

Sangna v New MBF Mgt. LLC
2023 NY Slip Op 35226(U)
April 17, 2023
Supreme Court, Bronx County
Docket Number: Index No. 34211/2020E
Judge: Wilma Guzman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX-----X
ASSANATA SANGNA,

Plaintiff,

DECISION AND ORDER

-against-

Index No.: 34211/2020E

NEW MBF MANAGEMENT LLC,

Motion Sequence No. 2

Defendant.
-----X

GUZMAN, J.

Plaintiff commenced this action to recover damages for personal injuries she allegedly sustained on August 12, 2020, after a portion of the ceiling in her apartment located at 1527 Taylor Avenue in Bronx, New York, suddenly fell on her while she was sitting in her living room. Plaintiff's bill of particulars alleges causes of action based on negligence in addition to violations of Multiple Dwelling Law §§ 78 and 80; RPAPL § 235-B; New York City Building Code §§ 27-127 and 27-128, and New York City Housing Maintenance Code § 27-2005. *See* NYSCEF Doc. No. 14. On this motion, Defendant moves for summary judgment dismissing the complaint pursuant to CPLR § 3212 on the grounds that it did not create the dangerous condition leading to the ceiling collapse, nor did it have actual or constructive notice of the condition of the ceiling.

In order to make a prima facie showing of entitlement to judgment as a matter of law, the moving party must tender sufficient evidence to demonstrate the absence of any material issues of fact. *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923 (1986). If the moving party meets its burden, the burden shifts to the nonmoving party to establish, through admissible evidence, the existence of disputed issues of material facts for trial. CPLR § 3212 (b); *Zuckerman v. New York*, 49 N.Y.2d 557, 560, 427 N.Y.S.2d 595 (1980). Because summary judgment is a "drastic remedy," it should only be employed when there is *no doubt* as to the absence of triable issues." *Andre v. Pomeroy*, 35 N.Y.2d 361, 364, 362 N.Y.S.2d 131 (1974) (emphasis added). Issue-finding, not issue-determination, is the role of the court on a motion for summary judgment. *Lebedev v. Blavatnik*, 193 A.D.3d 175, 142 N.Y.S.3d 511 (1st Dep't 2021). Additionally, the court views the evidence in the light most favorable to the non-moving party

and gives the non-moving party the benefit of all reasonable inferences that can be drawn from the evidence. *Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499, 942 N.Y.S.2d 13 (2012). However, the non-moving party must produce evidence in the record and may not rely on conclusory statements or contentions that are not credible.

A defendant moving for summary judgment in a premises liability case involving an alleged dangerous condition has the initial burden of demonstrating, prima facie, that it neither created nor had actual or constructive notice of the existence of the allegedly hazardous condition for a sufficient length of time to discover and remedy it. *Del Marte v Leka Realty LLC*, 156 A.D.3d 453, 67 N.Y.S.3d 16 (1st Dep't 2017); see *Parsons v. City of New York*, 195 A.D.2d 282, 284, quoting *Trujillo v. Riverbay Corp.*, 153 A.D.2d 793, 794, 545 N.Y.S.2d (1st Dep't 1989); *Pulley v. McNeal*, 240 A.D.2d 913, 658 N.Y.S.2d 732 (1st Dep't 1997).

In support of its motion, Defendant has submitted, *inter alia*, a copy of the relevant pleadings, Plaintiff's deposition testimony, and the deposition testimony of Jose Vega, the building superintendent. Plaintiff--an immigrant from Burkina Faso who speaks little to no English and testified through the use of an interpreter--testified at her deposition as follows:

Q. That first day that you noticed the dripping three days before the accident, describe the dripping for me, in your own words.

A. So from time to time the water that was dripping into the plate was really dirty.

Q. What about the frequency of the dripping that first day that you noticed it?

A . All the time. All the time.

Q. Did you speak to the super that first day that you noticed the dripping?

A. After I took the photos, I sent it to my case manager [at African Services Committee] and then I told the super and he said that he was going to come and, you know, fix it.

THE INTERPRETER: Then she had more to say.

A. So he didn't come and then I spoke with the case manager. The case manager said that they were going to come, but he never came.

* * *

Q. After you communicated with [African Services Agency], did you then go to the basement to speak to the super that same day?

A. So I called him. He didn't answer. So then I went down and I told him what was going on. He said he was --

THE INTERPRETER: I'm sorry, I have to verify something. I'm sorry. No, I'm sorry, I correct myself.

A. I went down to the basement, but he wasn't there. So then I called again, and then he said he was going to come, but then he never came. And each time, it's always like that.

Q. So on the same day that you noticed the dripping for the first time, you did speak to the super on the phone. Were you able to tell him what the problem was in your apartment in English?

A. So each time when I ask them to come by, I said: Please come by my house and see. So since we don't understand each other, I do that each time.

* * *

Q. [. . .] When you called the super on the phone on the day you saw the dripping, he answered the phone; correct?

A. The first time I didn't speak to him on the phone so I went down to the basement. But the second time he got on the phone.

Q. Right. The second time you got him on the phone, did he say "Hello," did he speak in Spanish or something else?

A. So he spoke in English and he said hello and I said hello and I say, "Come 3 house." I said, "Apartment 3."

Q. Okay. After you said: Come house, apartment 3, what did he say, if anything?

A. He said, "Later, later."

Q. Then what did you say, if anything?

A. I said, "Okay." Since each time he says later and I say okay.

* * *

Q. During that phone call, did you ever tell him, in broken English, what was wrong in your apartment that you needed him to come?

A. Yes.

Q. What did you say?

A. So I said the shower where I wash myself has the same problem, and I said, "Super, come see the bathroom."

Q. You said that during this phone call we're talking about?

A. Since I don't understand and he doesn't understand, I always say "Come see."

* * *

Q. I just want to focus on this one telephone call on the day that you saw the dripping, when he answered the phone the second time. What, exactly, did you say to him? Was it just "Come house, apartment 3," or did you say anything else other than that?

A. I told him, "Come see my house, I have a problem, apartment 3." Each time I say apartment so that he comes specifically to my house.

Q. Did you say anything else, other than what you just told us, "I have a problem"?

THE INTERPRETER: I'm sorry, I didn't hear her.

A. He said "Later." And then I said, "Okay."

Q. I just want to ask: What did you say? Did you say anything other than what you just told us, "I have a problem"? Did you say anything else before he hung up?

A. No. No, because without him coming, we can't understand each other on the telephone.

See NYSCEF Doc. No. 26, at 41-42; 44; 45-47.

Plaintiff also testified that previously there was water dripping in her bathroom “above the shower,” and that condition was fixed after she followed “the same procedure” by notifying her case manager, after which the building superintendent fixed the problem. *Id.* at 59-61.

For his part, Jose Vega testified that Plaintiff never complained about water dripping from the ceiling of her apartment or otherwise informed him that there were any problems with the ceiling prior to the incident. *See* NYSCEF Doc. No. 27, at 29. After the incident, Vega went to the apartment located directly above Plaintiff’s unit. Vega testified that the tenant in that unit had installed an air conditioner improperly, causing water to drip onto the floor. *Id.* at 33. Vega testified that he removed the damaged/wet portions of the ceiling in Plaintiff’s apartment, installed new sheetrock, and plastered and repainted the ceiling. *Id.* at 34.

Here, the Court finds that Defendant’s submissions--which include both of the parties’ deposition testimony--do not eliminate all questions of fact as to whether Defendant had notice of the allegedly defective condition. *See, e.g., Breton v. Dishy*, 206 A.D.3d 446, 167 N.Y.S.3d 793 (1st Dep’t 2022) (testimony that plaintiff’s roommate called superintendent complaining of leak in ceiling and ceiling collapsed on plaintiff one day after superintendent told plaintiff that he could not do anything about it at that point, raised issue of fact regarding whether defendant had notice of ceiling defect). The Court may not weigh evidence or assess the credibility of witnesses on a summary judgment motion; these determinations are within the sole province of the jury. Under the particular circumstances of this case, the Court therefore concludes that Defendant has not established, *prima facie*, that it lacked notice of the alleged defect. *See Ku Sung Lee v. Leybman*, 51 A.D.3d 639, 857 N.Y.S.2d 675, 675 (2d Dep’t 2008). In view of this determination, the Court does not address Defendant’s remaining contentions. Accordingly, it is hereby:

ORDERED AND ADJUDGED that Plaintiff’s motion for summary judgment pursuant to CPLR § 3212 to dismiss the complaint is DENIED; and it is further

[intentionally left blank]

ORDERED AND ADJUDGED that Plaintiff shall serve a copy of this Decision & Order with Notice of Entry upon Defendant within thirty days of the date of this Decision & Order.

The foregoing constitutes the Decision & Order of the Court.

Dated: Bronx, New York
April 17, 2023



HON. WILMA GUZMAN, J.S.C.