

Flyntz v PSEG Long Is.
2025 NY Slip Op 35442(U)
February 11, 2025
Supreme Court, Nassau County
Docket Number: Index No. 612017/2022
Judge: Conrad D. Singer
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAUP R E S E N T : HON. CONRAD D. SINGER,
Justice

TRIAL PART: 18

-----X
MARY FLYNTZ,

Plaintiff,

Index No.: 612017/2022

Motion Seq. No. 002

Motion Submitted: 11/26/2024

-against-

PSEG LONG ISLAND,

DECISION AND ORDER

ON MOTION

XXXDefendant.
-----X

The following papers were read on this motion:

Defendant's Notice of Motion for Summary Judgment and Supporting Papers [002].....X

Plaintiff's Affirmation in Opposition to Motion and Supporting Papers [002].....X

Defendant's Reply Affirmation [002].....X

Upon the foregoing e-filed documents, the motion of the Defendant, PSEG LONG ISLAND LLC i/s/h/a PSEG LONG ISLAND ["Defendant"], for an Order pursuant to CPLR § 3212, granting them summary judgment dismissing all claims asserted against them by the Plaintiff, MARY FLYNTZ ["Plaintiff"], is determined as follows:

The Plaintiff commenced the instant action alleging that the Defendant negligently performed electrical work that resulted in a fire and caused extensive property damage to her home. After the fire, the Plaintiff filed a claim with State Farm Insurance, the homeowners' insurance, and received payments from State Farm totaling \$528,917.54 to repair her home. The Plaintiff's Complaint asserts a cause of action for negligence against the Defendant, and seeks \$218,551.00 in damages for expenses incurred in reconstructing her home and that were not covered by insurance.

The Defendant now moves for summary judgment dismissal of the Plaintiff's claims,

arguing that there is no evidence in the record that PSEG was negligent, and because Plaintiff has been fully reimbursed by insurance for the costs of repair to her home, and is not entitled to additional recovery from an alleged tortfeasor above and beyond what was recovered from insurance to bring the property to its pre-incident condition.

The proponent of a summary judgment motion must demonstrate entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact (*See Orellana v. Mendez*, 208 AD3d 888, 888 [2d Dept. 2022]; *Alvarez v. Prospect Hosp.*, 68 NY2d 320 [1986]). “This burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party.” (*Cach, LLC v. Khan*, 188 AD3d 1135, 1136 [2d Dept. 2020]). “Where the moving party fails to meet this burden, summary judgment cannot be granted, and the non-moving party bears no burden to otherwise persuade the court against summary judgment.” (*Cach, LLC*, 188 AD3d at 1136). However, once the movant has made the required showing, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action. (*Alvarez*, 68 NY2d at 324). The opponent’s mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient to defeat a summary judgment motion. (*Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]).

“To establish a *prima facie* case of negligence, a plaintiff must demonstrate the existence of a duty owed by the defendant to the plaintiff, a breach of that duty, and that the breach was a proximate cause of the plaintiff’s injury”. (*Demshick v Community Hous. Mgt. Corp.*, 34 AD3d 518, 519 [2d Dept 2006] [citations omitted]). The Plaintiff’s *prima facie* case in a negligent fire case such as this one is to “show that the defendant created the condition which caused the accident

or that the defendant had actual or constructive notice of the condition”. (*Associated Mut. Ins. Co. v Kipp's Arcadian II, Inc.*, 298 AD2d 478, 479 [2d Dept 2002][citations omitted]).

In this case, the Defendant has put forth sufficient evidence to meet its *prima facie* burden of demonstrating that they neither created nor had actual or constructive notice of the dangerous condition that allegedly caused the subject fire. The evidence submitted in support of the Defendant’s motion consists of, *inter alia*, the deposition testimonies of the Plaintiff¹, PSEG witness William Sinram, non-party witness Fire Marshall James Hickman, non-party witness Philip Mazzullo of State Farm, reports and other documents used as exhibits during depositions, and a sworn affirmation from Defendant’s expert electrical engineer, George Ello [“Ello Affirmation”]. The Defendant’s evidence, particularly the testimony of Fire Marshall James Hickman, non-party witness Philip Mazzullo, and Mr. Ello’s Affirmation, establishes, *prima facie*, that PSEG did not cause the fire that led to the Plaintiff’s claimed property damage, and that instead the fire originated within the circuit breaker panel located in the basement of Plaintiff’s home, and was caused by the panel sustaining a catastrophic failure.

The Court further finds that the Plaintiff failed to raise a triable issue of fact in opposition to the Defendant’s *prima facie* showing. The Plaintiff cites to deposition testimony from non-party witness Detective Lawrence Meisner [Ret.], and the Nassau County Police Department Victim’s Report prepared by Detective Meisner, for Detective Meisner’s determination that the fire was caused by an “over-energized main line going into the resident’s main electrical panel” and that, as part of his investigation into the fire, Detective Meisner spoke with PSEG and thought

¹ Contrary to the Plaintiff’s contention, the deposition transcript of the Plaintiff is admissible and may be used by the Defendant in support of its summary judgment motion. (*Celestin v 40 Empire Blvd., Inc.*, 168 AD3d 805, 808 [2d Dept 2019] [citations omitted]).

there was “a good possibility that work being done on the pole [by PSEG]...energized the electrical panel to the point where it caused the electrical panel to be damaged by flame”.

However, as pointed out by the Defendant, Detective Meisner investigated the fire together with his counterpart from the fire department, Fire Marshall Hickman. Fire Marshall Hickman specifically denied adopting Detective Meisner’s cause of origin determination that the fire was caused by an “over-energized main line”. Fire Marshall Hickman determined that the “fire is the result of an apparent electrical event that resulted in the failure of the circuit breaker panel”. Fire Marshall Hickman denied making any observation as to what caused the event at the electrical panel, because Fire Marshall Hickman “is not an electrician”. Detective Meisner is also not an electrician, and the Plaintiff offered no expert testimony or affirmation from an electrician to refute the defense expert’s sworn affirmation concluding that PSEG did not cause the fire. Therefore, the Court finds that the Plaintiff failed to raise a triable issue of fact in opposition to the Defendant’s *prima facie* showing, such that the Plaintiff’s claims should be dismissed.

The Court also finds that the Defendant established, *prima facie*, that the Plaintiff failed to establish entitlement to compensatory damages because the Plaintiff was already fully reimbursed for the costs of repair to bring her home back to its pre-incident condition, and under CPLR 4545 she is precluded from further recovery of costs. (*Fisher v Qualico Contr. Corp.*, 98 NY2d 534, 540 [2002]). The Plaintiff failed to raise a triable issue of fact with respect to this issue as well.

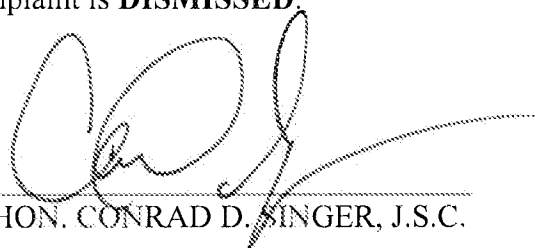
As the Defendant established its *prima facie* entitlement to summary judgment dismissal of the Plaintiff’s claims, and the Plaintiff failed to raise a triable issue of fact in opposition thereto, the Defendant’s motion shall be **GRANTED**, and the Plaintiff’s Complaint shall be dismissed.

Accordingly, it is hereby,

ORDERED, that the Defendant's motion for summary judgment dismissal of the Plaintiff's Complaint is **GRANTED**, and the Plaintiff's Complaint is **DISMISSED**.

This constitutes the decision and Order of this Court.

Dated: February 11, 2025
Mineola, NY



HON. CONRAD D. SINGER, J.S.C.

ENTERED

Feb 20 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE