

Jimenez v 3410 Kingsbridge, LLC

2023 NY Slip Op 31924(U)

February 22, 2023

Supreme Court, Bronx County

Docket Number: Index No. 28735/2017E

Judge: Adrian Armstrong

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 21

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DANIEL JIMENEZ,

Plaintiff,

-against-

DECISION and ORDER
28735/2017E

**3410 KINGSBRIDGE, LLC, and HUDSON
REALTY CAPITAL, LLC,**

Defendants.

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Adrian Armstrong, J.

Plaintiff brings this personal injury case against 3410 Kingsbridge, LLC and Hudson Realty Capital, LLC. (hereinafter “Defendants”). Plaintiff moves for partial summary judgment on the issue of liability pursuant to CPLR § 3212 and setting this matter down for trial on the issue of damages.

Plaintiff seeks damages for injuries he allegedly sustained on April 27, 2017, at around 7:00 p.m. to 7:30 p.m. when a piece of sheetrock ceiling collapsed and dropped down onto Plaintiff’s head while he was sitting on the toilet in his apartment bathroom, located at 3410 Kingsbridge Avenue, Bronx, New York. Defendants owned and managed the subject building.

Plaintiff testified in connection with this action at his deposition that he saw water leaking from the same spot of the bathroom ceiling that collapsed, for six months before the ceiling collapsed. Plaintiff claims to have told a building super named “Eric” about the water dripping from the bathroom ceiling, in person, on the same day that he first noticed the leak, around six months prior to this ceiling collapse accident. Plaintiff stated that Eric came to his apartment the next day,

to look at the bathroom ceiling, and since water was not coming down from the ceiling at the time, Eric told him to call when he saw any more water coming out of the bathroom ceiling. Plaintiff further testified that during the six months between the time that he first told Eric about the leaking ceiling, and the ceiling collapse on the accident day, the plaintiff again told Eric about the continued leaking from his bathroom ceiling a total of three or four times, and asked Eric when he was going to fix the leaking ceiling. Before the accident, plaintiff also testified that he told Eric's assistant about the water leak, and the assistant answered that he would let Eric know about it. Plaintiff does not recall the assistant's name.

The next day following his accident, plaintiff testified that he told another budding super (who was not Eric), in person, that the bathroom ceiling had fallen down onto him. This super allegedly went to Plaintiff's apartment, looked at the bathroom ceiling and told Plaintiff that the ceiling needed to be repaired. Plaintiff testified that his bathroom ceiling was repaired one or two months after the accident by the building super's helper who "put up sheetrock and paint."

In opposition, Defendants' witness Kemal Jadadic ("Kemal") testified at his deposition that he has been employed as a superintendent for the subject building since about 2016. In 2017, he testified that he supervised two workers in the building, Pedro and George, the porter and handyman, respectively. Kemal could not recall whether anyone from Plaintiff's apartment had ever made any complaints to him about leaks in the bathroom ceiling and could not recall whether he had been involved in any type of work to repair the ceiling in the subject apartment in April 2017. Defendants' witness simply had no personal knowledge or recollection concerning the Plaintiff's bathroom ceiling leak or Defendants'

notice of it.

In reply, Plaintiff submits an affidavit with a photo attached thereto. Plaintiff affirms the photo fairly and accurately depicts a sign the building had displayed in the lobby during the last six months preceding the subject ceiling collapse. Plaintiff also affirms in his affidavit that the man, “Gutic Edin,” who is listed as being the budling’s super on the sign in the photo was called “Eric” by everyone and was the super to whom he complained to about the leaking ceiling during the six months prior to the ceiling collapse.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence in admissible form to demonstrate the absence of any material issues of fact. *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851, 487 N.Y.S.2d 316, 476 N.E.2d 642 (1985). Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. The burden on the movant is a heavy one, and the 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 [2014].) Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

“In general, to impose liability for an injury caused by a ceiling collapsing ‘because of a leak, a plaintiff must show that the defendant had prior notice, actual or constructive, of the leak and that the leak was never repaired’ (*Ellisy v Eklecco, LLC*, 56 AD3d 517 [2nd Dept 2008], quoting *Figuroa v Goetz*, 5 AD3d 164, 165

[1st Dept 2004]).

Here, the Plaintiff established his prima facie entitlement to judgment as a matter of law by submitting evidence demonstrating that the Defendants had actual notice of a recurring leak in the bathroom ceiling six months before it collapsed. Defendants' opposing papers are insufficient to raise any factual issues. Additionally, Plaintiff's sworn affidavit submitted in reply with a photo of the building sign that indicated a "Gutic Edin" was listed as being the Building's super to whom Plaintiff call "Eric", was the super to whom Plaintiff complained to about the leaking ceiling during the six months prior to the ceiling collapse.

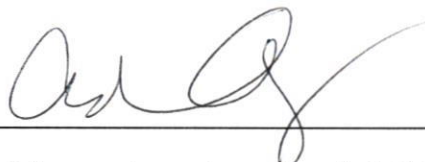
The court has considered the additional contentions of the parties not specifically addressed herein. To the extent that any relief requested by either party was not addressed by the court, it is hereby denied.

Accordingly, it is hereby

ORDERED, that the motion of plaintiff pursuant to CPLR 3212 for an order granting partial summary judgment on the issue of liability against the Defendants is granted.

This is the Decision and Order of the Court.

Dated: February 22, 2023



Adrian Armstrong, A.J.S.C.