Colon v New York City Hous. Auth.
2025 NY Slip Op 32097(U)
May 26, 2025
Supreme Court, New York County
Docket Number: Index No. 157416/2021
Judge: Leslie A. Stroth

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LESLIE A. STROTH** **PART** **12M**

Justice

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DANIEL COLON

Plaintiff,

- v -

NEW YORK CITY HOUSING AUTHORITY,

Defendant.

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INDEX NO. 157416/2021

MOTION DATE N/A

MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 006) 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134

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

FACTUAL AND PROCEDURAL BACKGROUND

This personal injury action arises from an incident that occurred on February 13, 2021, in Apartment 13A at 50 Avenue D, New York, NY, part of the Lillian Wald Houses owned by Defendant New York City Housing Authority ("NYCHA"). Plaintiff, Daniel Colon, alleges that he suffered second-degree burns to his left ear and shoulder after suffering a seizure and falling against an exposed steam pipe in the bathroom while visiting his parents, who reside in the apartment.

Plaintiff served a Notice of Claim on April 26, 2021, commenced the action on August 7, 2021, and served a Verified Bill of Particulars on April 15, 2022. Plaintiff's deposition confirmed that he passed out in the bathroom due to a seizure and had not previously complained about the pipe condition.

Plaintiff contends that NYCHA was negligent in failing to cover or insulate the pipe, failing to properly maintain the building's heating system, and failing to provide a reasonably safe premises. Defendant denies liability, asserting that the building was constructed in 1949 and governed by the 1938 Building Code of the City of New York, which did not require insulation of steam pipes in residential bathrooms. NYCHA further asserts that no capital improvements or renovations were made that would have triggered obligations under subsequent building codes, including the 1968 Code and its "30% rule."

Defendant moves in Motion Sequence 006 for summary judgment dismissing Plaintiff's complaint pursuant to CPLR 3212(b). Plaintiff subsequently cross moves for summary judgment as to liability against NYCHA. For the reasons below, both Defendant's motion and Plaintiff's cross motion are denied.

LEGAL STANDARD

The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (*Alvarez v Prospect Hospital*, 68 NY2d 320 (1986)). Once a party has submitted competent proof demonstrating that there is no substance to its opponent's claims and no disputed issues of fact, the opponent, in turn, is required to "lay bare [its] proof and come forward with some admissible proof that would require a trial of the material questions of fact on which [its] claims rest" (*Ferber v Sterndent Corp.*, 51 NY2d 782, 783 (1980)). The party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted (*See Dauman Displays, Inc. v Masturzo*, 168 AD2d 204 (1st Dept 1990)).

DISCUSSION

A. Dispute Over Applicable Building Code

Questions of fact remain as to the applicable building code. Though both Plaintiff and Defendant agree that the building was initially subject to the 1938 New York City Building Code, Defendant has not sufficiently established that the subject building has not been exempted from compliance with the 1968 New York City Housing Code (Administrative Code of the City of New York §§27-111; 27-116; 27-809). Those provisions provide constitute "grandfathering provisions" which, if triggered, would subject the subject premises to the provisions of the 1968 New York City Building Code. Specifically, if expenditures on the subject building fell between 30% and 60% of the building's value, the portion of the building in which the work occured would be required to come into compliance with the rules set forth in the 1968 New York City Building Code. (Id. §27-116). If the expenditures exceeded 60% of the subject value, the entire building would be required to comply with the 1968 New York City Building Code. (Id. §27-115).

Such expenditures would require with New York City Building Code §27-809, which reads:

> "All accessible piping in habitable and occupiable rooms carrying steam, water, or other fluids at temperatures exceeding one hundred sixty-five degrees Fahrenheit shall be insulated to prevent the temperature at the outer surface of the insulation from exceeding sixty degrees Fahrenheit above the ambient temperature. The openings for insulated piping through combustible floors, walls, partitions, ceilings and other combustible construction shall include clearance and insulation adequate to satisfy the requirements of section 27-792 of article one of this subchapter. Where accessible piping carries a fluid not exceeding two hundred fifty degrees Fahrenheit and insulation would interfere with the functioning of the system, such piping may be uninsulated provided sufficient clearance is maintained from the combustible construction so that the temperature limitation of section 27-792 of article one of this subchapter is not exceeded, and all

uninsulated piping shall be provided with at least one-half inch clearance from combustible materials"

Defendant has not sufficiently established that the subject building has not been exempted from compliance with the 1968 New York City Housing Code (Administrative Code of the City of New York §§§27-115 and 27-116 and 27-809).

There are questions of fact as to expenditures that were made. Though defendant proffers an exact value for the subject building's value, it offers only an average cost for the portion of the alteration work among the Lillian Wald Housing Development. Defendant submits expenditure totals for the Lilian Wald Housing Development as a Whole, but none for the subject building in particular. Defendant contends that an exact value would constitute "an impossibly monumental accounting task going back decades," (NY St Cts Elec Filing [NYSCEF] Doc No. 132 at 8).

Expert Alex LaGrotta opined that the heating system was compliant with the applicable building code, and NYCHA had no legal obligation to insulate the pipes. NYCHA further asserts that its records, reviewed by NYCHA official Adam Eagle and valuation expert Eileen Frank, show that no capital improvements triggered an obligation to upgrade the building to meet newer code requirements. However, this Court finds that the expenditures proffered do not conclusively absolve NYCHA of responsibility. Instead, issues of fact remain as to the expenditures made.

The Court finds that such absence of a more exact accounting raises at least a triable issue of fact precluding summary judgment for either party. Thus, Defendant failed to establish a prima facie case that they were not subject to the 1968 New York City Housing Code.

B. Plaintiff's Claims in Reply

As to plaintiff's assertions of new theories of liability raised in reply that defendant violated the Americans With Disabilities Act, Fair Housing Act and ANSI standards and that defendant violated Section C26-691 of the 1938 Building Code, the Court is rejecting all of such alleged violations. Plaintiff raised, for the first time, these claims in reply and finds that plaintiff did not sufficiently put defendant on notice of these claims when they filed their initial notice of claim. A notice of claim need not be stated with "literal nicety or exactness." (*Purdy v City of New York*, 193 NY 521, 523 [1908]). However, a notice of claim must "include information sufficient to enable the city to investigate" (*See O'Brien v City of Syracuse*, 54 NY2d 353, 358 [1981]).

Plaintiff did not properly put defendant on notice in its notice of claim to sustain the subsequent claims of the above violations. Plaintiff's notice of claim alleges that defendant was "careless, negligent and/or reckless in the ownership, operation, control, management, maintenance, equipping, inspection, construction, engineering, and repair of the aforesaid boiler/heating system, and all appurtenances therein and thereat; in causing, allowing, permitting and/or creating a dangerous, defective, hazardous, unsafe and trap-like condition to develop at said location" (NYSCEF Doc No. 107 at 2). Such language in the notice of claim did not adequately give defendant an opportunity to assess municipal exposure to liability. Thus, plaintiff's new claims related to violations of the Americans With Disabilities Act, Fair Housing Act and ANSI standards and Section C26-691 of the 1938 Building Code are hereby rejected. Accordingly, neither party has demonstrated entitlement to summary judgment, as issues of fact remain. The Court has considered the remaining arguments and finds such unavailing.

Accordingly; it is hereby

ORDERED that Defendant New York City Housing Authority's motion for summary judgment is denied; and it is further

ORDERED that Plaintiff Daniel Colon's cross-motion for summary judgment is likewise denied.

5/26/2025
DATE

HON. LESLIE A. STROTH
J.S.C.

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