

Reyes v Tarani

2024 NY Slip Op 34937(U)

December 3, 2024

Supreme Court, Bronx County

Docket Number: Index No. 21565/2020E

Judge: Laura G. Douglas

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 6

Winston Reyes,

Index No. 21565/2020E

-against-

Hon. LAURA G. DOUGLAS
Justice Supreme Court
Justice Supreme Court

Robert Tarani,

The following papers numbered 1 to (3) were read on this motion (Seq. No. 2)
for Summary Judgment noticed on August 2, 2024
submitted

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	No(s). (1)
Answering Affidavit and Exhibits	No(s). (2)
Replying Affidavit and Exhibits	No(s). (3)

Upon the foregoing papers, it is ordered that this motion ~~is~~ by the defendant is decided in accordance with the attached memorandum Decision/Order.

Dated:

Dated: 12-3-24

Hon. [Signature]
LAURA G. DOUGLAS, J.S.C.
Justice Supreme Court

- HECK ONE..... CASE DISPOSED IN ITS ENTIRETY CASE STILL ACTIVE
- OTION IS..... GRANTED DENIED GRANTED IN PART OTHER
- HECK IF APPROPRIATE..... SETTLE ORDER SUBMIT ORDER SCHEDULE APPEARANCE
- FIDUCIARY APPOINTMENT REFEREE APPOINTMENT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Index No. 21565/2020E

WINSTON REYES,

Plaintiff,

-against-

ROBERT TARANI,

Defendant.

DECISION/ORDER

Present:
Hon. Laura G. Douglas
J. S. C.

Part 6

Recitation, as required by Rule 2219(a) of the C.P.L.R., of the papers considered in the review of this motion to compel deposition (seq. no. 2):

Papers

Numbered

Defendant’s Notice of Motion, Affirmation of Jennifer Prusiecki, Esq. dated May 13, 2024 in Support of Motion, and Exhibits (“A” through “G”)..... 1

Affirmation of Scott E. Agulnick, Esq. dated July 26, 2024 in Opposition to Motion..... 2

Reply Affirmation of Jennifer Prusiecki, Esq. dated August 30, 2024..... 3

Upon the foregoing papers and after due deliberation, the Decision/Order on this motion is as follows:

The defendant (“Tarani”) seeks summary judgment pursuant to CPLR 3212 dismissing the plaintiff’s complaint. The motion is denied.

The plaintiff (“Reyes”) seeks recovery for property damages sustained to his residential building as a result of a fire on February 10, 2017. Tarani owned the neighboring building where the fire started. Reyes alleges that Tarani is liable for the property damage because the fire was precipitated by his negligence in the ownership, operation, and management of his building.

In support of his motion, Tarani relies on Reyes’ own deposition testimony. In pertinent part, Reyes testified that he owned the subject property, but was not present during the fire. He stated that the fire started in the house next door, owned by Tarani. One of Reyes’ tenants called him and said that the fire was coming from next door. When Reyes arrived at the scene, he realized that the fire was

indeed in Tarani's building, but had caused damage to a large section of the side of his own house. By then, the fire department had already put out the fire. Finally, Reyes testified that one of Tarani's tenants told him that he fell asleep while smoking in bed and the cigarette started a fire.

Tarani also submits his own deposition testimony. In pertinent part, Tarani testified that he owned the house next door to Reyes'. The second-floor apartment was occupied by a tenant named "Bernard", who had a couple of roommates. Tarani believed that the fire at his house was caused by an unextinguished cigarette that ignited a fire in one of the second-floor bedrooms occupied by one of Bernard's roommates. Tarani claims to have received this conclusion from the fire marshal following his investigation. Tarani was downstairs sleeping when he heard one of the smoke detectors beeping. He went upstairs and saw the middle door engulfed in flames. Tarani stated that he was not aware that there was smoking occurring in that apartment. He did not see any ashtrays in the second-floor middle bedroom when he observed it after the fire. He never observed cigarette butts at or around the property after Bernard and his roommates moved in.

Tarani testified that there were two smoke detectors in the hallway of that apartment, one outside the bathroom and the other near the bedrooms. He had changed the battery in one of them some three to four months prior to the fire. Tarani stated that there were no repairs, renovation, or maintenance performed on the upper floors of the house after Bernard moved in. Tarani had previously received violations only for litter in front of the house, but no violations with respect to occupancy.

Tarani also relies on a Fire Incident Report by the Bureau of Fire Investigation of the Fire Department of the City of New York ("FDNY"), as well as a report from Michael Owney ("Owney"), purported to be an expert in fire investigation. Tarani notes that the FDNY report states that the fire originated in the middle bedroom on the second floor and lists the cause as "electrical wiring". Owney's investigation took place on February 14, 2017. He concluded that the fire was accidental and originated in the middle bedroom on the second floor. According to Owney, the possible cause of the fire is undetermined, pending further questioning of the room's occupant. Under these circumstances, Tarani concludes that responsibility for the fire loss cannot be attributed to him.

Tarani argues that he cannot be held liable for Reyes' property damages, since there is no evidence that he was somehow negligent or otherwise culpable in causing the fire. He notes that the two fire investigations concluded that the cause of the fire was either electrical wiring or accidental/undetermined, that he had placed smoke detectors in the house, and that he was unaware of

anyone smoking in the house. Therefore, Tarani also had no reason to foresee that a fire would occur. Tarani concludes that Reyes' claim that Tarani is responsible for the fire is purely speculative.

In opposition, Reyes maintains that Tarani has failed to carry his *prima facie* burden to demonstrate the absence of any material issues of fact, since his motion is based upon inadmissible and unauthenticated hearsay documents and lacks any admissible personal knowledge regarding his lack of liability for the fire damages. Reyes notes that one of his claims is that Tarani was negligent, careless, and culpable in unlawfully permitting and using his house as a single-room occupancy dwelling, thereby increasing the risk of hazard and fire, in permitting occupancy far in excess of what was legally permitted, and in permitting activities that caused an increased and foreseeable risk of fire. Reyes contends that Tarani's assertion that the fire was an "accident" does not eliminate questions of negligence.

Reyes contends that Owney's report is inadmissible, since it takes the form of an unsworn and unauthenticated letter. Reyes notes that while Tarani characterizes Owney's report as one by a "fire investigation expert", there is no expert disclosure and no *curriculum vitae* submitted. Reyes maintains that Owney's report also relies on unspecified hearsay "discussions with the insured and fire investigator", without any expert qualification or hearsay exception which might make the report otherwise admissible. As to the FDNY report, Reyes maintains that it also lacks a hearsay exception and is not supported by any testimony or affidavit. The FDNY report contains certain redactions, making it not a "true" copy, and does not identify the source of the information contained therein.

Putting aside concerns about its admissibility, Owney's report is also said to confirm that Tarani was knowingly using his property as an illegal single-room occupancy, thereby increasing the foreseeable risk of fire and raising issues of triable fact that preclude summary judgment. Reyes notes that Tarani testified that "Jimmy/James Graham", not "Bernard", occupied the middle bedroom and that Owney's report states that Amarylys Lebron, Tarani's girlfriend, knew that Graham was a smoker because he had asked her for cigarettes before. Reyes also refers to his own testimony that, prior to the fire, he mentioned to Tarani that one of his tenants was a smoker. Reyes argues that this evidence raises a material issue of fact remains as to whether Tarani violated Multiple Dwelling Law § 248 by permitting single-room occupancies, which may be evidence of negligence and increase the risk of fire.

Finally, Reyes notes that Owney states that his designation of the fire as "accidental" only rules out any intentional act as a cause of the fire. It does not exclude the possibility of negligence or culpable

conduct for the accident.

To obtain summary judgment, Tarani must demonstrate that there are no material issues of fact in dispute and that he is entitled to judgment as a matter of law under these undisputed facts (*see Winegrad v. New York University Medical Center*, 64 NY2d 851 [Ct App 1985] and *Flores v. City of New York*, 29 AD3d 356 [1st Dept 2006]). To defeat such a showing, Reyes must present facts in admissible form demonstrating that a genuine, triable issue(s) of fact exists precluding summary judgment (*see Zuckerman v. City of New York*, 49 NY2d 557 [Ct App 1980] and *Flores v. City of New York*, 29 AD3d 356 [1st Dept 2006]). It is incumbent upon Tarani to demonstrate a *prima facie* entitlement to judgment, as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case; failure to do so requires denial of the motion, regardless of the sufficiency of Reyes' opposing papers (*see Vega v. Restani Construction Corporation*, 18 NY3d 499 [Ct App 2012]). The facts must be viewed in the light most favorable to Reyes (*see Ortiz v. Varsity Holdings, LLC*, 18 NY3d 335 [Ct App 2011]). The goal of a motion for summary judgment is issue finding, rather than issue determination (*see Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [Ct App 1957]).

Even if the issues concerning hearsay and admissibility were resolved in Tarani's favor, he has failed to satisfy his initial burden to demonstrate the absence of issues of material fact. The very FDNY report that he relies on identifies a possible cause of the fire as "electrical wiring". This very specific conclusion puts into question the condition and/or appropriateness of the home's electrical wiring and whether Tarani was negligent in installing and/or maintaining the wiring as part of his duty as property owner (*see Onetti v. Gatsby Condominium*, 111 AD3d 496 [1st Dept 2013]). However, Tarani's initial motion papers make no mention of the electrical wiring in his building, let alone defend it as being safe and free of any negligent installation or maintenance. Tarani has not eliminated the possibility that his negligent ownership or maintenance of the building resulted in faulty wiring, which then caused the fire (*see Daly v. 9 East 36th LLC*, 153 AD3d 1145 [1st Dept 2017]).

Owney's report is insufficient on its own to warrant summary judgment. Owney's report is not sworn or otherwise verified and is not accompanied by any documentation qualifying him as an expert in fire investigation (*see Accardo v. Metro-North Railroad*, 103 AD3d 589 [1st Dept 2013] and *Tower Insurance Company of New York a/s/o Phillips v Jewels of Buddha*, Sup Ct, Queens County, July 12, 2023, Culley, J., Index No. 714224/2018). Moreover, Owney's conclusion that the cause of the fire is "undetermined" is only provisional, since he states that further interviews with the occupant of the room

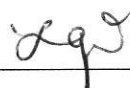
are pending. Finally, Owney’s classification of the fire as “accidental” means only that its “proven cause does not involve an intentional human act to ignite or spread fire into an area where the fire should not be” (*see* Owney report, footnote iv). That the fire was not “intentional” does not therefore preclude a finding that negligence played a part.

Since Tarani has not met his initial burden, the Court does not reach the merits of Reyes’ arguments in opposition.

For these reasons, Tarani’s motion is denied.

The foregoing constitutes the Decision/Order of this Court.

DATED: December 3, 2024
Bronx, New York



HON. LAURA G. DOUGLAS
J.S.C.