

Garcia v New York City Hous. Auth.

2025 NY Slip Op 34782(U)

December 10, 2025

Supreme Court, New York County

Docket Number: Index No. 160338/2021

Judge: Dakota D. Ramseur

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAKOTA D. RAMSEUR PART 34M

Justice

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LILA GARCIA

Plaintiff,

- v -

THE NEW YORK CITY HOUSING AUTHORITY,

Defendant.

INDEX NO. 160338/2021
MOTION DATE 05/12/2025
MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 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

were read on this motion to/for JUDGMENT - SUMMARY

In November 2021, Lila Garcia, as Administrator of the Estate of Oscar Garcia, commenced this wrongful death action against defendant The New York City Housing Authority (hereinafter, "NYCHA"). Plaintiff alleges that, on October 31, 2019, Oscar Garcia was admitted to Mount Sinai Hospital, where he was diagnosed with Legionnaires' Disease, and died on November 15, 2019. According to plaintiff's General Municipal Law §50-e Notice of Claim, verified complaint, and first Bill of Particulars dated July 7, 2021, he was exposed to the Legionella bacteria at his residence at 2680 Frederick Douglass Boulevard, a building which, as admitted in its answer, NYCHA operated, managed, and maintained. On or about January 15, 2025, plaintiff served a verified amended Bill of Particulars that described the place of exposure as being at the Drew Hamilton Houses, which is a five-building NYCHA-managed complex that includes, but, significantly, is not limited to, plaintiff's residence at 2680 Frederick Douglass Boulevard (also known as "Building 2").

In this motion sequence (004), NYCHA moves for summary judgment pursuant to CPLR 3212. NYCHA contends that environmental tests taken from the water supply at plaintiff's residence revealed the presence of a different subspecies of the Legionella bacteria (Legionella pneumophila serogroup 3) than the one detected in plaintiff's lab sample by a diagnostic test taken when he was admitted to Mount Sinai Hospital (Legionella pneumophila serogroup 1).¹ Accordingly, NYCHA argues that the Legionella strain that was found at plaintiff's residence at 2680 Frederick Douglass Boulevard was not the source and did not cause of Oscar Garcia's bacterial infection. Plaintiff opposes the motion and interposes the affidavits of experts Benjamin Miko and Aaron Rosenblatt, who aver that (1) Legionella pneumophila serogroup 1 was detected in Building 5 of the Drew Hamilton Houses, a building which supplies water to plaintiff's residence in Building 2, which would suggest, even if not detected, serogroup 1 was

¹ Serogroup 1 is the most common form of Legionnaires' Disease among humans.

actually present in Building 2, and (2) Oscar Garcia's positive test for *Legionella pneumophila* serogroup 1 does not rule out the possible presence of other *Legionella* subspecies like serogroup 3 in his system. Either way, Rosenblatt opined, "it is more likely than not that Mr. Garcia's infection by *Legionella* was due to his exposure to *Legionella* bacteria from the premise plumbing of his apartment in Building 2 at the NYCHA/Drew Hamilton Houses, 2690 Frederick Douglass Blvd." (NYSCEF doc. no. 110 at ¶4, Aaron Rosenblatt aff.) Plaintiff maintains that these expert opinions raise issues of fact as to whether Oscar Garcia's infection was caused by the same *Legionella pneumophila* serotype that was found present in Building 2. For the following reasons, NYCHA's motion is granted.

BACKGROUND

Neither party disputes the following facts. On October 31, 2019, Oscar Garcia first began experiencing medical symptoms, whereupon he was transported via ambulance to Mount Sinai Hospital. Two days later, on November 1, 2019, the results of a urinary antigen test indicated that he tested positive for *Legionella pneumophila* serogroup 1. Thereafter, Mount Sinai took a respiratory sputum culture to determine whether any other *Legionella* subspecies or serotypes were present. The culture report did not detect any other species of *Legionella*. (See NYSCEF doc. no. 105 at ¶¶8-9, Dr. Stanley Yancovitz's expert aff.; NYSCEF doc. nos. 100-103, Mount Sinai medical records; NYSCEF doc. no. 110 at ¶7.) On November 15, 2019, Garcia died from acute hypoxic respiratory failure and septic shock as a result of Legionnaires' Disease.

Lila Garcia testified that, in the two weeks prior to developing symptoms (two weeks being Legionnaires' Disease's approximate incubation period), Oscar Garcia regularly visited his children's school, his place of work at a Head Start program at 127th Street and Lexington Avenue, and his church. (NYSCEF doc. no. 96 at 24-25, Lila Garcia §50-h transcript.) During this same period, in October 2019, Oscar Garcia also took their daughter away to Virginia for her birthday. Other than his residence, no outbreaks of *Legionella* have been identified at these locations.

As to the building's history, on July 10, 2019, the New York City Department of Health and Mental Hygiene ("NYCDOH") first identified two cases of people living at 2680 Frederick Douglass Boulevard who contracted Legionnaires' Disease within the previous 12 months. As part of a "building water system evaluation," the NYCDOH's Bureau of Communicable Disease and NYCDOH's Building Water System Oversight conducted environmental tests of the water supply in each of the five buildings within the Drew Hamilton Houses. None of the samples taken from Building 2 held traces of *Legionella* serogroup 1, while 12 of the 14 species that were found in limited locations were identified as serogroup 3. (NYSCEF doc. no. 123, NYCDOH report.) According to a second report certified by the Special Pathogen Laboratory, further water testing was conducted from August through December 2019. Samples taken from Building 2 detected only the presence of *Legionella pneumophila* serogroup 3. (NYSCEF doc. no. 104 at ¶12, Paul Boyce expert aff.; NYSCEF doc. no. 99 at 3, Special Pathogen Laboratory report.) Thereafter, NYCHA posted a notice of the report and the presence of traces of the *Legionella* bacteria in the lobby of plaintiff's residence in Building 2.

NYCHA's Contentions

In support of its motion for summary judgment, then, NYCHA attaches Oscar Garcia's medical records that reveal the presence of *Legionella pneumophila* serogroup 1 in his body upon admission to the hospital, the two environmental reports that found only *Legionella pneumophila* serogroup 3 in the water supply system of Building 2, and the expert affidavits of Yancovitz and Boyce, who both opine, to a reasonable degree of medical certainty, that Oscar Garcia's death was not caused by exposure to *Legionella* bacteria in his residence. (See NYSCEF doc. no. 105 at ¶13; NYSCEF doc. no. 104 at ¶12.)

Plaintiff's Contentions

In his affidavit, plaintiff's water systems expert Aaron Rosenblatt² disputes these findings. Rosenblatt avers that the Abbot BinaxNow urinary antigen tests administered by Mount Sinai are susceptible to "cross-reactions," where a test designed to detect the presence of one type of bacteria, say *Legionella* serogroup 1, produces a positive result when the antigen detects the presence of another bacteria, say *Legionella* serogroup 3.³ (NYSCEF doc. no. 110 at ¶¶9-12.) He suggests that this may account for the fact that Mount Sinai's test identified only serogroup 1 in Garcia's urine sample.⁴ Further, as to the environmental tests, Rosenblatt avers that the majority (30 out of 35) of the water samples collected from the five buildings were collected at temperatures below 120 degrees Fahrenheit, which is conducive to both *Legionella* serogroups 1 and 3 growth. Moreover, while samples from plaintiff's building were negative for serogroup 1, Buildings 3, 4, and 5—all of whom share a common supply of cold water—were all positive for *Legionella* bacteria from serogroup 1. (See *id.* at ¶¶4[d]-[f], 33-34.)

Dr. Benjamin Miko's findings echo Rosenblatt's. He avers that "serogroup 1 was identified in the water systems of both Building 5, which supplies water to Building 2, and Building 3 and Building 4, which receive water from the same source as Building 2." (NYSCEF doc. no. 109 at ¶3.) In his opinion, this "strongly supports that serogroup 1 was also present in Building 2's water system, despite not being specifically detected in the available sampling." (*Id.*) He also points to the epidemiologic pattern of *Legionella* exposure, specifically the two other residents at 2680 Frederick Douglass Boulevard who contracted Legionnaires' Disease, which, in his view, suggests the presence of posed *Legionella* bacteria serogroup 1 in that building that presented an ongoing infectious risk to residents like Oscar Garcia. (*Id.*) Based on these factors, he likewise concludes that, to a reasonable degree of medical certainty, it is "more likely than not... serogroup 1 was present throughout the complex, including Building 2, where Mr. Garcia lived." (*Id.* at ¶11.)

² While Rosenblatt is a water systems expert, he is not a licensed physician and has no medical background. Thus, he is not qualified to offer an expert opinion on the urinary antigen tests. Indeed, as discussed in Footnote 4, his opinion conflicts with the opinion of plaintiff's licensed physician expert Benjamin Miko.

³ Rosenblatt cites three peer-reviewed medical journals that purport to find just such cross-reactions for the Abbot BinaxNow test. (*Id.* at ¶12.)

⁴ According to Miko's affidavit, the urinary antigen test that Mount Sinai administered is widely used for its rapid turnaround and high specificity in detecting *Legionella pneumophila* serogroup 1. Moreover, he admits that "there are reports of cross-relativity, but the test is generally considered highly specific for serogroup 1. (NYSCEF doc. no. 109 at ¶6.)

Thus, in opposition to summary judgment, plaintiff advances two reasons why these affidavits create issues of fact. First, she suggests that, although undetected, *Legionella* serogroup 1 was likely present in Building 2's water supply, which would account for Garcia's positive test at Mount Sinai for serogroup 1. Thus, there remains an issue of fact as to whether *Legionella pneumophila* serogroup 1 was actually present in Building 2 to which Oscar Garcia was exposed. Alternatively, she suggests that the Mount Sinai positive diagnostic test could have resulted from a cross-reaction with *Legionella* bacteria serogroup 3, and thus, there is an issue of fact as to whether Oscar Garcia's Legionnaires' Disease was caused by exposure to *Legionella* serogroup 3.⁵ (NYSCEF doc. no. 108 at ¶¶29-38, plaintiff memo of law.) As discussed below, both of plaintiff's arguments are premised on the possibility that the environmental and diagnostic testing produced inaccurate results.

DISCUSSION

Under CPLR § 3212(b), a proponent moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, producing sufficient evidence to eliminate any material issues of fact from the case. (*Brandy B. v Eden Cent. School Dist.*, 15 NY3d 297, 302 [2010]; *Kesselman v. Lever House Rest.*, 29 A.D.3d 302 [1st Dept 2006].) Once a defendant establishes their entitlement, the burden shifts to plaintiff to raise a triable issue of fact. (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980].) Since summary judgment is an extreme remedy, the Court must draw all reasonable inferences in favor of the non-moving party. (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012].) Where there is doubt as to the existence of material facts or where different conclusions can reasonably be drawn from the evidence, summary judgment should be denied. (*Udoh v Inwood Gardens, Inc.*, 70 AD3d 563, 565 [1st Dept 2010].)

The evidence defendant has attached to this motion—namely, the different subspecies of the *Legionella* bacteria detected by Mount Sinai in Oscar Garcia's urine sample and the one found present in Building 2—undoubtedly meets its prima facie burden of showing that plaintiff did not contract Legionnaires' Disease through exposure to the bacteria at his residence. The only issue remaining is whether, as plaintiff asserts, Rosenblatt and Miko's affidavits create an issue of fact as to how and where he contracted the disease. The Court finds that they do not.

By premising their affidavits on the possibility that the initial Mount Sinai test could have produced a false positive for *Legionella* serogroup 1 (an exceedingly remote possibility according to Miko's own averments) and that, contrary to two reports certified by the Department of Health and the Special Pathogen Laboratory, Building 2's water supply *could* have had undetectable traces of serogroup 1 bacteria, Rosenblatt and Miko's affidavits amount to pure speculation: neither offers any affirmative evidence that directly shows Oscar Garcia was exposed to the *Legionella* bacteria of the type present at his residence. In other words, neither's opinion is supported by an evidentiary foundation from which the Court could conclude that Garcia was exposed in the manner they suggest. (*See Ramos v Howard Indus., Inc.*, 10 NY3d 218, 224 [2008] ["An expert's affidavit—offered as the only evidence to defeat summary

⁵ Miko's affidavit does not address the respiratory sputum culture that Mount Sinai also took and which was also negative for serogroup 3 bacteria.

judgment—must contain sufficient allegations to demonstrate that the conclusions it contains are more than mere speculation and would, if offered alone at trial, support a verdict in the proponent’s favor” (internal quotations omitted)], citing *Diaz v New York Downtown Hosp.*, 99 NY2d 542, 544 [2002] [“where the expert’s ultimate assertions are speculative or unsupported by any evidentiary foundation...the opinion should be given no probative force and is insufficient to withstand summary judgment”].) Again, to be clear, plaintiff’s position would require the Court to find an issue of fact where four separate tests and/or reports show that Oscar Garcia’s bacterial infection cannot be attributed to the same bacteria subspecies as the one to which he would have been exposed in his residence. (See NYSCEF doc. nos. 100-103, Mount Sinai medical records with urinary antigen test and the respiratory sputum culture test; NYSCEF doc. no. 123, NYCDOH environment report, NYSCEF doc. no. 99 at 3, Special Pathogen Laboratory report.)

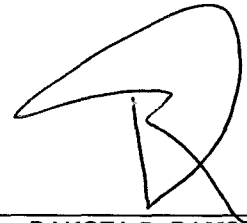
Nor is an issue of fact created by the two previous residents in Building 2 who contracted Legionnaires’ Disease within the prior year. First, it is not clear from plaintiff’s experts that the Building 2 residents were infected with bacteria from *Legionella* serogroup 1 as would be required were these residents to support plaintiff’s position. Even more to the point, the Department of Health and Human Services could not definitively identify the source of their infection as originating in Building 2 “due to the small number of cases,” “the possible exposures of one case potential sources outside of NYC,” and “the lack of clinical *Legionella* isolates for comparison.” (NYSCEF doc. no. 98 at 10, DOH testing records.) To this point, while the various places Oscar Garcia frequented in New York City in the two weeks prior to his hospitalization have been ruled out as potential sources of infection, Lila Garcia testified that he left New York State to travel to Virginia for their daughters birthday (NYSCEF doc. no. 96 at 24-25), which raises a source other than his residence where he may have been exposed to the *Legionella* bacteria. Neither Rosenblatt nor Miko address this possible point of exposure in their expert affidavits when finding it likely that the source of exposure was at his residence. Given that plaintiff has not raised an issue of fact and, thus, defendant is entitled to summary judgment, the Court need not address the parties’ argument with respect to striking the plaintiff’s amended Bill of Particulars.

Accordingly, for the foregoing reasons, it is hereby

ORDERED that defendant The New York City Housing Authority’s motion for summary judgment pursuant to CPLR 3212 is granted and the complaint is dismissed; and it is further

ORDERED that counsel for The New York City Housing Authority shall serve a copy of this order, along with notice of entry, on all parties within twenty (20) days of entry.

This constitutes the Decision and Order of the Court.



12/10/2025
DATE

DAKOTA D. RAMSEUR, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	DENIED
			<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT