SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. MARY V. ROSADO** **PART** **33M**

Justice

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CHASATY HARRIS,

Plaintiff,

- v -

357 WEST 54TH STREET LLC,BROWNSTONE PROFESSIONAL SERVICES CORP.

Defendant.

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INDEX NO. 160955/2022

MOTION DATE 09/28/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25

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

Upon the foregoing documents, submitted by Steven Pestyner, Esq. on behalf of Plaintiff Chasaty Harris' ("Plaintiff"), and by Erin Masterson, Esq. on behalf of Defendants 357 West 54th Street LLC ("337 West 54th") and Brownstone Professional Services Corp. ("Brownstone") (collectively "Defendants"), and after a final submission date of July 30, 2024, Plaintiff's motion for partial summary judgment on the issue of liability against Defendants is granted.

I. Background

This is a case about an alleged rat attack. Plaintiff claims she was injured as a result of falling backwards when multiple rats jumped towards her on April 28, 2021 in the trash room of the premises located at 357 West 54th Street, New York, New York (the "Premises") (*see* NYSCEF Doc. 1). Plaintiff was a tenant at the Premises. In the past, prior to her accident, Plaintiff allegedly complained about the condition of the trash room and observed rats in the basement (NYSCEF Doc. 18 at 22). Another tenant in the building, Mr. Jones likewise testified encountering

rats in the trash room and Defendants failed to address these conditions despite numerous complaints (NYSCEFE Doc. 20).

A representative of Defendants, Shazad Ali testified that tenants often throw their garbage down the stairs and that he was aware of the complaints regarding rodents (NYSCEF Doc. 19 at 35). Mr. Ali testified Defendants hired an extermination company named Citi Pest Control to perform monthly services at the Premises (*id.* at 37, 39). The extermination services on the Premises began in August of 2020 (NYSCEF Doc. 23).

Plaintiff now moves for summary judgment on the issue of liability. Plaintiff argues the undisputed facts establish violations of the Multiple Dwelling Law ("MDL") § 78 and § 80[1], Real Property Law ("RPL") § 235-b[2], and New York City Administrative Code § 27-2017[3]. Plaintiff argues the violations of these statutes constitutes negligence *per se*. In opposition, Defendants argue that a violation of a statute in and of itself does not constitute negligence *per se*, but only does so if the statute imposes a specific duty. Defendants argue that the alleged violations of the statutes highlighted by Plaintiff do not impose any specific duty and therefore cannot be the basis of a negligence *per se* argument. Moreover, Defendants argue that there was no proof of complaints of vermin in the months prior to the incident and therefore Defendants had no reason to believe that the monthly exterminator was insufficient.

II. Discussion

A. Standard

"Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact." (*Vega v*

[1] MDL § 78 mandates that owners of multiple dwellings keep the dwellings "in good repair." MDL § 80 requires owners to keep multiple dwellings "clean at all times" and requires dwellings erected after 1947 to be "rat-proof."
[2] RPL § 235-b provides for a warranty of habitability in every written or oral lease.
[3] NYC Admin. Code § 27-2017 is a municipal provision which governs the control of pests and other allergen triggers.

Restani Const. Corp., 18 NY3d 499, 503 [2012]). The moving party's "burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party." (*Jacobsen v New York City Health and Hosps. Corp.*, 22 NY3d 824, 833 [2014]). Once this showing is made, 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. *See e.g., Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Pemberton v New York City Tr. Auth.*, 304 AD2d 340, 342 [1st Dept 2003]). Mere conclusions of law or fact are insufficient to defeat a motion for summary judgment (*see Banco Popular North Am. v Victory Taxi Mgt., Inc.,* 1 NY3d 381 [2004]).

To prevail on a negligence claim, a plaintiff must show (1) a duty owed by defendant to plaintiff, (2) breach of the duty, and (3) injury proximately caused by the breach of duty (*Pasternack v Laboratory Corp. of America Holdings*, 27 NY3d 817 [2016]). In establishing proximate cause, a plaintiff must show that the manner in which she was harmed was foreseeable (*De'L. A. v City of New York*, 158 AD3d 30 [1st Dept 2017]).

As a rule, violation of a state statute that imposes a specific duty constitutes negligence *per se*, but violation of a municipal ordinance constitutes only evidence of negligence (*Elliott v City of New York*, 95 NY2d 730 [2001]). However, where certain provisions of a municipal ordinance have their origin in state law, violations of those provisions may constitute negligence *per se* (*Yenem Corp. v 281 Broadway Holdings*, 18 NY3d 481 [2012]).

