

Farina v Nagle Ave. Realty Inc.

2024 NY Slip Op 34468(U)

December 19, 2024

Supreme Court, New York County

Docket Number: Index No. 155488/2021

Judge: Lynn R. Kotler

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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. LYNN R. KOTLER PART 08

Justice

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INDEX NO. 155488/2021

ROSAURA M. FARINA,

MOTION DATE 12/19/2023

Plaintiff,

MOTION SEQ. NO. 001

- v -

NAGLE AVE. REALTY INC., ELYSEE INVESTMENT COMPANY

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, it is ORDERED that this motion by plaintiff for summary judgment on the issue of liability on her negligence claim and to dismiss defendants' affirmative defenses of comparative negligence or that the hazard was open and obvious or assumption of the risk, is decided as follows.

Plaintiff Rosaura M. Farina and her husband were the lessees of Apartment 3R4R in the building located at 86 Nagle Avenue, New York (building). Plaintiff had resided in the apartment since February 2017. The building is owned and managed by defendant Nagle Avenue Realty Inc. (owner) and defendant Elysee Investment Company is a trade name and does not own or manage the building.

Plaintiff was injured on April 11, 2021 when a portion of the ceiling in her bedroom collapsed on her. Plaintiff claims that water had been leaking into her apartment, from the roof, every time

there was significant precipitation, for years. Plaintiff points to evidence in the record that there was a leak coming from her bedroom ceiling for over a year. Plaintiff claims that she made complaints to the owner about the leak repeatedly and points to emails she sent to the Owner's representatives, notifying them of the condition, with photographs and a video. Plaintiff argues that this is sufficient evidence on the issue of notice.

Defendants dispute plaintiff's claims and maintain that she has not demonstrated as a matter of law that defendants had notice of the particular leak which caused plaintiff's injuries. Further defendants contend that plaintiff has not established that her injuries were proximately caused by defendants' violation of Multiple Dwelling Law §78, N.Y.C. Administrative Code §28-301.1 and §27-2005 of the Housing Maintenance Code.

On a motion for summary judgment, the proponent bears the initial burden of setting forth evidentiary facts to prove a prima facie case that would entitle it to judgment in its favor, without the need for a trial (CPLR 3212; *Winegrad v. NYU Medical Center*, 64 NY2d 851 [1985]; *Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]). If the proponent fails to make out its prima facie case for summary judgment, however, then its motion must be denied, regardless of the sufficiency of the opposing papers (*Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]; *Ayotte v. Gervasio*, 81 NY2d 1062 [1993]).

Granting a motion for summary judgment is the functional equivalent of a trial, therefore it is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue (*Rotuba Extruders v. Ceppos*, 46 NY2d 223 [1977]). The court's function on these motions

is limited to “issue finding,” not “issue determination” (*Sillman v. Twentieth Century Fox Film*, 3 NY2d 395 [1957]).

The court agrees with plaintiff that she has demonstrated a prima facie case for premises liability insofar as the record is replete with proof that there were multiple leaks in the apartment, including a leak in the corner of the same bedroom where the subject ceiling collapse occurred. Further, there is sufficient proof that the defendants were on notice of the condition which caused plaintiff’s accident. Indeed, defendants had an obligation to determine the cause of the bedroom leak and remedy same and plaintiff has established that the ceiling collapse is evidence that defendants failed to meet their obligations as a building owner.

In turn, defendants have failed to raise a triable issue of fact. To the extent that defendants argue that they were only on notice of a leak in the corner of the bedroom, which was then painted over, and that the leak in the center of the bedroom where the ceiling collapse occurred was separate and apart from the corner bedroom ceiling leak, defendants have failed to come forward with any evidence to support this speculative claim. Indeed, defendants admit that they did not keep records after they deemed repairs complete, and so defendants conveniently have no records on the issue of notice. Defendants’ attempt to attack plaintiff’s expert’s opinion because he did not conduct a personal inspection is equally unavailing (*Garcia-Rosale v. 370 Seventh Ave. Assocs. LLC*, 88 AD3d 464 [1st Dept 2011]). For at least these reasons, defendants have not raised a successful opposition to plaintiff’s motion for summary judgment on liability.

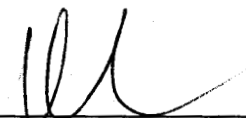
As for plaintiff's motion seeking dismissal of the affirmative defenses, the court denies that branch of the motion. Medical records indicate that plaintiff stated she was "fixing leak in roof" when the ceiling collapsed. Although plaintiff denies making this statement, defendants are allowed to explore this topic before a jury which in turn is charged with assessing plaintiff's credibility and could otherwise reasonably determine that the ceiling collapse was at least, in part, caused by plaintiff's own culpable conduct.

Accordingly, it is hereby **ORDERED** that plaintiff's motion is granted to the extent that plaintiff is entitled to summary judgment on the issue of defendant's liability for the April 11, 2021 ceiling collapse; and it is further

ORDERED that the balance of the motion is denied.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby denied and this constitutes the Decision and Order of the Court.

12/19/2024
DATE


LYNN R. KOTLER, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: