

Donehue v HP Savoy Park II Hous. Dev. Fund Co., Inc.
2023 NY Slip Op 35193(U)
March 8, 2023
Supreme Court, Bronx County
Docket Number: Index No. 28543/2016E
Judge: Adrian Armstrong
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 21

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FELICIA DONEHUE,

Plaintiff,

DECISION and ORDER

-against-

28543/2016E

HP SAVOY PARK II HOUSING

DEVELOPMENT FUND COMPANY, INC., et al.,

Defendants.

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Adrian Armstrong, J.

In this personal injury case, defendant Sean Coakley Plumbing and Heating Inc., (hereinafter "Sean Coakley") moves for summary judgment dismissing all claims, counterclaims and/or cross claims asserted against it. Defendants HP Savoy Park II Housing Development Fund Company, Inc., and New Savoy Park Portfolio LLC, (hereinafter collectively "Savoy Park") and the plaintiff both oppose the motion.

Plaintiff seeks damages for injuries she allegedly sustained on October 8, 2016 in the bathroom of apartment 15-M at her parents' home at 620 Lenox Avenue, New York, NY due to the collapse of the ceiling. Plaintiff's mother, Lucia Moya testified at her deposition that on the evening of October 6, 2016, she noticed a leak in her bathroom ceiling. The next morning, she went to the management office for the complex and told them about it. She testified that a building superintendent came up to her apartment that morning, saw the leak, and told her that he/building maintenance would have to contact a plumber.

Plaintiff and her mother both testified that two plumbers were at the apartment on Friday October 7, 2016, for a repair. Francisco Tavarez from Sean

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Coakley testified at his deposition that he and his helper Ryan were directed to the subject apartment by office personnel at the complex and they went to the apartment accompanied by a maintenance guy. After observing the leak in the bathroom, he concluded that the ceiling damage was caused by the toilet in apartment 16-M, directly above, which was leaking. He thereupon went up to apartment 16-M and determined that the wax seal/gasket had to be replaced. He further testified that after replacing the wax gasket and the toilet in 16-M, he went back down to 15-M and confirmed that the repair worked, and there were no more leaks. Mr. Tavaréz and his helper then removed the remaining wet plaster from the ceiling in 15-M about a 1-inch circumference around the hole, and then covered the hole with a plastic contractor's garbage bag. The bag was taped to the ceiling with duct tape. After completing their work, they went to the maintenance office and obtained a signature from a building representative on their work ticket.

After Mr. Tavaréz and his helper completed their plumbing repairs around 5 pm on October 7, 2016, both plaintiff and Ms. Moyer confirmed in their deposition testimony that there were no more leaks. However, Ms. Moyer testified that while Mr. Tavaréz and his helper were still at the site, she called the maintenance office and complained about the condition of the ceiling. It is undisputed that she was told by the complex's representative that she would have to wait until Tuesday for the ceiling to be repaired because of the three-day weekend.

Plaintiff testified that she was using the bathroom at approximately 1:00 pm the following day on October 8, 2016, when the ceiling allegedly collapsed on her. Ms. Moyer thereafter called the office of the complex, and security arrived about 10 minutes later. Ms. Moyer stated that the maintenance guys from the building cleaned up and put a big wood board on the ceiling. After about 4 days, the wood

was removed and the ceiling was repaired. It is undisputed that no additional plumbing repairs were done after Sean Coakley completed its work on Friday, October 7, 2016.

Sean Coakley argues that it is an independent contractor that owed no duty to plaintiff because it was retained by the building owner/managing agent to repair a plumbing leak emanating from a leaking toilet. Its duty, it maintains was limited to repairing the leaking toilet in apartment 16-M, and that the record confirms that it satisfied that duty by repairing the toilet and eliminating the leak. Additionally, Sean Coakley maintains that the cross-claims asserted by Savoy Park should be dismissed because it was Savoy Park that owed a duty to the plaintiff to maintain the premises in a reasonably safe manner.

In opposition, Savoy Park argues that substantial evidence shows that Sean Coakley negligently repaired the leak which caused the next day's ceiling collapse. Secondly, Savoy Park contends that Sean Coakley's plumbing efforts not only negligently failed to fix the leak above apartment 15-M, but that the plumbers worsened the leaking.

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]).

“Generally, a contractual obligation, standing alone, will not give rise to tort liability in favor of a third party” (*Cioffi v Klein*, 119 AD3d 886, 888 [2014]; see *Espinal v Melville Snow Contrs.*, 98 NY2d 136, 140 [2002]). The Court of Appeals has recognized three exceptions to this rule, only one of which is pertinent to this case. Under that exception, a party who enters into a contract to render services may be liable in tort to a third party “where the contracting party, in failing to exercise reasonable care in the performance of his [or her] duties, ‘launche[s] a force or instrument of harm’ ” (*Espinal v Melville Snow Contrs.*, 98 NY2d at 140, quoting *Moch Co. v Rensselaer Water Co.*, 247 NY 160, 168 [1928]; see *Cioffi v Klein*, 119 AD3d at 888-889). Moreover, “a claim that a contractor exacerbated an existing condition requires some showing that the contractor left the premises in a more dangerous condition than he or she found them” (*Foster v Herbert Slepoy Corp.*, 76 AD3d 210, 215 [2010]).

Here, Sean Coakley demonstrated its prima facie entitlement to judgment as a matter of law by submitting evidence that it owed no duty of care to the plaintiff (see *Bauerlein v Salvation Army*, 74 AD3d 851, 856 [2010]). In opposition, the plaintiff and Savoy Park both failed to raise a triable issue of fact as to whether Sean Coakley, in allegedly failing to exercise reasonable care in the performance of its work, “ ‘launche[d] a force or instrument of harm’ ” (*Espinal v Melville Snow Contrs.*, 98 NY2d at 140, quoting *Moch Co. v Rensselaer Water Co.*, 247 NY at 168). Contrary to Savoy Park’s arguments, there is absolutely no evidence

that Sean Coakley negligently repaired the leak which caused the next day's ceiling collapse. Indeed, the plaintiff and her mother both testified that after Sean Coakley completed its work, there was no evidence of a continued leak.

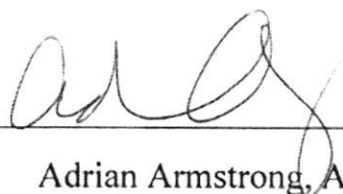
Accordingly, it is hereby

ORDERED, that the defendant Sean Coakley's motion pursuant to CPLR 3212 for an order granting summary judgment is granted. The claims and cross-claims against Sean Coakley are hereby dismissed; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This is the Decision and Order of the Court.

Dated: March 8, 2023



Adrian Armstrong, A.J.S.C.