

**McGrath v Page Mgt., Co., Inc.**

2024 NY Slip Op 33359(U)

September 24, 2024

Supreme Court, New York County

Docket Number: Index No. 154355/2021

Judge: Judy H. Kim

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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. JUDY H. KIM **PART** **04**

*Justice*

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KATHLEEN J. MCGRATH,  
  
Plaintiff,

**INDEX NO.** 154355/2021

**MOTION DATE** 11/29/2023

**MOTION SEQ. NO.** 001

- v -

PAGE MANAGEMENT, CO., INC., SIXTH REALTY  
ASSOCIATES, LLC,

**DECISION + ORDER ON  
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36

were read on this motion for SUMMARY JUDGMENT (AFTER JOINDER).

Upon the foregoing documents, defendants’ motion for summary judgment is denied for the reasons set forth below.

In this action, plaintiff seeks to recover for injuries sustained on November 21, 2020, when a kitchen cabinet in apartment 3FN in 190 Avenue of the Americas, New York, New York (the “Building”) fell off the apartment’s wall. At her examination before trial, plaintiff testified that on the date in question she and her boyfriend, Declan Sander —the resident of the apartment—were putting away dishes from the dishwasher. After plaintiff placed a dish on the second shelf from the bottom” the cabinet fell off the wall (NYSCEF Doc. No. 18 [McGrath EBT at p. 16]). Plaintiff caught the cabinet with her hands but the cabinet’s contents fell out, cutting her (*Id.*). Plaintiff testified that she had never noticed any type of defect with the cabinet and never made any complaints regarding the kitchen to the Building’s management (*Id.* at pp. 17-18).

Declan Sander testified that he moved into the apartment in August of 2020 and had never noticed any defects with the cabinet in question and never complained to management about that cabinet (NYSCEF Doc. No. 19 [Sander EBT at pp. 15, 20-21]).

Donna Saunders, the property manager for the Building's management company, Page Management Co. Inc. ("Page Management") since approximately 2003, testified that Page Management's workers did not install the subject cabinets in Apartment 3FN and that these cabinets were installed as part of a July 2015 renovation of the entire apartment by Artique Construction Service, Inc., an independent contractor (NYSCEF Doc. No. 21 [Saunders EBT at pp 63-66]). Saunders further testified that Page Management maintenance workers never worked alongside Artique employees but that a Building employee would inspect the apartment after the renovation (Id. at p. 78). She testified that the only other time the cabinets were inspected was at the start of Sanders' lease term, absent a complaint from a tenant (Id. at pp. 80-81, 93). Finally, she testified that Page Management had never received a complaint about the subject cabinet (Id. at p. 93).

Defendants now move for summary judgment, arguing that the foregoing establishes that they did not cause or create any defective condition and that they had neither actual nor constructive notice of same. Beyond the foregoing deposition transcripts, defendants also submit the proposal from Artique Services for the renovation of the Apartment in July 2015 and the "ready to rent" checklist completed by the building superintendent Antonio Rivera, reflecting his inspection of Apartment 3FN on July 11, 2020 (noting "cabinets firmly on wall") (NYSCEF Doc. Nos. 23, 24).

In opposition, plaintiff emphasizes that defendants have a non-delegable duty to keep the Building in good repair under Multiple Dwelling Law §78 and argues, incorrectly, that the

testimony of the Building's Superintendent, Antonio Rivera, that he and his staff sometimes installed large kitchen cabinets such as the one at issue here raises an issue of fact as to who actually installed the cabinet in question.<sup>1</sup> Plaintiff also notes that no other documentary evidence beyond a proposal supports defendants' claim that Artique installed the subject cabinet and asserts that Saunders testified that she did not know who performed the installation. Finally, plaintiff speculates that that the subject cabinet could have been replaced between the renovation in 2015 and the date of the subject incident.

### DISCUSSION

"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 to eliminate any material issues of fact from the case" (Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 [1985]). "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]).

Defendants have not met their burden here. Defendants note, correctly, that while Multiple Dwelling Law §78 expanded a landlord's common-law duty to maintain the common areas of leased premises to the entirety of the premises but does not "impose liability upon a property owner for a dangerous or defective condition of which it had no actual or constructive notice" (Hauerstock v Barclay St. Realty LLC, 168 AD3d 519 [1st Dept 2019]). What defendants overlook, however,

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<sup>1</sup> Contrary to plaintiff's characterization, Saunders did not testify that she did not know who performed the installation but in fact testified unequivocally that Artique performed the installation and no Page Management employees were involved. Nor did Superintendent Rivera's testimony contradict Saunders, as Rivera testified only that, while Page Management employees sometimes installed cabinets like the one at issue here, he did not know who performed the installation of the subject cabinet and deferred to Saunders on this point.

is that “[d]efendant's nondelegable duty under Multiple Dwelling Law § 78 to maintain the premises in good repair renders it vicariously liable for any negligence on the part of the independent contractor” (Dowling v 257 Assoc., 235 AD2d 293, 293 [1st Dept 1997]) and that, of particular relevance here, “an owner's nondelegable statutory duty under Multiple Dwelling Law §78 does not hinge upon notice” (Hauerstock v Barclay St. Realty LLC, 2017 WL 3438146 [Sup Ct, NY County 2017] [emphasis added], affd., 168 AD3d 519 [1st Dept 2019]; see also Barkley v Plaza Realty Invs. Inc., 149 AD3d 74, 79 [1st Dept 2017]). Accordingly, the fact that defendants did not have notice of any defect with the kitchen cabinet does not entitle defendants to summary judgment where an issue of fact remains as to whether Artique was negligent in the installation of the cabinet (See Franco v P & M Mgt. Realty Corp., 41 AD3d 244 [1st Dept 2007]).

Defendants’ reliance on Samuels v Lee, 160 AD3d 539 (1st Dept 2018) is misplaced. That case involved a plaintiff injured by a jagged door bottom at an indoor activity center for young children, to which Multiple Dwelling Law §78 did not apply. In any event, defendants there established their prima facie case through proof that they did not create the defect (which, as discussed above, remains an open question here) and did not have actual or constructive notice of same (See Samuels v Lee, 2016 NY Slip Op 31023[U], 5-7 [Sup Ct, NY County 2016], affd., 160 AD3d 539 [1st Dept 2018]).

Accordingly, it is

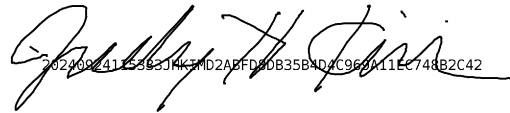
**ORDERED** that defendants’ motion for summary judgment is denied; and it is further

**ORDERED** that defendants shall serve a copy of this decision and order with notice of entry on plaintiff within fifteen days of the date of this decision and order; and it is further

**ORDERED** that defendants shall serve a copy of this decision and order, with notice of entry, upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119); 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 this court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)).

This constitutes the decision and order of the Court.



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9/24/2024

DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE