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As of: February 16, 2024 9:45 PM Z

Padilla v. Holrod Assoc. LLC

Supreme Court of New York, Appellate Division, First Department

April 25, 2023, Decided; April 25, 2023, Entered

Index No. 156977/18, Appeal No. 92, Case No. 2022-02199

Reporter

215 A.D.3d 573 *; 189 N.Y.S.3d 59 **; 2023 N.Y. App. Div. LEXIS 2100 ***; 2023 NY Slip Op 02082 ****

[****1] Michelle Padilla, Plaintiff-Respondent-Appellant, v Holrod Associates LLC, Defendant-Appellant-Respondent.

Prior History: [***1] Order, Supreme Court, New York County (Sabrina Kraus, J.), entered on or about May 4, 2022, which, to the extent appealed from as limited by the briefs, denied defendant's motion for summary judgment dismissing the complaint and denied plaintiff's cross motion for summary judgment on liability, unanimously modified, on the law, to grant defendant's motion for summary judgment dismissing the complaint and otherwise affirmed, without costs. The Clerk is directed to enter judgment accordingly.

Headnotes/Summary

Headnotes

Negligence — Maintenance of Premises — Liability of Out-of-Possession Landlord — Fall on Cracked Step

Counsel: Lewis Brisbois Bisgaard & Smith LLP, New York (Nicholas P. Hurzeler of counsel), for appellant-respondent.

Kenneth J. Gorman, New York, for respondent-appellant.

Judges: Before: Kapnick, J.P., Kern, Friedman, Gesmer, Pitt-Burke, JJ.

Opinion

[**60] [*573] Defendant's motion for summary judgment should have been granted. "An out-of-possession landlord is generally not liable for negligence with respect to the condition of the demised premises unless it '(1) is contractually obligated to make repairs or maintain the premises or (2) has a contractual right to reenter, inspect and make needed repairs and liability is based on a significant structural or design defect that is contrary to a specific statutory safety provision'" (*DeJesus v Tavares*, 140 AD3d 433, 433, 33 N.Y.S.3d 47 [1st Dept 2016] quoting [***2] *Vasquez v The Rector*, 40 AD3d 265, 266, 835 N.Y.S.2d 159 [1st Dept 2007]). Here, defendant [*574] established that it was an out of possession landlord with no contractual obligation to make repairs or maintain the restaurant premises. Pursuant to Paragraph 4 of the lease agreement, all non-structural repairs to the premises were to be made by the tenant restaurant at its sole cost and expense. Moreover, the cracked step at issue was not a significant structural or design defect that is contrary to a specific statutory safety provision (*see Deebes v Rich-Mar Realty Assoc.*, 248 AD2d 185, 185-186 [1st Dept 1998]; *Chery v Exotic Realty, Inc.*, 34 AD3d 412, 414, 824 N.Y.S.2d 364 [2d Dept 2006]).

In response, plaintiff failed to raise a triable issue of fact sufficient to defeat defendant's motion. Plaintiff's assertion that there is an issue of fact as to whether defendant had actual notice of the cracked step on which plaintiff fell is without merit. An out of possession landlord may not be held liable even if it had notice of the defective condition prior to the accident (*see Marie D. v Roman Catholic Church of the Sacred Heart*, 161 AD3d 448, 76 N.Y.S.3d 535 [1st Dept 2018]; *Devlin v Blaggards III Rest. Corp.*, 80 AD3d 497, 498, 916 N.Y.S.2d 580 [1st Dept 2011], *lv denied* 16 NY3d 713 [2011]).

215 A.D.3d 573, *574; 189 N.Y.S.3d 59, **60; 2023 N.Y. App. Div. LEXIS 2100, ***2; 2023 NY Slip Op 02082, ****1

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE
DIVISION, FIRST DEPARTMENT.

ENTERED: April 25, 2023

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