLR 3124, titled “failure to disclose; motion to compel disclosure,” provides, in pertinent part, that “[i]f a person fails to respond to or comply with any request, notice, . . . demand, [or] question . . . under this article, . . . the party seeking disclosure may move to compel compliance or a response.”

Based on the papers submitted, the court finds that plaintiff is entitled to an order compelling defendants to produce the subject work orders, service tickets, and maintenance records from demand 13 for the three-year period beginning January 14, 2014, to and including the date of the incident, January 14, 2017. It is well-settled that the production of repair and maintenance records over a three-year period as to premises where an incident occurred due to an alleged intransient condition is reasonable (see Petty v Riverbay Corp., 92 AD2d 525, 526

[1st Dept 1983]; see also K.V. v New York City Hous. Auth., 180 AD3d 533 [1st Dept 2020], Cook v HMC Times Square Hotel, LLC, 112 AD3d 485 [1st Dept 2013], Daniels v City of New York, 291 AD2d 260 [1st Dept 2002], Freeman v Hertzoff, 179 AD2d 363 [1st Dept 1992]).

Defendants' reliance on Robinson is inapposite. In Robinson, the plaintiff allegedly slipped and fell on urine, a "wet, transitory condition," in a stairwell (124 AD3d at 473). The plaintiff had moved to compel the production of the defendant's entire maintenance records and maintenance complaint logbook for a period of two years prior to the alleged accident. The Appellate Division, First Department modified the motion court's denial of the motion to compel and required the production of the records for a one-year period prior to the accident and only as to the subject stairwell. The Robinson Court reasoned that "[t]o the extent that plaintiff seeks records for any other location or type of condition or for a period exceeding one year, the request is not material and necessary to the prosecution of an action" (*id.* citing CPLR 3101[a] and Allen v Crowell-Collier Publ. Co., 21 NY2d 403, 406-407 [1968]). Here, plaintiff alleges injuries caused by the collapse of his dining room ceiling, not a transient condition meant to be remedied by required routine maintenance and cleaning as in Robinson. Moreover, plaintiff has resided in the premises for at least 40 years, and the duration and nature of the conditions prior to the alleged incident implicate the entirety of the premises. Further, the catastrophic and extraordinary nature of a ceiling collapse necessitates broad, liberal discovery where persistent, proximate structural damage is alleged as a cause.

Here, the EBT transcript contains evidence of extensive ceiling and other damage due in part to water infiltration throughout the premises going back years. As such, the court finds that the demand 13 discovery is material and necessary under CPLR 3101 in that the production of responsive documents would result in the disclosure of "facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity" (Allen, 21 NY2d at 406). Accordingly, the court finds that plaintiff has established entitlement to the subject demand 13 discovery.

To the extent that defendants previously objected to demand 13 as overbroad and unduly burdensome, the court finds that objection to be conclusory and without merit. The premises are a one-bedroom apartment on the first floor of an apartment building. Based upon the location of the premises within defendants' building and the severe, pervasive nature of the ceiling collapse damage alleged, the court finds that the production of three years of work orders, service tickets, and maintenance records of one apartment is adequately specific and, on balance, does not pose an undue burden to defendants.

While plaintiff's motion is to compel a response to the entirety of its October 19, 2017 combined demands, as the plaintiff's affirmations contain no argumentation as to items other than demand 13, the court takes no position as to defendants' responses to anything contained within the combined demands beyond demand 13. As such, no further relief is merited on the face of the papers submitted.

CONCLUSION

Accordingly, it is

ORDERED that the motion by plaintiff Abdulkareem Shakir pursuant to CPLR 3124 to compel is granted to the extent that it is

ORDERED that defendants Convent 1 LLC and Chestnut Holdings of New York, Inc. shall produce to plaintiff all work orders, service tickets and maintenance records of 310 Convent Avenue, Apartment 1F, New York, New York 10031 from January 14, 2014, through January 14, 2017, on or before March 23, 2023; and it is further

ORDERED that if all other discovery is complete, plaintiff and defendants are directed to stipulate that all discovery is complete on or before March 30, 2023, and plaintiff is directed to e-file the stipulation, along with the note of issue and certificate of readiness, on or before March 30, 2023, and it is further

ORDERED that the parties are directed to appear in Part 23, located at 71 Thomas Street Room 311, New York, New York 10013-3821, on Wednesday, April 5, 2023, for a status conference; and it is further

ORDERED that plaintiff is directed to notify the court of the timely filing of the note of issue, pursuant to the part's rules, if applicable, on or before March 30, 2023, and this will result in the cancellation of the conference; and it is further

ORDERED that the parties are directed to read and abide by the part's rules, located at <https://www.nycourts.gov/legacypdfs/courts/1jd/suptctmanh/Rules/Part23-Rules.pdf>.

The foregoing constitutes the decision and order of the court.

2/21/2023

DATE



ERIC SCHUMACHER, 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