

**Kakiashvili v 593 Riverside Assoc., LLC**

2024 NY Slip Op 32741(U)

August 6, 2024

Supreme Court, New York County

Docket Number: Index No. 156377/2022

Judge: Lori S. Sattler

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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. LORI S. SATTLER PART 02M**

*Justice*

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NINA KAKIASHVILI,

Plaintiff,

- v -

593 RIVERSIDE ASSOCIATES, LLC, THE HEIGHTS  
MANAGEMENT COMPANY, LLC

Defendant.

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INDEX NO. 156377/2022

MOTION DATE 01/22/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 28, 29, 30, 31, 32, 33, 34, 35, 36

were read on this motion to/for JUDGMENT - SUMMARY.

In this negligence action, Plaintiff Nina Kakiashvili (“Plaintiff”) moves for summary judgment as to liability and for an order striking the affirmative defenses of Defendants 593 Riverside Associates, LLC (“593 Riverside”) and The Heights Management Company, LLC (“Heights Management”) (collectively “Defendants”). Defendants oppose the motion.

Plaintiff is a tenant in Apartment 4A in a building located at 593 Riverside Drive, owned by 593 Riverside and managed by Heights Management. The accident that led to this action occurred on May 30th, 2022 in one of the bathrooms in her apartment. There was a “continuous leak” in the ceiling of that bathroom, and Plaintiff was in the bathroom trying to catch the water, specifically leaning over her bathtub to remove debris that was clogging the drain, when the ceiling collapsed on her, causing her to lose consciousness and sustain other injuries (NYSCEF Doc. No. 22, Plaintiff’s EBT, 56-59, 66-67).

Plaintiff testified that there “was an ongoing water problem there, along with the ceiling was completely in disrepair, had mold growing on it. It was very obvious water penetration” (*id.*

at 72). She testified to a history of notifying the building super about ceiling leaks in that bathroom dating back to more than a year before the date of the accident (*id.* at 84-150). As set forth in that testimony, after she first notified the building of the issue, a handyman made repairs and “reassured me the leak was taken care of and it really just needs a paint job now.”

Thereafter, additional damage became visible, and Plaintiff contacted the building’s management office via phone and email without response. Plaintiff then noticed black mold and mushrooms growing on the wall below the ceiling. She notified management “continuously” and the problem persisted. In total, Plaintiff states she spoke with six different people working for Defendants about the leaking ceiling (*id.* at 151-157).

In the Summer of 2021, Plaintiff hired a mold remediation company, who concluded the mold resulted from “the wetness and the ongoing leak” (*id.* at 103). In March 2022, Plaintiff commenced a Housing Court proceeding seeking a rent reduction on the grounds that she was unable to use this portion of her apartment (*id.* at 131-132). Her petition stated, *inter alia*, that there was a ceiling leak and water damage in the bathroom (*id.* at 140). Defendants appeared in that proceeding. On April 20, 2022, New York City Housing Preservation & Development (“HPD”) inspected her apartment, issued three violations, and gave Defendants a deadline to fix the violations. The accident occurred approximately one month later.

The building super, who is employed by Heights Management, conceded he was aware of the problem, but could not remember as of when it started because it “was so many times” (NYSCEF Doc. No. 23, Restrepo EBT, 40). He testified that problem originated with the tenants in 5A, the apartment above: “they would disconnect the faucets. Then let the toilet overflow. They would let the tub overflow. They would let the water leak out of everything, and it caused many problems in 4A” (*id.* at 39). Whenever he made repairs in 5A or 4A, he reported it to

Heights Management (*id.* at 45-46). He stated that “things became complicated” because the 5A tenants threatened to refuse access to that apartment, but that in 4A, “there were leaks at every moment . . . [The 5A tenants] were letting water come down from that apartment all the time” (*id.* at 49). He testified to repairing Plaintiff’s ceiling three times and stated that at one point Plaintiff “wouldn’t let me go in there anymore until we fixed what was going on in 5A” (*id.* at 46, 51).

On a motion for summary judgment, a movant must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). After the movant makes this showing, “the burden shifts to the party opposing the motion . . . to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*id.*). The Court must view the facts “in the light most favorable to the non-moving party” (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]).

A property owner owes a duty to exercise reasonable care in maintaining its property in a reasonably safe condition under the circumstances (*Powers v 31 E 31 LLC*, 24 NY3d 84, 94 [2014]; *Galindo v Town of Clarkstown*, 2 NY3d 633, 636 [2004]). Nevertheless, no duty exists without actual or constructive knowledge of a dangerous condition (*Langer v 116 Lexington Ave., Inc.*, 92 AD3d 597, 598 [1st Dept 2012]). In the case of a ceiling collapse, it is the plaintiff’s burden to show actual or constructive notice of a defect prior to the collapse (*Figueroa v Goetz*, 5 AD3d 164, 165 [1st Dept 2004] [citations omitted]). “If the claim is that the ceiling collapsed because of a leak, a plaintiff must show that the defendant had prior notice, actual or constructive, of the leak and that the leak was never repaired” (*id.*).

“Mere notice of a general or unrelated problem is not enough; the particular defect that caused the damage must have been apparent” (*Hayes v Riverbed Hous. Co., Inc.*, 40 AD3d 500, 500 [1st Dept 2007]). A plaintiff may satisfy the burden on notice “by producing evidence that an ‘ongoing and recurring dangerous condition existed in the area of the accident which was routinely left unaddressed by the landlord’” (*Talavera v New York City Tr. Auth.*, 41 AD3d 135, 136 [1st Dept 2007], quoting *O’Connor-Miele v Barhite & Holzinger*, 234 AD3d 106, 106-107 [1st Dept 1996]).

Plaintiff’s testimony that she “continuously” notified multiple employees of Defendants about ongoing leaking and other conditions caused by leaking, together with the fact that she commenced a Housing Court proceeding relating to the leaking, in which Defendants appeared, and the resulting HPD violations are amply sufficient to establish a prima facie showing of entitlement to summary judgment as a matter of law. In response, Defendants fail to raise a triable issue of fact as their witness testified that he knew the leak that caused the ceiling collapse was an ongoing issue and had reported it to the management office repeatedly.

Defendants do not dispute that they had notice of leaks in the ceiling of Plaintiff’s bathroom, but argue they lacked notice because Plaintiff could not identify the exact cause of the leak or the exact reason the ceiling fell on the date of the accident. Plaintiff has satisfied her burden on notice by demonstrating that Defendants had more than a year of notice that ongoing and recurring water leakage from apartment 5A was causing damage to her bathroom ceiling and failed to adequately address the root cause of issue. Therefore, Plaintiff’s motion for summary judgment is granted.

Plaintiff also seeks dismissal of thirteen of Defendants’ affirmative defenses. Defendants do not oppose dismissal of twelve of these defenses. Defendants do oppose dismissal of their

affirmative defense that the condition was open and obvious. This defense is without merit and must be dismissed (CPLR 3211[b]). While the ongoing leaks may have been open and obvious, the danger that the ceiling would collapse on the date of the accident was not.

Accordingly, forth the reasons set forth herein it is hereby,

ORDERED that summary judgment as to liability is granted in favor of Plaintiff and against Defendants; and it is further

ORDERED that Defendants' first, second, third, fifth, sixth, seventh, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, and fifteenth affirmative defenses are dismissed.

This constitutes the Decision and Order of the Court.

8/6/2024  
DATE

  
LORI S. SATTLER, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  OTHER  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT  REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: