

**Ochart v Housing Preserv. & Dev. Corp.**

2023 NY Slip Op 33868(U)

October 24, 2023

Supreme Court, New York County

Docket Number: Index No. 157650/2023

Judge: Nicholas W. Moyne

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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. NICHOLAS W. MOYNE PART 52**

*Justice*

-----X

YARITZA OCHART,

Plaintiff,

- v -

HOUSING PRESERVATION & DEVELOPMENT CORP.,  
NEW YORK CITY HOUSING AUTHORITY, THE CITY OF  
NEW YORK

Defendant.

-----X

INDEX NO. 157650/2023

MOTION DATE 08/16/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

Plaintiff, Yaritza Ochart, commenced this action against defendants, Housing Preservation & Development Corp., New York City Housing Authority, and The City of New York, to recover for personal injuries allegedly sustained on July 25, 2022, when she was caused to trip/slip and fall on a wet staircase and/or landing in the premises located at 566 West 191<sup>st</sup> Street, New York, NY.

Defendant New York City Housing Authority (“NYCHA”), in response to plaintiff’s notice of claim, informed plaintiff that NYCHA, upon a review of its records, did not own, manage, maintain or control the premises and requested that plaintiff withdraw the claim (NYSCEF Doc. No. 8). In lieu of an answer, NYCHA now moves, pursuant to CPLR 3211(a)(1) and (7), seeking an order dismissing the complaint and all cross-claims. The motion is unopposed.

On a motion to dismiss pursuant to CPLR § 3211, the pleading is to be afforded a liberal construction, the facts alleged in the complaint accepted as true, accord plaintiffs the benefit of every favorable inference, and determine whether the facts alleged fit within any cognizable legal theory (*Leon v Martinez*, 84 NY2d 83, 87 [1994]). When evidentiary material is considered, the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]). To prevail on a motion to dismiss pursuant to CPLR § 3211(a)(1), the defendant must show that the documentary evidence conclusively refutes the plaintiff's allegations, establishing a defense as a matter of law (*AG Capital Funding Partners, L.P. v State St. Bank and Tr. Co.*, 5 NY3d 582, 591 [2005]).

Plaintiff's claims of negligence are based on a supposedly dangerous, defective, or unsafe condition at the premises and allegedly arising out of the defendants' ownership, operation, management, maintenance, supervision, repair and control of the premises and the fixtures or appurtenances thereof. Considering that a defendant may only be liable in negligence only for a breach of duty of care owed to a plaintiff (*Sanchez v State of New York*, 99 NY2d 247, 252 [2002]). The existence and scope of an alleged tortfeasor's duty is, in the first instance, a legal question for determination by the court (*Darby v Cie. Natl. Air France*, 96 NY2d 343, 347 [2001]; *Espinal v Melville Snow Contractors, Inc.*, 98 NY2d 136, 138 [2002]). Accordingly, "[l]iability for a dangerous condition on property may only be predicated upon occupancy, ownership, control or special use of such premises" (*Jackson v Bd. of Educ. of City of New York*, 30 AD3d 57, 60 [1st Dept 2006]).

In support of its' motion, NYCHA has produced an affidavit by Miguel Angel Ballena, Assistant Director of the Department of Performance Tracking & Analytics, attesting to his search of NYCHA's computerized records, the New York City Department of Finance's

Automated City Register System (ACRIS), the New York City Department of Building's Building Information System (BIS), and the Open Accessible Space Information System (OASIS), which provided documentary evidence regarding 566 West 191<sup>st</sup> Street, Block 2161, Lot 128 (NYSCEF Doc. No. 10). Through this affidavit and supporting exhibits, it has been conclusively established that NYCHA did not own, manage, maintain, repair or control the subject property on the alleged accident date of July 25, 2022 (*see Igarashi v Higashi*, 289 AD2d 128 [1st Dept 2001] [while pleadings should be liberally construed on a motion to dismiss, claims "flatly contradicted by documentary evidence" must be rejected]). Therefore, as NYCHA did not owe a duty to the plaintiff, dismissal of the complaint is warranted as against them.

Accordingly, it is hereby

ORDERED that the motion of defendant New York City Housing Authority to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk's Office, who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and 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)].

This constitutes the decision and order of the court.

10/24/2023  
DATE

  
NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE