

Barnes v New York City Hous. Auth.

2023 NY Slip Op 33586(U)

October 11, 2023

Supreme Court, New York County

Docket Number: Index No. 156789/2021

Judge: Leslie A. Stroth

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. LESLIE A. STROTH PART 12

Justice

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 MICHELLE BARNES INDEX NO. 156789/2021
 Plaintiff, MOTION DATE 07/18/2023
 MOTION SEQ. NO. 002

- v -

NEW YORK CITY HOUSING AUTHORITY, **DECISION + ORDER ON**
 Defendant. **MOTION**

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 The following e-filed documents, listed by NYSCEF document number (Motion 002) 22, 23, 24, 25, 26,
 27, 28, 29, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49
 were read on this motion to/for JUDGMENT - SUMMARY

Plaintiff Michelle Barnes (plaintiff) commenced this action against defendant New York City Housing Authority (NYCHA), seeking to recover damages for personal injuries she sustained after her bathroom ceiling allegedly collapsed. Plaintiff now moves for summary judgment against defendant on her negligence claim.

In her complaint, plaintiff alleges that while sitting on her toilet in apartment 5F at 45 Pike Street on January 26, 2021, the ceiling above the toilet collapsed and struck her, resulting in serious injuries. Plaintiff argues that NYCHA, the building owner, was negligent in resolving an ongoing leak in her apartment which led to the accident that caused her injuries. In turn, NYCHA asserts that it did not know the precise location of the leak until the day before the accident, and it was in the midst of repairing the leak when the accident occurred.

I. Analysis

It is well-established that a motion for summary judgment must include sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law. *See Alvarez v Prospect Hospital*, 68 NY2d 320 (1st Dept 1986). The Court must view the evidence in the light

most favorable to the non-moving party and give the non-moving party the benefit of all reasonable inferences that can be concluded from the evidence. *Id.*

In order to impose liability for an injury caused by a ceiling collapsing from a leak, a plaintiff must prove that the defendant had both actual notice of the leak and that the leak was never repaired. *Figueroa v Goetz*, 5 AD3d 164 (1st Dept 2004). A building owner is liable for a ceiling collapse when it "...had notice of leaks in plaintiff's bathroom ceiling and did not fix the leaks *prior to the ceiling collapse* in which plaintiff was injured." *See Govan v Ft. Sheri Realty Co.*, 267 AD2d 99, 100 (1st Dept 1999) (emphasis added) (citation omitted).

A. Notice

Plaintiff, in moving for summary judgement, argues that NYCHA had sufficient notice of the leak in plaintiff's bathroom through the numerous work orders relating to a leak in her apartment, and therefore, summary judgment should be granted in her favor on the issue of liability. Plaintiff alleges further that NYCHA had sufficient notice of the problem in plaintiff's bathroom, and that the leak was not properly addressed. In support of her motion, plaintiff submits Exhibits B, C, and D, to show as evidence the 24 work orders submitted by plaintiff (apartment 5F) and her neighbors in apartments 5E, 6F, and 7F between May 4, 2020, and January 26, 2021. *See* NYSCEF docs. no. 42, 43, and 44. All the work orders specifically requested bathroom maintenance, mainly for problems with leaking, mold, drains, or pipes. *Id.* Plaintiff submitted 15 of the 24 work orders, and 11 of her orders unambiguously recorded her complaints as a leaking and classified the bathroom leaking as "leak from above". Notably, a work order dated January 25, 2021, specified that the leak was over the plaintiff's toilet. NYSCEF doc. no. 42. Plaintiff also submits her affidavit (NYSCEF doc. no. 24) and the deposition transcript of Martin Downs, the superintendent of NYCHA (NYSCEF doc. no. 26) in support of her motion. Plaintiff emphasizes that the numerous work

orders demonstrate that NYCHA was completely aware of and failed to resolve the unrelenting leak for 9 months.

In opposition, NYCHA argues that the work orders submitted primarily relate to a mold condition and other complaints that were properly treated. Additionally, NYCHA argues that the work orders that referenced a leak in plaintiff's bathroom never specified where the leak was specifically located or indicated that the leak was above the toilet. NYCHA further asserts that as soon as it was able to identify the source of the leak as the waste lines in the apartments above plaintiff's, NYCHA's plumbers started repairing the area in the hours just before the accident, and plaintiff's accident occurred while these repairs were being made.

