Antonetti v Academy Studio Assoc. LLC
2024 NY Slip Op 34947(U)
September 19, 2024
Supreme Court, Bronx County
Docket Number: Index No. 26678/2020E
Judge: Laura G. Douglas
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 6

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Hector Antonetti,

Index No. 26678/2020E

-against-

Hon. LAURA G. DOUGLAS Justice Supreme Court

Justice Supreme Court

Academy Studio Associates LLC,

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The following papers numbered 1 to (3) were read on this motion and cross-motion (Seq. No. 1) for Summary Judgment noticed/submitted on March 26, 2024

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	No(s). (1), (2)
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 defendant and cross-motion by plaintiff are decided in accordance with the attached memorandum Decision/Order.

Dated: 9-19-24

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

CHECK ONE..... ☑ CASE DISPOSED IN ITS ENTIRETY ☐ CASE STILL ACTIVE

MOTION IS..... ☐ GRANTED ☐ DENIED ☑ GRANTED IN PART ☐ OTHER

CHECK 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. 26678/2020E

HECTOR ANTONETTI,

Plaintiff,

-against-

ACADEMY STUDIO ASSOCIATES LLC,

Defendant.

DECISION/ORDER

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

Recitation, as required by Rule 2219(a) of the C.P.L.R., of the papers considered in the review of this motion for summary judgment and cross-motion to add parties (seq. no. 1):

Papers	**Numbered**
Defendant's Notice of Motion, Statement of Material Facts by Sean Pie, Esq. dated January 26, 2024, Affirmation of Sean Pie, Esq. dated January 26, 2024 in Support of Motion, Memorandum of Law by Sean Pie, Esq. dated January 26, 2024, and Exhibits ("A" through "O")	**1**
Plaintiff's Notice of Cross-Motion, Affirmation of Michael Nathan, Esq. dated March 19, 2024 in Support of Cross-Motion and in Opposition to Motion, Memorandum of Law by Michael Nathan, Esq. dated March 19, 2024, and Response to Statement of Material Facts by Michael Nathan, Esq. dated March 19, 2024	**2**
Affirmation of Sean Pie, Esq. dated March 25, 2024 in Reply and in Opposition to Cross-Motion and Exhibit ("P")	**3**

This motion and cross-motion are joined for purposes of Decision/Order and, upon the foregoing papers and after due deliberation, the Decision/Order on this motion and cross-motion is as follows:

The defendant ("Academy") seeks summary judgment pursuant to CPLR § 3212 dismissing the plaintiff's complaint in its entirety. The plaintiff ("Antonetti") cross-moves for an order pursuant to CPLR 1001 allowing him to add Armon Holding, LLC ("Armon") and Praxis Housing Initiatives ("Praxis") as indispensable and necessary parties in this action. The motion is granted. The cross-motion is denied.

The plaintiff ("Antonetti") seeks monetary damages for personal injuries purportedly sustained

on January 5, 2020 when he allegedly slipped while walking down certain interior stairs in the building where he resided. Antonetti attributes his accident to his shoes having been made wet by a flood caused by a clogged toilet at the premises. Academy owned the subject building and leased it to Armon, who in turn subleased it to Praxis. The premises was known as the Riverside Hotel and was operated by Praxis as a homeless shelter.

Academy contends that it was an out-of-possession landlord with no duty to, or actual practice of, repair or maintenance of the subject premises. Alternatively, Academy argues that it did not have actual or constructive notice of the purported flood which Antonetti alleges precipitated his fall. Academy maintains that Antonetti never reported the alleged hazard to it nor did the alleged flooding condition exist for a period sufficient to allow Academy to remedy it.

In support of its motion, Academy relies on Antonetti's own deposition testimony. In pertinent part, Antonetti testified that he fell from the top of the stairs to the bottom of the stairs. He was not holding anything in his hands when he fell, nor was he wearing a backpack at the time. He attributes his fall to his tennis shoes being wet at the time. Antonetti stated that the toilet in the bathroom adjacent to his was clogged, but water accumulated on the floor because people kept using it. When he left his room that day, he stepped in the water from the overflowing toilet, since it had flooded the hallway next to his door. Antonetti did not know when the bathroom flooded or when the hallway flooded. He told building management on the first floor about the flood, but could not recall if that had been prior to or after his fall. Antonetti recalled that the bathroom had flooded previously, but could not recall the last time prior to his accident. He testified that he did report one prior occasion to management some months prior to his accident. Finally, Antonetti maintained that there was no water on the steps, but that he fell because the bottoms of his shoes were wet.

Academy also submits the deposition transcript of Jasmin Echevarria ("Echevarria"), who is employed as a Site Director for Praxis and in charge of overseeing Praxis' transitional housing properties, including the building where Antonetti resided. Echevarria testified that Praxis handled maintenance in the Riverside Hotel, including having porters on site for cleaning duties with respect to the hallways, steps, floors, and bathrooms. While each resident has his own room, the bathrooms at this facility are shared, with four bathrooms per floor. The porters inspect each floor hourly to ensure that the bathrooms are operable and that there is no trash on the floor. A flood condition in one of the bathrooms would be fixed and reported to the front desk for entry into a logbook. Residents may report issues to

the front desk or by completing a repair request form. Echevarria was not aware of a flooding condition in any of the bathrooms on the 4th floor in January 2020 or during the prior four months.

Finally, Academy submits what purports to be the lease between Academy and Armon for the subject premises, as well as the related sublease between Armon and Praxis. Academy notes that the lease made Armon responsible for keeping the premises in good repair. Academy did retain the right to enter the premises to make any necessary repairs.

In opposition, Antonetti maintains that Academy failed to lay a proper foundation for its reliance on the lease, sublease, and maintenance log, since no one with personal knowledge has stated that the records submitted were created or maintained in the normal course of business and created on or about the time of the event being recorded. In addition, Antonetti argues that Academy has not demonstrated that it did not retain a right to re-enter the premises to inspect and repair. Separately, Antonetti contends that Armon and Praxis are indispensable and/or necessary parties who must be joined in this action.

To obtain summary judgment, Academy must demonstrate that there are no material issues of fact in dispute and that it 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, Antonetti 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]). 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]).

In a slip and fall action, the defendants have the initial burden of establishing that they did not create the alleged hazardous condition and lacked actual or constructive notice of its existence *(see Rodriguez v. 705–7 E. 179th St. Hous. Dev. Fund Corp.*, 79 AD3d 518 [1st Dept 2010]). A lack of actual notice can be demonstrated by testimony that no complaints about the location were received before the accident, and that there were no prior incidents in that area prior to the plaintiff's fall (*see Frederick v. New York City Hous. Auth.*, 172 AD3d 545 [1st Dept 2019]). Constructive notice usually exists when the allegedly hazardous condition is visible, apparent, and exists on defendant's premises for a period sufficient to give the defendant an opportunity to discover and remedy it (*see Ross v. Betty G. Reader Revocable Trust*, 86 AD3d 419 [1st Dept 2011]). Constructive notice can also be established by

evidence that a recurring dangerous condition existed in the area of the accident that the defendant routinely left unaddressed (*see Uhlich v. Canada Dry Bottling Co. of N.Y.*, 305 AD2d 107 [1st Dept 2003]). A defendant can satisfy its burden of showing that it lacked constructive notice by submitting evidence of its maintenance activities on the accident date and that the alleged condition did not exist when the area was last inspected or cleaned prior to the plaintiff's accident (*see Velocci v. Stop & Shop*, 188 AD3d 436 [1st Dept 2020]). When a defendant fails to meet its initial burden to show that it did not cause, create, or have actual or constructive notice of the alleged condition, the burden does not shift to the plaintiff to raise a triable issue of fact (*see Hill v. Manhattan N. Mgt.*, 164 AD3d 1187 [1st Dept 2018]).

Here, Academy has demonstrated its *prima facie* entitlement to judgment as a matter of law by establishing that it was a property owner who transferred possession and control of the premises to Armon/Praxis, that the lease did not obligate Academy to make repairs at the premises, and that the hazard that Antonetti complains of is not a significant structural or design defect that violates a safety provision (*see Figueroa v. Skillman Realty Co.*, 154 AD3d 470 [1st Dept 2017]). Echevarria clearly testified that Praxis took on maintenance and repair obligations for conditions such as a bathroom leak. Academy did not owe Antonetti a duty of care to prevent the incident since Academy was an out of possession landlord at the time and there is no evidence that it retained control of the premises or was involved with how the bathrooms were maintained and/or how hazards were addressed (*see Ballo v. AIMCO 2252-2258 ACP, LLC*, 155 AD3d 582 [1st Dept 2017]). In addition, the testimony of Echevarria and Antonetti establishes that Academy did not have actual or constructive notice of the hazard posed by the alleged flood condition prior to Antonetti's accident.

Antonetti has failed to raise a triable issue of fact. Setting aside any perceived issue with the admissibility of the leases, Antonetti has not refuted the unequivocal testimony of Echevarria, who clearly has personal knowledge, as to the occupancy, control, maintenance, and repair of the premises by Praxis, in place of Academy. In any event, Antonetti concedes that the leases are genuine and admissible by relying on them in support of his own cross-motion. That Academy retained the right to reenter the premises to perform certain repairs is not determinative, since the condition that allegedly cause Antonetti to fall was not structural in nature or a design defect (*see Devlin v. Blaggards III Restaurant Corporation*, 80 AD3d 497 [1st Dept 2011]).

The proposed additional defendants are not necessary parties as contemplated by CPLR 1001

and CPLR 1003. As alleged tenants/lessees of the subject premises, they simply are entities who may, but are not required to, be joined; the claim(s) against them may be asserted jointly and severally (*see* CPLR 1002(b) and *Kellogg v. All Saints Housing Development Fund Co., Inc.*, 146 AD3d 615 [1st Dept 2017]). A plaintiff may elect to proceed against any or all defendants (*see Hecht v. City of New York*, 60 NY2d 57 [Ct App 1983]). Neither Armon nor Praxis are necessary to adjudicate liability as between Antonetti and Academy.

Similarly, Antonetti cannot rely on the relation back doctrine because he has not shown that Armon and/or Praxis were united in interest with Academy, which requires some relationship triggering the vicarious liability of one defendant for the conduct of another defendant (*see Regina v. Broadway-Bronx Motel Company*, 23 AD3d 255 [1st Dept 2005] (landlord-tenant relationship in a commercial property does not constitute united in interest)). Here, neither Armon nor Praxis can be charged with notice of this lawsuit simply by virtue of being Academy's tenant(s) at the subject premises (*see Kingstone Insurance Company v. Marion Pharmacy Inc.*, 224 AD3d 501 [1st Dept 2024] (landlord-tenant relationship does not give rise to vicarious liability or otherwise create unity of interest)).

While Academy had no obligation to inform Antonetti that he had failed to sue a proper party, there is no evidence that the existence and involvement of Armon and/or Praxis were concealed from Antonetti. In its Answer, Academy denied that it maintained, managed, or controlled the subject premises. Antonetti took Echevarria's deposition on May 5, 2023. These instances should have alerted Antonetti that another party needed to be added or a separate action commenced. Moreover, Antonetti has not shown that any meaningful discovery request went unanswered. In fact, Antonetti filed a note of issue indicating that this case was ready for trial on November 29, 2023.

Accordingly, it is hereby

ORDERED that defendant Academy Studio Associates LLC have summary judgment dismissing the plaintiff's complaint in its entirety; and it is further

ORDERED that the Clerk of the Court make all entries necessary to effectuate the terms of this Order, including entry of a judgment of dismissal.

The foregoing constitutes the Decision/Order of this Court.

DATED: September 19, 2024
Bronx, New York

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