

Michel v 107 McLean Ave. Holdings, LLC
2023 NY Slip Op 35313(U)
September 21, 2023
Supreme Court, Westchester County
Docket Number: Index No. 61991/2021
Judge: Gretchen Walsh
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To commence the statutory time period for appeals as of right CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

Present: HON. GRETCHEN WALSH, J.S.C.

-----X

EDDY MICHEL,

Plaintiff,

-against-

Index No. 61991/2021

Mot. Seq. No. 2

Mot. Date: 6/9/2023

DECISION & ORDER

107 MCLEAN AVENUE HOLDINGS, LLC,
and Z JEREIS REAL ESTATE, LLC,

Defendants.

-----X

WALSH, J.

The following e-filed documents, listed in NYSCEF by document numbers 32-48 were read on this motion by Defendant Z Jereis Real Estate, LLC (“Z Jereis”) for an order granting it summary judgment pursuant to CPLR 3212 and dismissing the Complaint of Plaintiff Eddy Michael’s (“Plaintiff” or “Michael”). Plaintiff opposes the motion.

Upon the foregoing papers and for the reasons set forth herein, Z Jereis’s motion shall be denied.

FACTUAL AND PROCEDURAL BACKGROUND

This personal injury action, involving allegations that a ceiling collapsed on Plaintiff’s head and shoulder on June 15, 2020 due to negligence in the ownership and maintenance of an apartment located at Apartment 1B of 107 McLean Avenue, Yonkers, New York, 10705 (the “Premises”), was commenced by Plaintiff’s filing of his Summons and Complaint on August 31, 2021. On April 20, 2022, 107 McLean Holdings, LLC (“107 McLean”) filed its Answer and on May 31, 2022, Z Jereis filed its Answer. In their Answers, 107 McLean and Z Jereis deny the material allegations of the Complaint and assert various affirmative defenses. Following the conclusion of discovery and this Court’s issuance of a Trial Readiness Order, on March 24, 2023, Plaintiff served and filed his Note of Issue and this motion ensued.

The Complaint alleges a negligence claim against Defendants and seeks monetary damages. Following a recitation of the basis for jurisdiction in Westchester County, Plaintiff alleges that, at all relevant times, both 107 McLean and Z Jereis conducted, carried on, and transacted business in New York and derived substantial revenue from goods used or consumed in New York (*id.* at ¶¶ 2-17). Plaintiff asserts that, at all relevant times, 107 McClean owned the Premises and was the lessor and the lessee of the Premises (*id.* at ¶¶ 18-20). Plaintiff states that 107 McLean and its servants, agents and/or employees managed, operated, maintained, controlled, supervised, inspected, repaired, designed, renovated, and constructed the Premises at all relevant times (*id.* at ¶¶ 21-30). Plaintiff alleges that at all relevant times it was the duty of 107 McLean and its servants, agents and/or employees to maintain the Premises in a reasonably safe and suitable condition (*id.* at ¶¶ 31). Plaintiff further alleges that Z Jereis owned the Premises and was the lessor and the lessee of the Premises (*id.* at ¶¶ 32-34). Plaintiff asserts that at all relevant times Z Jereis and its servants, agents and/or employees managed, operated, maintained, controlled, supervised, inspected, repaired, designed, renovated, and constructed the Premises (*id.* at ¶¶ 35-44). Plaintiff asserts that it was the duty of Z Jereis and its servants, agents and/or employees to maintain the Premises in a reasonably safe and suitable condition (*id.* at ¶ 45).

According to Plaintiff, on or about June 15, 2020, Plaintiff “was a lawful patron” of 107 McClean and Z Jereis and was at the Premises (*id.* at ¶¶ 46-47). He alleges that “solely as a result of Defendants’ negligence, carelessness and recklessness” he “was caused to be seriously injured when he was struck by a falling object/ceiling debris, while lawfully at the aforementioned location” (*id.* at ¶ 48). Plaintiff asserts that by the negligence of Defendants he “was severely injured, bruised and wounded, suffered, still suffers and will continue to suffer for some time physical pain and bodily injuries and became sick, sore, lame and disabled and so remained for a considerable length of time” (*id.* at ¶ 49). He states that he required medical aid and incurred expenses for this aid and attention and that he “has been unable to attend to his usual occupation in the manner required” (*id.* at ¶¶ 50-51). Plaintiff alleges that “this occurrence was caused by reason of the negligence, carelessness and recklessness of [107 McClean and Z Jereis and/or their] agents, servants and/or employees, in the ownership, management, maintenance, supervision, inspection, repair, control, design and construction of the [Premises] . . . in creating said dangerous, defective and hazardous condition; in failing to properly inspect remedy and/or remove said dangerous condition” (*id.* at ¶¶ 52-53). Plaintiff further alleges that 107 McLean and Z Jereis were negligent, reckless and careless in that they violated their duties to Plaintiff “in knowingly permitting, suffering and allowing a defective, dangerous, trap like condition to be present at the aforesaid premises, and was further negligent in failing to take suitable precautions for the safety of persons lawfully at the aforesaid premises;” specifically, in “failing to give any notice or warning to Plaintiff of said dangerous condition” (*id.* at ¶¶ 54-57).

Plaintiff asserts that the “accident and the injuries resulting therefrom were due, solely and wholly, as the result of the careless and negligent manner in which the Defendant’s owned, managed, operated, maintained, controlled, supervised, inspected, repaired, designed, renovated, and constructed the aforesaid premises, without the Plaintiff, EDDY MICHEL, in any way contributing thereto” (*id.* at ¶ 58). He alleges that “one or more of the provisions of §1602 of the Civil Practice Law and Rules do apply to the within action” (*id.* at ¶ 59). Plaintiff further alleges

that “pursuant to the Governor’s Declaration of Disaster Emergency in New York State in Executive Order 202 due to the COVID-19 pandemic, together with subsequently issued Executive Orders, including without limiting thereto EO 202.8, EO 202.14, EO 202.28, EO 202.48, EO 202.55, EO 202.60 and EO 202.67, the statute of limitations in the within action has been tolled and extended to remedy the Plaintiff’s inability to file the within action resulting from the Administrative Orders of the New York State Chief Administrative Judge, Lawrence K. Marks, prohibiting electronic filing and the commencement of new actions until further notice in non-essential matters, including without limiting thereto Administrative Orders AO-78-20 and AO-85-20” (*id.* at ¶ 60). Plaintiff asserts that he was damaged in an amount exceeding the monetary jurisdictional limit of all lower courts which would otherwise have jurisdiction and in an amount exceeding \$75,000 to be determined at trial (*id.* at ¶¶ 61-62).

Z JEREIS’S MOTION FOR SUMMARY JUDGMENT

A. Z Jereis’s Contentions in Support of Its Motion

In support of its motion for summary judgment, Z Jereis submits: (1) an affirmation of Lawrence R. Sykes, Esq. dated May 8, 2023 (“Sykes Aff.”) which attaches: (a) a title search and report of the National Real Estate Services certifying that 107 McLean acquired title to the Premises on March 9, 2018; (b) an affidavit of Saida Jereis, the sole member of 107 McLean and Z Jereis, sworn to on May 8, 2023 (“Jereis Aff.”); and (c) a Statement of Material Facts (“Z Jereis’s SMF”).

In her affidavit, Jereis avers that Plaintiff claims that “on June 15, 2020 while seated in [the Premises] a portion of the living room ceiling collapsed striking him on his head and left shoulder” (Jereis Aff. at ¶ 2). She asserts that the actual tenant of the Premises at that time was Plaintiff’s son, Alex Perez (*id.*). She states that, on June 15, 2020, Z Jereis was not the owner of the Premises, as it conveyed title to 107 McLean on March 9, 2018, and that it did not occupy or control the Premises at that time (*id.* at ¶ 3). She avers that “[a]lthough on or about December of 2020 I may have tendered a lease to the Premises to Alex Perez naming Defendant Z Jereis Real Estate, LLC as the landlord Defendant Z Jereis Real Estate, LLC was not the actual owner of the Premises at that time; nor did it occupy manage or control the Premises” (*id.* at ¶ 4). She further avers that any payments made by Z Jereis for repairs made to the collapsed ceiling do not “constitute ownership, occupation, or control of the Premises” by Z Jereis (*id.* at ¶ 5).

In counsel’s affirmation, after summarizing the allegations of the Complaint and procedural history, Sykes contends that Plaintiff’s Complaint must be dismissed as to Z Jereis since it did not own, occupy, or control the Premises at the time the accident occurred, as evidenced by the last known owner search report for the Premises and the Jereis Affidavit (Sykes Aff. at ¶¶ 1-10). Sykes argues it is “axiomatic that under New York State law liability for a dangerous condition on real property is predicated upon ownership, occupancy, or control of the [] property” and, where none of those factors are present, a party cannot be held liable for injuries caused by an allegedly defective condition (*id.* at ¶ 9). Therefore, Z Jereis asserts that its motion should be granted along with costs and disbursements.

B. Plaintiff's Contentions in Opposition

In opposition to Z Jereis's motion, Plaintiff submits: (1) an affirmation of Stephen J. Liakas, Esq., dated May 30, 2023, with accompanying exhibits; and (2) a Response to Defendant Z Jereis's Statement of Material Facts ("Plf's Response to SMF"). In counsel's affirmation, Liakas argues that Z Jereis's motion must be denied because it fails to eliminate all triable issues of fact in that it focuses on that fact that Z Jereis did not own the Premises, but does not demonstrate that it did not have a duty to maintain the Premises in a reasonably safe condition (Liakas Aff. at ¶ 2). Following a summary of the facts and procedural history, Liakas contends that negligence cases by their nature do not lend themselves to summary judgment since, even if the parties agree about the underlying facts, the question of negligence is for a jury to determine and "[w]hether a party acted reasonably and/or exercised due care under the circumstances can rarely be decided as a matter of law" (Plf's Opp. Mem. at ¶¶ 1-17).

Liakas first argues that he submits sufficient admissible evidence to raise multiple triable issues of fact on the issue of liability thus precluding a grant of summary judgment. He contends that "[i]t is well settled that 'liability for a dangerous or defective condition on property is generally predicated upon ownership, occupancy, control or special use...'" and that this duty may not be delegated by the owner to its agents, employees, or independent contractors (*id.* at ¶ 18 [citations omitted]). He argues that the law requires landowners to use reasonable care in the maintenance of property "taking into account all circumstances such as the likelihood of injury to others, the seriousness of the injury, and the burden involved in avoiding the risk," as well as to make reasonable efforts to inspect the property to determine the presence of dangerous conditions (*id.* at ¶ 19). Liakas further contends that "Courts have also determined that when a lease agreement is so 'comprehensive and exclusive' in delegating the duty to maintain the property to the tenant, the duty is on the tenant to maintain the property regardless of New York City Administrative Code" (*id.* at ¶ 20 [citations omitted]). He argues that it is undisputed that here 107 McLean assumed ownership of the Premises from Z Jereis on or about March 9, 2018 and that 107 McLean had a non-delegable duty to maintain the Premises in a reasonably safe condition at the time of Plaintiff's accident but that, regardless, there are still triable issues of fact as to Z Jereis's alleged duty to maintain the Premises in a reasonably safe condition (*id.* at ¶¶ 21-22).

Liakas submits the "front page of a lease agreement between tenant, Alexis Michel Perez (Plaintiff's son), and Defendant, Z JEREIS REAL ESTATE, LLC—as *landlord*—for the subject apartment," which he affirms was marked as "Alexis 1" (the "Lease") at the non-party deposition of Alexis Michael Perez ("Perez") (*id.* at ¶ 23). Liakas affirms that Perez authenticated the Lease as the lease he entered into with "*landlord/Defendant, Z JEREIS REAL ESTATE, LLC, and said lease was in effect at the time of Plaintiff's accident*" (*id.*, Ex. A [Lease]). Liakas asserts that the "limited lease states that the landlord, Z JEREIS REAL ESTATE, LLC, had a duty to perform certain 'repairs' and 'services,'" including that "landlord will repair the plumbing, heating and electrical systems," which Liakas contends raises triable issues of fact as to Z Jereis's duty to maintain and repair the Premises (*id.* at ¶ 24). Liakas affirms that Defendants have failed to provide a complete copy of the Lease, despite repeated demands for it (*id.* at ¶ 26).

Liakas attaches as an exhibit checks from Saida Jereis to Jose Quizhpi dated June 16, 2020 and June 25, 2020 for “107 Mclean 1B Mclean” (*id.* at ¶ 27, Ex. B). He affirms that Jereis testified on behalf of both Defendants as the sole member of both Defendants and attaches excerpts from her deposition in which she testifies that she hired Quizhpi to perform repairs to the subject ceiling following Plaintiff’s accident and that “Ms. Jereis paid Mr. Quizhpi by personal check and therefore, it is unknown which Defendant corporation, if any, hired Mr. Quizhpi and paid Mr. Quizhpi to perform the subsequent repairs” (*id.*, Ex. C). Liakas further affirms that “it is unknown which Defendant corporation, if any, Ms. Jereis was acting on behalf of when she hired Mr. Quizhpi and paid Mr. Quizhpi to repair the subject ceiling following Plaintiff’s accident” (*id.*). Liakas then states that Samuel Gill also testified on behalf of both Defendants and that Gill worked for Jereis for twenty years and was her only employee for the Premises (*id.* at ¶ 28, Ex. D). According to Liakas, Gill “did not know which corporation, if any, he was working for at or around the time of Plaintiff’s accident, and he was always paid in cash by Ms. Jereis” and that “both Defendant corporations were the same thing or corporation” (*id.*). Liakas affirms that Gill stated that Jereis hired Quizhpi to fix the ceiling after Plaintiff’s accident (*id.*).

Liakas affirms that Gill testified “that the tenants were told to contact the owner or landlord if there was a complaint or issue, and that the owner or landlord would then contact him to address the issue” and, therefore, “Jereis should have received all tenant complaints as the sole member of both Defendant corporations” (*id.* at ¶ 29). Liakas reiterates that it is “unknown who or which corporation Ms. Jereis was working for when she instructed Mr. Gill or paid Mr. Gill, *or when Ms. Jereis hired Mr. Quizhpi or paid Mr. Quizhpi to fix the subject ceiling after Plaintiff’s accident*” (*id.* at ¶ 30). He contends that Jereis “could have been acting on behalf of Defendant, Z JEREIS REAL ESTATE, LLC, as Mr. Gill assumed during his deposition” (*id.*). Liakas argues that, while Z Jereis’s motion is focused on Z Jereis’s non-ownership of the Premises, it does not address the evidence raising triable issues of fact as to its duty to maintain the Premises and pattern of conduct in terms of maintenance and repair of the Premises (*id.* at ¶¶ 31-32). Therefore, Plaintiff contends, triable issues of fact exist as to whether Z Jereis was operating as property manager for the Premises at the time of Plaintiff’s accident and/or assumed a duty to maintain the Premises in a reasonably safe condition (*id.* at ¶ 33).

C. Statements of Material Facts

In its Statement of Material Facts, Z Jereis asserts that, on March 9, 2018, Z Jereis conveyed title of the Premises to 107 McLean (Z Jereis SMF at ¶ 1). It also represents that, on June 15, 2020, 107 McLean owned the Premises (*id.* at ¶ 2). In his Response to Z Jereis’s Statement of Material Facts, Plaintiff admits each of these statements (Plf’s Response to SMF at ¶¶ 1-2). Plaintiff then sets forth a counterstatement of material facts, asserting that “Tenant, Alexis Michel Perez (Plaintiff’s son), entered into a lease agreement with landlord Z JEREIS REAL ESTATE, for 107 Mclean Avenue, Apartment 1B, Yonkers, New York, from January 1, 2020, to December 21, 2020” (Plf’s Counterstatement at ¶ 1). Plaintiff asserts that the Lease states that the landlord, Z Jereis, will repair the plumbing, heating and electrical systems (*id.* at ¶ 2). He asserts that Jereis hired and paid Jose Quizhpi to fix the ceiling in the Premises after Plaintiff’s accident (*id.* at ¶¶ 3-4). He represents that Jereis is the sole member of both 107 McLean and Z Jereis (*id.* at ¶ 5). He

states that Samuel Gill worked for Jereis and was assigned to work at the Premises at the time of Plaintiff's accident and prior thereto (*id.* at ¶ 6).¹ DEFENDANT'S RESPONSE TO COUNTERSTATEMENT

DISCUSSION

A. CPLR 3212 Standard of Review

The legal standards on a motion for summary judgment are well-settled. The proponent of a motion for summary judgment "bears the initial burden of demonstrating its prima facie entitlement to the requested relief" (*Reyes v Arco Wentworth Mgt. Corp.*, 83 AD3d 47, 50 [2d Dept 2011]; *see also Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]). The moving party must tender sufficient evidence to demonstrate as a matter of law the absence of a material issue of fact (*William J. Jenack Estate Appraisers & Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470 [2013]). Failure to make that initial showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*id.*; *Vega v Restani Constr. Corp.*, 18 NY3d 499 [2012]).

Once the moving party has made a prima facie showing of entitlement to summary judgment, the burden of production shifts to the opponent, who must go forward and produce sufficient evidence in admissible form to establish the existence of a triable issue of fact or demonstrate an acceptable excuse for failing to do so (*Reyes*, 83 AD3d 47; *Jacobsen v New York City Health & Hosps. Corp.*, 22 NY3d 824 [2014]). A party opposing summary judgment may not rest on mere conclusions or unsupported assertions; rather, the party must "affirmatively demonstrate the merit of its claim or defense" (*Collado v Jiacono*, 126 AD3d 927, 928 [2d Dept 2015]; *Sun Yau Ko v Lincoln Sav. Bank*, 99 AD2d 943 [1st Dept 1984], *aff'd* 62 NY2d 938 [1984]).

"It is not the function of a court deciding a summary judgment motion to make credibility determinations or findings of fact, but rather to identify material triable issues of fact (or point to the lack thereof)" (*Vega*, 18 NY3d at 505). Since summary judgment is a drastic remedy, it should not be granted where there is any doubt as to the existence of a triable issue (*Pizzo-Juliano v Southside Hosp.*, 129 AD3d 695 [2d Dept 2015]; *William J. Jenack Estate Appraisers & Auctioneers, Inc.*, 22 NY3d 470). Thus, when the existence of an issue of fact is even arguable or debatable, summary judgment should be denied (*Stone v Goodson*, 8 NY2d 8, 12 [1960]; *Collado*, 126 AD3d 927). In reviewing a motion for summary judgment, the Court must accept as true the evidence presented by the nonmoving party and must deny the motion "if there is any doubt as to the existence of a triable issue" (*Herrin v Airborne Frgt. Corp.*, 301 AD2d 500, 501 [2d Dept 2003]; *see also Stukas v Streiter*, 83 AD3d 18 [2d Dept 2011]).

¹ Defendant Z Jereis failed to respond to Plaintiff's counterstatement of material facts and, therefore, the facts asserted by Plaintiff may be deemed admitted for purposes of this motion (22 NYCRR 202.8-g). And even if the Court did not treat the facts asserted in Plaintiff's counterstatement as deemed admitted, as set forth herein, Plaintiff has submitted sufficient evidence raising a triable issue of fact necessitating the denial of Defendant's motion.

B. Z Jereis's Motion Shall be Denied

“As a general rule, liability for a dangerous or defective condition on real property must be predicated upon ownership, occupancy, control, or special use of that property” (*Suero-Sosa v Cardona*, 112 AD3d 706, 707 [2d Dept 2013]; *see also Gover v Mastic Beach Prop. Owners Assn.*, 57 AD3d 729 [2d Dept 2008]). “Where none of these factors is present, a party cannot be held liable for injuries caused by the allegedly defective condition” (*Suero-Sosa*, 112 AD3d at 707). “An owner of property has a duty to maintain the property in a reasonably safe condition” (*Egan v Emerson Assocs., LLC*, 127 AD3d 806, 806 [2d Dept 2015]; *Kellman v 45 Tiemann Assocs., Inc.*, 87 NY2d 871 [1995]; *Basso v Miller*, 40 NY2d 233 [1976]). “In order for a landowner to be liable in tort to a plaintiff who is injured as a result of an allegedly defective condition upon property, “it must be established that a defective condition existed and that the landowner affirmatively created the condition or had actual or constructive notice of its condition”” (*Rant v Locust Valley High Sch.*, 123 AD3d 686, 687 [2d Dept 2014] [citations omitted]; *see also Witkowski v Island Trees Pub. Lib.*, 125 AD3d 768 [2d Dept 2015]). However, in certain circumstances, a lease or management agreement may be so “comprehensive and exclusive” as to displace a landowner’s duty to maintain the property (*Lattimore v Thackurdeen*, 194 AD3d 915, 916 [2d Dept 2021] [“A duty of care on the part of a managing agent may arise where there is a comprehensive and exclusive management agreement between the agent and the owner that displaces the owner’s duty to safely maintain the premises”]; *Hsu v City of New York*, 145 AD3d 759 [2d Dept 2016]; *Espinal v Melville Snow Contractors, Inc.*, 98 NY2d 136 [2002]; *see generally* Premises liability—Duty to make the land reasonably safe for persons on it, 15 N.Y.Prac., New York Law of Torts § 12:3).

Moreover, where it is unclear as to which entity controls a property summary judgment is properly denied (*Silverberg v Palmerino*, 61 AD3d 1032, 1034 [3d Dept 2009] [“It is well settled that, in addition to ownership, occupancy or special use, liability for a dangerous or defective condition on property may be predicated upon a party’s exercise of control over the premises on which the accident occurred”]; *see, e.g., Saunders v Bryant’s Towing*, 27 AD3d 992 [3d Dept 2006] [denying summary judgment based on testimony by one brother where it was unclear which of the brothers’ company or companies’ employees performed the maintenance]; *Ortega v Liberty Holdings, LLC*, 111 AD3d 904 [2d Dept 2013] [denying summary judgment where defendant established it was not the record owner of the premises on the date of plaintiff’s accident by producing a deed to the premises, but defendant’s evidentiary submissions did not address the issues of its occupancy, control, and special use of the premises]; *Hsu*, 145 AD3d 759 [where neither defendant owned the premises at the time of the incident, plaintiff’s submission of a lease requiring the City, at its sole cost and expense, to take good care of the sidewalk, and “make all repairs thereto, ordinary and extraordinary, foreseen and unforeseen” raised a triable issue of fact as to whether the lease was comprehensive and exclusive as to sidewalk maintenance so as to entirely displace the former landowner’s duty to maintain the sidewalk]).

Here, Z Jereis demonstrated prima facie its entitlement to judgment as a matter of law through the affidavit of Saida Jereis, the sole member of Z Jereis and 107 McLean, who averred that Z Jereis was not the owner of the Premises on June 15, 2020, having conveyed title to 107 McLean on March 9, 2018, and further averred that Z Jereis did not occupy or control the Premises at the time of Plaintiff’s injury (Jereis Aff. at ¶ 3). Z Jereis also provides a last known owner title

search and report of the National Real Estate Services, Inc. certifying that 107 McLean acquired title to the Premises on March 9, 2018 (Sykes Aff. Ex. A).

In opposition, Plaintiff submits the Liakas Affirmation affirming that it is undisputed that 107 McLean assumed ownership of the Premises from Z Jereis on or about March 9, 2018 and that 107 McLean owned the Premises at the time of Plaintiff's accident on June 15, 2020 (Liakas Aff. at ¶ 21). However, Plaintiff also submits evidence raising a triable question of fact as to Z Jereis's alleged duty to maintain the Premises in a reasonably safe condition under the circumstances of this case. Plaintiff submits a portion of a page of the alleged Lease² for the Premises which states that it is between "LANDLORD" "Z Jereis Real Estate LLC" and "TENANT: Alexis Perez" (*id.* at ¶ 23, Ex. A). The Lease also states that "Landlord will repair the plumbing, heating and electrical systems" and provide certain services including supplying heat, hot and cold water, use of elevator, if one is available, and cooling if central air conditioning is installed (*id.* at ¶ 24, Ex. A). Plaintiff submits copies of personal checks produced in discovery by 107 McLean from Saida Jereis to Jose Quizhpi dated June 16, 2020 and June 25, 2020 listing "107 McLean 1B McLean" and "107 McLean 1B" respectively on their subject lines; however, the checks simply list Jereis's name, without any indication of which corporate entity on whose behalf she was acting (*id.* at ¶ 27; Ex. B at ¶ 5). Plaintiff also provides the transcript from Jereis's deposition³ in which she testified that she hired Quizhpi to perform repairs to the ceiling of the Premises following Plaintiff's injury (*id.* at ¶ 27; Ex. C at 92-94). Jereis further testified that at the time of the accident she only maintained one bank account for the two entities and one personal bank account and that because the money came out of her personal account she could not testify as to which entity paid for the repairs (*id.*). She also testified that the one business account for the two entities was under Z Jereis Real Estate, LLC (*id.*). In addition, Plaintiff provides the deposition testimony of Samuel Gill, who testified that he has been doing work for Z Jereis for almost twenty years and was the sole person performing repairs and cleaning for the Premises through June 2020 (Liakas Aff. at ¶ 28, Ex. D at 27-33). He testified that he did not know which entity he was working for at the time of Plaintiff's injury because "[i]t is all the same" and that, as far as he knows the entity who owned the Premises both in June 2020 and currently is "Z Jereiz, LLC" which he understands is the same company as 107 McLean run by the same people (*id.*). He also testified that he was paid in cash by Jereis for his work and that he did not fix the ceiling after Plaintiff's accident (*id.* at 14, 22, 55).

Therefore, Plaintiff has raised a triable issue of fact as to Z Jereis's involvement with the Premises at the time Plaintiff was injured, whether it exercised any control over the Premises, and whether it had a duty to maintain the Premises in a reasonably safe condition at the time of Plaintiff's injury.

Accordingly, Defendant Z Jereis's motion shall be denied.

² Plaintiff represents that, while he has only submitted a portion of a page of the alleged Lease, it is because Defendants "have failed to provide a complete copy of the lease agreement(s) despite Plaintiff's repeat[ed] demands for same" (Liakas Aff. at ¶ 26).

³ In the future the Court requests that parties submit only the relevant excerpts of deposition transcripts rather than the entire transcripts.

CONCLUSION

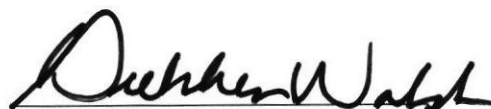
Based on the foregoing papers and for the reasons stated, it is hereby

ORDERED that the motion by Defendant Z Jereis Real Estate, LLC for an order granting summary judgment dismissing the Complaint of Plaintiff Eddy Michael as against it is denied.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York
September 21, 2023

ENTER:



Hon. Gretchen Walsh
Justice of the Supreme Court

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