NYCHA submits the affidavit of Eddie Quetell, the superintendent of the Rutgers Houses at the time of plaintiff's injury, in which he attests that the source of the leak was identified on January 25, 2021. *See* NYSCEF doc. no. 45. NYCHA also submits the affidavit of Marvin Downs, in which he states that two plumbers began repairing the waste lines at 6:35 p.m. on January 26, 2021, and continued working until 5:00 a.m. the next day. *See* NYSCEF doc. no. 46. Therefore, at the time of the plaintiff's accident, January 26, 2021, at 9:00 p.m., Mr. Downs contends that NYCHA was in the midst of making a lengthy repair to the conditions causing the leak in plaintiff's apartment. *Id.*

Based on the evidence adduced by plaintiff, NYCHA plainly had actual notice of the ongoing leak in plaintiff's bathroom. In fact, 11 of the work orders submitted plaintiff specifically complained about the bathroom ceiling leaking, from as early as May 04, 2020, until the date of the subject accident. Although plaintiff complained only once about a ceiling leak directly above the toilet, her many complaints about the bathroom ceiling clearly put NYCHA on notice that any specific portion of the bathroom ceiling could potentially collapse. *C.f. Ellisy v Eklecco, LLC*, 56 AD3d 517 (2d Dept 2008) (holding that a general awareness of leaks present in the building is insufficient to constitute notice of a

leak in a particular segment of the building). NYCHA had notice of a leak in a particular room plaintiff's apartment, which clearly indicates more than a general awareness of leaks in the building as a whole.

B. Repair

Plaintiff next contends that defendant failed to adequately resolve the leaking after notifying NYCHA of the issue numerous times. In fact, plaintiff stated in her affidavit in support that the week before the collapse, she informed NYCHA that the bathroom ceiling was again leaking. *See* NYSCEF doc. no 24. According to plaintiff, NYCHA made no effort to repair the leak. *Id.* Plaintiff concedes that NYCHA was repairing the leak when the accident occurred. Nevertheless, plaintiff contends that NYCHA's belated attempt to repair the leak does not absolve it of liability, as the leak had existed for a long period of time and was not repaired prior to the accident.

In opposition, NYCHA maintains that it did respond to the complaints of leaking prior to and on the day of the accident. As explained in the affidavit of Eddie Quetell, a NYCHA maintenance worker responded to plaintiff's complaint of the bathroom leak on January 24, 2021. *See* NYSCEF doc. no. 45. The maintenance worker informed Quetell about the leaks and then both Quetell and the maintenance worker inspected neighboring apartments. *Id.* Eventually, the maintenance worker determined the leak was due to the waste lines in apartments above plaintiff. *Id.* According to NYCHA work order #79187642 (NYSCEF doc. no. 44), two NYCHA plumbers repaired the waste pipes on the same day as plaintiff's accident, and during the extensive repair process, the ceiling collapsed two floors below. *Id.*

Viewing the evidence in a light most favorable to the non-moving party, NYCHA did attempt to repair the leaking problem throughout the building and was in the process of repairing the specific leak that caused the damage to plaintiff's bathroom when the ceiling collapsed. However, it is clear that NYCHA did not timely fix the leak, despite it having received multiple work orders over a 9-month period. Although NYCHA began to fix the ceiling the day before plaintiff's accident, despite numerous

notifications for many months prior to the accident, it did not fix the leak prior to the accident as required in order to evade liability. Whether NYCHA's attempts to resolve the leak were reasonable are irrelevant to the inquiry of liability, as plaintiff has demonstrated that NYCHA did not fix the leak before her injury. Plaintiff has demonstrated her entitlement to summary judgment on her negligence claim, and NYCHA fails to raise any triable issues of fact sufficient to deny summary judgment.

II. Conclusion

Accordingly, for the reasons stated above, it is hereby

ORDERED that the plaintiff's motion for summary judgement is granted; and it is further

ORDERED that an assessment of damages against defendant New York State Housing Authority is directed, and it is further

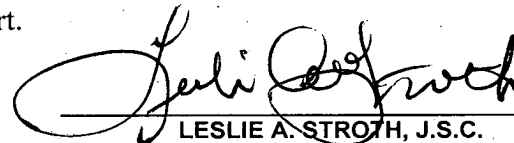
ORDERED that a copy of this order with notice of entry be served by the movant upon the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who is directed, upon the filing of a note of issue and a certificate of readiness and the payment of proper fees, if any, to place this action on the appropriate trial calendar for the assessment hereinabove directed; and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

This constitutes the order and decision of the Court.

10/11/2023

DATE


LESLIE A. STROTH, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE