

Hylton v BLT Restaurant Group LLC

2013 NY Slip Op 33315(U)

December 23, 2013

Sup Ct, New York County

Docket Number: 653077/13

Judge: Cynthia S. Kern

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: CYNTHIA S. KERN
J.S.C.

PART _____

Index Number : 653077/2013
HYLTON, SHANI
vs
BLT RESTAURANT GROUP LLC
Sequence Number : 001
DISMISS ACTION

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____
Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____
Answering Affidavits — Exhibits _____ | No(s). _____
Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

is decided in accordance with the annexed decision.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 12/23/13

CYNTHIA S. KERN, J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

-----X
SHANI HYLTON, individually and on behalf of all
others similarly situated and on behalf of the general
public,

Plaintiff,

Index No. 653077/13

-against-

DECISION/ORDER

BLT RESTAURANT GROUP LLC and BLT GRILL
NYC LLC,

Defendants.

-----X
HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for

: _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Notice of Cross-Motion.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Plaintiff Shani Hylton commenced the instant class action against defendants BLT Restaurant Group LLC and BLT Grill NYC LLC (hereinafter collectively referred to as “defendants”) alleging unlawful surveillance in violation of New York Labor Law (“Labor Law”) § 203-c. Defendants now move for an Order pursuant to CPLR §§ 3211 (a)(1) and (a)(7) dismissing the complaint based on documentary evidence and that it fails to state a cause of action. For the reasons set forth below, defendants’ motion is denied.

The relevant facts are as follows. In or around June 2012, plaintiff was employed by defendants as a line cook at one of defendants’ restaurants, BLT Bar & Grill, located at 123 Washington Street, New York, New York (the “restaurant”). Plaintiff alleges that the restaurant’s

facilities include a locker room that is used by approximately forty employees to store personal belongings and to change into and out of their work uniforms, which must be left at the restaurant when the employees are not working. Plaintiff further alleges that in or around June 2013, the restaurant's management installed a video camera in said locker room and that beneath the video camera is a sign informing employees that they are subject to twenty-four hour video surveillance. Defendants allege that the video camera was installed in that area after they received numerous complaints from employees that their personal belongings were being stolen. Plaintiff then commenced the instant class action against defendants alleging unlawful surveillance in violation of Labor Law § 203-c. Defendants now move for an Order pursuant to CPLR §§ 3211(a)(1) and (a)(7) dismissing the complaint based on documentary evidence and that it fails to state a cause of action.

On a motion addressed to the sufficiency of the pleadings, the facts pleaded are assumed to be true and accorded every favorable inference. *See Morone v. Morone*, 50 N.Y.2d 481 (1980). Moreover, "a [claim] should not be dismissed on a pleading motion so long as, when [defendant's] allegations are given the benefit of every possible inference, a cause of action exists." *Rosen v. Raum*, 164 A.D.2d 809 (1st Dept 1990). "Where a pleading is attacked for alleged inadequacy in its statements, [the] inquiry should be limited to 'whether it states in some recognizable form any cause of action known to our law.'" *Foley v. D'Agostino*, 21 A.D.2d 60, 64-65 (1st Dept 1977), citing *Dulberg v. Mock*, 1 N.Y.2d 54, 56 (1956). Further, in order to prevail on a defense founded on documentary evidence pursuant to CPLR § 3211 (a)(1), the documents relied upon must definitively dispose of plaintiff's claim. *See Bronxville Knolls, Inc. v. Webster Town Partnership*, 221 A.D.2d 248 (1st Dept 1995). Additionally, the documentary evidence must be such that it resolves all factual issues as a matter of law. *Goshen v. Mutual Life*

Ins. Co. of New York, 98 N.Y.2d 314 (2002).

In the instant action, defendants' motion for an Order pursuant to CPLR §§ 3211 (a)(7) dismissing the complaint on the ground that it fails to state a cause of action is denied as plaintiff has sufficiently alleged a cause of action for unlawful surveillance. Pursuant to Labor Law § 203-c, "[n]o employer may cause a video recording to be made of any employee in a restroom, locker room, or room designated by an employer for employees to change their clothes, unless authorized by court order." Plaintiff's complaint alleges that defendants violated Labor Law § 203-c when they "unlawfully installed a video camera in a locker room designated by Defendant for approximately forty of its employees to change their clothes." Thus, plaintiff sufficiently states a cause of action for unlawful surveillance pursuant to CPLR § 203-c.

Defendants' motion for an Order pursuant to CPLR § 3211 (a)(1) dismissing the complaint based on documentary evidence is also denied as the documents relied upon by defendants do not definitively dispose of plaintiff's claim. Defendants rely on photographs of the room at issue which they allege show that the room was not a "locker room" pursuant to CPLR § 203-c but rather a storage room. However, the photographs do not conclusively establish that the room was not a "locker room" pursuant to that statute as they merely show a closed-off area with lockers and storage space. However, even if the photographs did conclusively establish that the room was actually a storage room and not a locker room pursuant to that statute as a matter of law, which they do not, they still would not definitively dispose of plaintiff's claim as they do not conclusively establish that defendants did not designate the storage room as a place for employees to change their clothes, which would also be a violation of Labor Law § 203-c. Defendants' assertion in the affidavit of Eduard Petrescu, the restaurant's General Manager, that the room at issue was not designated by defendants as an area to change clothes as "[t]he employees are

permitted to change their clothes in the bathrooms not the storage area” also does not definitely dispose of plaintiff’s claim as party affidavits do not constitute documentary evidence on a motion to dismiss. *See Flowers v. 73rd Townhouse LLC*, 99 A.D.3d 431 (1st Dept 2012).

Accordingly, defendants’ motion to dismiss the complaint is denied. This constitutes the decision and order of the court.

Dated:

12/23/13

Enter:

CGK

J.S.C.

CYNTHIA S. KERN
J.S.C.