

Hepson v Riverbay Corp.
2024 NY Slip Op 35535(U)
September 3, 2024
Supreme Court, Bronx County
Docket Number: Index No. 802154/2022E
Judge: Paul L. Alpert
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 26-----X
Sean Hepson,

Index No.: 802154/2022E

Plaintiff,

DECISION/ORDER

-against-

Riverbay Corporation,

Defendant.
-----X

Recitation, as required by CPLR §2219(a), of the papers considered in the review of the motion as indicated below:

Papers	Numbered
Notice of Motion and Affirmation in Support & Exhibits.....	1
Affirmation in Opposition & Exhibits.....	2
Affirmation in Reply.....	3

Upon the foregoing cited papers the Decision/Order on this motion is decided as follows:

The plaintiff commenced this action for personal injuries following a ceiling collapse that occurred within a bathroom at 140 Benchley Place, Apt 22L, Bronx, New York, 10475. The apartment is owned by Nicole Oddman. The defendant, Riverbay Corporation (hereinafter "Riverbay") moves for an order awarding summary judgment pursuant to CPLR § 3212 dismissing the complaint.

Sean Hepson has resided at 140 Benchley Place, Apt 22L, Bronx, New York, 10475 with his girlfriend and children for five years (Defendants Motion, Exhibit D, page 7 lines 2-22). Mr. Hepson is currently employed as a train operator with the New York City Transit Authority (page 10 line 25- page 11 line 3). On August 22, 2021, a ceiling fell on his shoulder causing him to fall back and hit his right shoulder against the towel rack (page 12 lines 6-14). Prior to the accident, Mr. Hepson was aware that the ceiling in the bathroom had water damage (page 13 lines 14-20). The water damage was present for over a week and consisted of spotting, leaking

and a bubble in the ceiling (page 13 line 21- page 14 line 6). According to Mr. Hepson, Ms. Oddman made a complaint one to two weeks prior to the accident (page 15 lines 15-25). There were repairs being done on the wall behind the sink and the wall had been plastered following the water damage (page 16 lines 1-14).

Nicole Oddman has resided at 140 Benchley Place for nine years (Defendants Motion, Exhibit E, page 8 lines 9-14). Ms. Oddman owns the property and lives with her two daughters (page 8 line 23- page 9 line 7). Ms. Oddman had previously made a complaint to Riverbay on that day because she had a leak in the bathroom prior to the plaintiffs accident (page 17 lines 2-8). Work was done prior to 8/22/21 within the bathroom because there was a leak from the apartment above (page 17 lines 10-5).

A party seeking summary judgment must make a prima facie showing that it is entitled to judgment as a matter of law by proffering sufficient evidence to demonstrate the absence of any material issue of fact (*Alvarez v. Prospect Hospital*, 68 NY2d 320). Once the proponent of a motion for summary judgment meets this burden it is incumbent upon the party opposing the motion to submit proof in admissible form that an issue of fact exists which necessitates a trial (*Zuckerman v. City of New York*, 49 NY2d 557). The courts function on a motion for summary judgment is issue finding and not issue determination (*Sillman v. Twentieth Century Fox Film Corp.*, 3 NY2d 395). Summary judgment is a drastic remedy that deprives the litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to the non-moving party (see *Assaf v. Ropog Cab Corp.*, 153 AD2d 520). Summary judgment will only be granted if there are no material, triable issues of fact (see *Sillman supra*). Failure of the movant to sustain its burden requires denial of

the motion, regardless of the sufficiency of the opposition (*Winegrad v. New York Univ. Med Center*, 64 NY2d 851).

Juan Dominguez has been employed by Riverbay for 20 years (Defendants Motion, Exhibit F, page 10 lines 1-8). Mr. Dominguez is currently a maintenance supervisor (page 19 lines 18-22). He began his position as a maintenance supervisor in 2022 (page 10 line 23- page 11 line 2). At the time of Mr. Hepson's accident, Mr. Dominguez's job title was a utility person (page 11 line 18 - page 12 line 3). As a utility person, Mr. Dominguez was responsible for fixing electricity, plumbing, air conditioning, and sinks within the apartments (page 12 lines 7-16). Mr. Dominguez was not responsible for sheetrock work or plaster work, as that was the responsibility of a different department within Riverbay (page 12 lines 17-25).

When there is a problem within a particular unit, residents call a call center (page 26 lines 14-17). The call center is answered by a tech that is located within the complex (page 26 line 21- page 27 line 1). When a person makes a complaint to the call center, they will take the person's information, including the issue with the apartment (page 27 lines 2-6). The call is sometimes logged (page 27 lines 7-9). After the call center gets a complaint, they send it to dispatch who will send it out to the workers (page 27 lines 15- 22). When Mr. Dominguez receives an email from dispatch, he prints the work order, and he assigns it to the workers (page 28 lines 1-6). Mr. Dominguez's department deals with water leaks and plumbing (page 35 lines 2-4). Ceiling material is handled by a different department (page 35 line 23-page 36 lines 1). Therefore, if Mr. Dominguez's department fixes a leak from a ceiling, someone else would have to come in to repair the ceiling and they are notified through the work order (page 36 lines 2-14). The ticket would be sent to the call center who would then notify the inspector in the ceiling department (page 38 lines 1-4). The inspector that would look at and repair the ceiling is also employed by

Riverbay (page 36 lines 9-20). Mr. Dominguez further identified the work order dated August 22, 2021 for Ms. Oddman's apartment which states that there was a small bathroom leak over the toilet in the sink (page 44 lines 9-14).

Riverbay maintains that it is not liable for the accident as it did not have a reasonable time to remedy the condition in the apartment because an appointment to address the condition was made by Ms. Oddman on the same day as the plaintiffs accident or the day prior. However, the testimony of the plaintiff and Ms. Oddman raises an issue of fact. The plaintiff and Ms. Oddman testified that there was water damage within the bathroom prior to the collapse which the defendants were trying to fix. The plaintiff noted that the water damage in the bathroom consisted of spotting, leaking, and a bubble in the ceiling and that there were multiple spots in the ceiling that were a tannish brown color (Defendants motion, Exhibit D, page 14 line 4- page 15 line 2). Whether a dangerous condition exists is a question of fact to be decided by a jury (*Trincere v. County of Suffolk*, 90 NY2d 976, 977). The plaintiff further testified that Ms. Oddman made complaints one to two weeks prior to the collapse (page 15 lines 15-25). There remains an issue of fact as to whether the leak in the ceiling was present for a period of time such that the defendants could have discovered the condition. Additionally, the self-serving statements of the plaintiff which refers to matters exclusively within his knowledge creates an issue of credibility which should be left for the tier of fact (*Sacher by Sacher v. Long Island Jewish-Hillside Medical Center, Inc.*, 142 AD2d 567). The credibility of witnesses and the resolution of conflicting testimony are to be determined by the jury (*Wiseburg v. Douglass Elliman-Gibbons and Ives*, 224 AD2d 361). Accordingly, the defendants motion for summary judgment is denied.

Based on the foregoing, it is hereby:

ORDERED AND ADJUDGED, that the defendant's motion for summary judgment pursuant to CPLR 3212 is denied, and it is further,

ORDERED AND ADJUDGED, that the defendant's shall serve a copy of this decision and order upon all parties within twenty (20) days of notice of entry.

This constitutes the decision and order of the court.

Dated: September 3, 2024



Hon. Paul L. Alpert, J.S.C.