B. Negligence Per Se

Plaintiff has failed to establish the requisite elements of negligence *per se*. As a preliminary matter, MDL § 78 and RPL § 235-b do not set forth a specific duty but instead provide general, abstract standards of conduct which are insufficient to support a claim of negligence *per se* (*see*

Jagger v Katz Park Ave. Corp., 33 Misc.3d 139[A] [App. Term 1st Dept 2011]). Moreover, Plaintiff concedes that the First Department has already ruled that compensatory damages do not flow from a RPL § 235-b violation (*Elkman v Southgate Owners Corp.*, 233 AD2d 104 [1st Dept 1996]).

Moreover, while MDL § 80 is more specific than MDL § 78 by mandating that dwellings erected after January 1947 to be ratproof, Plaintiff has failed to establish her prima facie burden of establishing this provision is applicable. There is no evidence provided as to when the Premises were built. Nor has Plaintiff provided any authority stating that MDL § 80(1) imposes a duty specific enough to give rise to negligence per se.

Plaintiff next argues that violations of New York City Administrative Code § 27-2017 and 24 RCNY 47.51 should be afforded the weight of state statutes and constitute negligence per se. Plaintiff does not provide any legislative history showing that these municipal ordinances and rules have their origin in the MDL. While Plaintiff relies on *Yenem Corp. v. 281 Broadway Holdings*, 18 NY3d 481 (2012) for the proposition that municipal ordinances with origins in state law may give rise to negligence *per se*, the Administrative Code at issue in *Yenem* was a recodification of a state statute which had been treated as imposing strict liability by numerous New York Courts. Here, the municipal ordinances and rules which Plaintiff argues serve as a basis for negligence *per se* are far more detailed and specific than the provisions of the MDL and RPL. They are not merely a recodification of state statute as was the case in *Yenem*, nor is there a demonstrated history of courts applying the provisions of the MDL and RPL which Plaintiff relies on as imposing strict liability.

Even if the local ordinances and rules did have their origin in the MDL and RPL, this Court, and other Courts, have already found that the specific sections of the MDL and RPL which Plaintiff

relies on as a basis for negligence *per se* are too abstract. Thus, the Court rejects Plaintiff's argument that she is entitled to summary judgment under a theory of negligence per se.

C. Ordinary Negligence

As Plaintiff is not entitled to summary judgment under a theory of negligence *per se*, she must make prima facie showing of her entitlement to summary judgment under the elements of ordinary negligence. Given the undisputed facts here, the Court finds Plaintiff should be granted partial summary judgment.

As a preliminary matter, Defendants owed a duty to Plaintiff to maintain its property in a reasonably safe condition (*Masillo v OnStage, Ltd.*, 83 AD3d 74 [1st Dept 2011]). The duty to maintain premises in a reasonably safe condition is not satisfied by permitting a dangerous, but correctable, condition to remain (*Westbrook v WR Activities-Cabrera Markets*, 5 AD3d 69 [1st Dept 2004]). Defendants cannot seriously dispute that they owed Plaintiff a duty to ensure tenants could enter and exit the trash room on the premises without rodents scurrying about the walkway. Moreover, it is undisputed that the duty was breached by allowing the rodent condition to remain. Indeed, Defendants' own witness admitted that he did not believe fifteen to twenty rodent complaints a year was enough to escalate extermination efforts. Nor can Defendants disclaim notice based on this admission. It is further undisputed that it was the jumping out of rats in the trash room which caused Plaintiff to fall backwards and injure herself, thereby satisfying causation.

Finally, Defendants cannot seriously dispute foreseeability, as it is the most natural human reaction to jump back in a startled manner upon seeing rats. Given the recurring complaints of rodents in the trash room, the requirement that stairs be taken to enter and exit the trash room, and the necessity of tenants to bring trash down to the trash room, the Defendants cannot dispute that it was unforeseeable that someone startled by rats might be injured on the stairs leading to the trash

room (*see generally Chowdhury v Philips*, 205 AD3d 471 [1st Dept 2022] [municipality liable for foreseeable consequences of failure to correct dangerous condition of which it had notice]; *see also Camacho v Conrail*, 156 AD2d 317 [1st Dept 1989]. Thus, Plaintiff's motion for partial summary judgment on the issue of liability is granted.

Accordingly, it is hereby,

ORDERED that Plaintiff's motion for summary judgment on the issue of liability is granted; and it is further

ORDERED that within ten days of entry, counsel for Defendants shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

9/23/2024
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
	x	GRANTED		DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE