SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: IA 4

X

Nativdad Aybar

Plaintiff(s),

DECISION

Index # 302546/2016

-against-

E. 138th Street Bronx Realty Corp., Maybar Maybarcafe & Piano Bar, Inc. Elvin Rozon, and Rafael Rozon, Individually and/or Jointly and D/b/a K-Loungerestaurant and/or KanelaRestaurant & Bar and/or Kanela Bar,

Defendant(s).

X

HON. HOWARD H. SHERMAN:

In this matter, plaintiff Natividad Aybar ("plaintiff") alleges that she was injured on June 11, 2016 when she fell on water on the floor of Kanela Restaurant. She has brought claims against the owner of the premises, E 138th Street Bronx Realty Corp.("defendant"), as well as the operator of the restaurant, Maybar Maybarcafe & Piano Bar, Inc., Elvin Rozon, and Rafael Rozon, Individually and/or Jointly and d/b/a K-Loungerestaurant and/or Kanela Restaurant & Bar and/or Kanela Bar (collectively "the restaurant"). The restaurant has never appeared in the action.

Defendant and the restaurant entered into a lease for the premises on December 19, 2007. Contained within that lease, in the second paragraph, was a general right of reentry for the defendants to exhibit, inspect, make repairs and improvements.

Defendant now moves for summary judgment and dismissal of the complaint against it, arguing that as an out of possession landlord, even with a right of reentry in its lease, it can only be held liable for any significant structural defects, or the violation of a specific statutory requirement. Plaintiff opposes, arguing that defendants should have been aware of the defect which led to the water condition, and that defendant had violated Multiple Dwelling Law § 78, as well as § 27-128 of the Administrative Code of the City of New York.

For the reason set forth herein, the motion is granted.

Generally, an out-of-possession landlord may not be held liable for a third party's injuries on his premises unless he has notice of the defect and has consented to be responsible for maintenance or repair (Manning v. New York Tel. Co., 157 A.D.2d 264, 266–69 [1st Dept. 1990]; see also, Worth Distrs. v. Latham, 59 N.Y.2d 231, 238 [1983]). However, constructive notice may be found where an out-of-possession landlord reserves a right under the terms of a lease to enter the premises for the purpose of inspection and maintenance or repair and a specific statutory violation exists (Guzman v. Haven Plaza Housing Development Fund Co., 69 N.Y.2d 559, 566 [1987]; see also, Santiago v. Port Auth. of New York and New Jersey, 203 A.D.2d 217 [1st Dept 1994], *lv. denied* 84 N.Y.2d). In such case, only a significant structural or design defect that is contrary to a specific statutory safety provision will support imposition of liability against the landlord (Quinones v. 27 Third City King Restaurant, 198 A.D.2d 23, 24[1st Dept 1993] Velazquez v Tyler Graphics, Ltd., 214 AD2d 489, 489 [1st Dept 1995]

Defendant alleges that summary judgment should be granted to it since there is no allegation or proof that it violated any specific statutory safety provisions, nor has plaintiff noticed any expert who can opine that there was a significant structural defect. In opposition plaintiff claims that defendants violated Multiple Dwelling Law § 78. That section states:

> 1. Every multiple dwelling, including its roof or roofs, and every part thereof and the lot upon which it is situated, shall be kept in good repair. The owner shall be responsible for compliance with the provisions of this section; but the tenant also shall be liable if a violation is caused by his own wilful act, assistance or negligence or that of any member of his family or household or his guest. Any such persons who shall wilfully violate or assist in violating any provision of this section shall also jointly and severally be subject to the civil penalties provided in section three hundred four.

This section does not impose any specific safety provisions, but merely states the owners' general duty to keep premises in good repair. As such, it is not the kind of specific statutory safety violation for which an out of possession landlord may be held liable (compare, Guzman , 69 NY2d 559 [in addition to allegation of landlord's failure to adhere to general duty to keep premises in good condition, specific allegations made with reference to administrative code violations as to handrails and lighting {Administrative Code § 27-375f and 27-381, respectively}]).

In addition to a specific statutory violation, a landlord's reservation of the right to re-enter, inspect, and make repairs, may subject a landlord to liability, provided the plaintiff shows that the landlord breached specific provisions of the Administrative Code of the City of New York (Flores v Baroudos, 27 AD3d 517, 518 [2d Dept 2006]). Here, plaintiff cites to § 27-128 of the Administrative Code Of The City Of New York, to argue that the defendants have violated the duty of care required of owners. Apparently, this section of the Administrative Code was repealed

in 2008, so it would have been in effect at the time the lease was entered into, but not at the time of plaintiff's accident. In any event, that section also apparently imposed a very general duty on the owners, and not any specific maintenance or repair requirements. As such, it would not constitute the kind of specific directive for which the defendants could be held liable.

The defendants have demonstrated their prima facie entitlement to summary judgment since they retained only a general right of reentry, and plaintiff has failed to raise a triable issue of fact as to the existence of either a significant structural defect or a violation of a specific statutory or administrative safety requirement (see, Joyner v Mingles Cafe, Inc., 115 AD3d 560, 561 [1st Dept 2014][the owner of the premises established its entitlement to judgment as a matter of law where plaintiff allegedly tripped and fell while walking to the bathroom in the nightclub operated by tenants; owner submitted its lease with tenant showing that it had no contractual duty to maintain or repair the demised premises, but retained only a limited right to reenter and repair where tenant failed to maintain the premises, and by demonstrating that the cracked floor tile and alleged inadequate lighting were not significant structural or design defects which violated specific statutory safety provisions]; see also, Kittay v. Moskowitz, 95 A.D.3d 451, [1st Dept.2012], lv. denied 20 N.Y.3d 859 [2013]).

The motion for summary judgment and dismissal of The complaint is granted.

This constitutes the decision and order of the Court.

Dated: May 27 2020

HON. _____

HOWARD H. SHERMAN, JSC