SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX
PART 6

Index No. 25454/2018

ERICA ALSTON,

Plaintiff,

-against-

NYSANDY12CBP9 LLC, RELATED MANAGEMENT COMPANY, L.P., SIMPLY BETTER MANAGEMENT CO., LLC, and SIMPLY BETTER APARTMENT HOMES,

Defendants.

**DECISION/ORDER**

**Present:**
**Hon. Laura G. Douglas**
**J. S. C.**

Recitation, as required by Rule 2219(a) of the C.P.L.R., of the papers considered in the review of this motion and cross-motion for summary judgment (Seq. No. 1):

| **Papers** | **Numbered** |
|---|---|
| **Defendants' Notice of Motion Affirmation of Gerard Van Leuvan, Esq. dated January 4, 2021 in Support of Motion, and Exhibits ("A" through "F")** | **1** |
| **Affirmation of Maya Kogan, Esq. dated February 25, 2021 in Opposition to Motion, and Exhibits ("A" and "B")** | **2** |
| **Reply Affirmation of Gerard Van Leuvan, Esq. dated March 2, 2021** | **3** |

*Upon the foregoing papers and after due deliberation, the Decision/Order on this motion is as follows:*

The defendants seek summary judgment pursuant to CPLR Rule 3212 against the plaintiff on the issue of liability. The motion is denied.

The plaintiff seeks monetary damages for personal injuries allegedly sustained on March 8, 2018 when a ceiling collapsed upon her in her apartment's bedroom. The premises was owned, operated, managed, and/or maintained by the defendants. Since the plaintiff served and filed a note of issue on November 5, 2020, this motion has been made timely pursuant to the CPLR and this Court's own rules.

In support of their motion, the defendants submit the plaintiff's deposition testimony. She testified that the ceiling collapsed upon her as she was making her daughter's bed, causing her to fall

atop the bed. The plaintiff stated that a leak began to come from the bedroom ceiling on March 2, 2018 during a heavy rain storm. She claims to have notified the Simply Better defendant(s) on that same day. The plaintiff further testified that a plumber arrived some 45 minutes later, but left stating that he could not address the issue since it was still raining. The plaintiff concedes that she was approached on March 6 by the building superintendent who sought to inspect the ceiling, but that she did not allow him to do so since she was on her way to work. The plaintiff testified that she never saw another building employee/agent until after the ceiling had collapsed. The plaintiff did not notice any water damage to the ceiling or surrounding area prior to its collapse and stated that the ceiling did not leak after March 2. The plaintiff did not make any written complaints regarding the leak.

In further support, the defendants submit the deposition testimony of Luis Gerena ("Gerena"), the building's acting superintendent on the accident date. Gerena testified that he received a telephone call regarding a bedroom leak on March 5, 2018 from defendant Related's home office. He waited at the plaintiff's apartment door for some fifteen minutes at around 1:00 p.m., but no one answered. The plaintiff would not return from work until Gerena had himself finished his workday. Gerena also testified that he saw the plaintiff on March 6 and March 7, but she denied access to the apartment because she was headed to work.

In order to obtain summary judgment, a party must demonstrate that there are no material issues of fact in dispute and that he is entitled to judgment as a matter of law under these undisputed facts (*see Winegrad v. New York University Medical Center*, 64 NY2d 851 [Ct App 1985] and *Flores v. City of New York*, 29 AD3d 356 [1st Dept 2006]). The moving party's "[f]ailure to make [a] prima facie showing [of entitlement to summary judgment] requires a denial of the motion, regardless of the sufficiency of the opposing papers" (*Vega v Restani Constr. Corporation.*, 18 NY3d 499, 503 [Ct App 2012]). To defeat such a showing, an adversary must present facts in admissible form demonstrating that genuine, triable issues exist which preclude summary judgment (*see Zuckerman v. City of New York*, 49 NY2d 557 [Ct App 1980] and *Flores v. City of New York*, 29 AD3d 356 [1st Dept 2006]). A premises owner will be liable for injuries caused by a ceiling collapse due to a leak where the plaintiff shows that the defendant had prior notice, actual or constructive, of the leak and the leak was never repaired *(see Figueroa v. Goetz*, 5 AD3d 164 [1st Dept 2004]).

Here, the defendants have failed to establish their entitlement to summary judgment as a matter of law. A trier of fact may reasonably conclude that the defendants became aware of a leak in the

plaintiff's bedroom ceiling on March 2, when a plumber was dispatched to the plaintiff's apartment, or by March 5, when Gerena received a telephone call about same and attempted to access the apartment. This was some 3 days before the ceiling collapsed. Gerena was aware of the precise hazard complained of - a leak in the plaintiff's bedroom ceiling – and not simply a generalized condition. Actual notice of a dangerous condition need not be verified by the duty-bound defendant; a specific complaint made by a tenant suffices (*see Best v. 1482 Montgomery Estates, LLC*, 114 Ad3d 555 [1st Dept 2014] (plaintiff's testimony that she called the building management office several times before the ceiling collapse suffices to withstand summary judgment) and *Toussaint v. Ocean Ave. Apartment Associates, LLC*, 144 AD3d 664 [2nd Dept 2016] (complaints made to the superintendent about a ceiling leak three days prior to the collapse suffice)). Nothing in the plaintiff's deposition testimony has been shown to be implausible. A jury could also reasonably find that the hazardous condition existed for a sufficient period for the defendants to have a reasonable chance to correct it (*see Brothers v. 574 9th Ave, Rest. Corp.*, 140 AD3d 512 [1st Dept 2016]). Whether the defendants' actions were reasonable in light of the plaintiff's response to Gerena's attempt(s) at inspection present material issues to be resolved by the trier of fact. Finally, the defendants have not established that the doctrine of *res ipsa loquitur* is inapplicable here (*see Wenzel v. All City Remodeling, Inc.*, 145 NYS3d 342 [1st Dept 2021] ("[a] ceiling collapse does not ordinarily occur in the absence of negligence, and the landlord has not established that plaintiff's own negligence caused this accident") and *Lisbey v. Pel Park Realty*, 99 AD3d 637 [1st Dept 2012]).

The foregoing constitutes the Decision/Order of this Court.

DATED: July 14, 2021
Bronx, New York

HON. LAURA G. DOUGLAS
J.S.C.