

**Buckstine v Schor**

2016 NY Slip Op 33209(U)

December 23, 2016

Supreme Court, Westchester County

Docket Number: Index No. 57710/2016

Judge: Lawrence H. Ecker

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER**

-----X  
HANNAH BUCKSTINE,

**INDEX NO. 57710/2016**

Plaintiff,  
  
-against-

**AMENDED  
DECISION/ORDER**

**Motion Date: 9/28/16  
Motion Seq. 2, 3**

JORDAN SCHOR, JORDAN'S OF NEW PALTZ LLC  
and L CORE ENTERPRISE CORP.,

Defendants.

-----X  
ECKER, J.

The following papers numbered 1 through 11 were read on the motion of Jordan Schor ("Schor"), made pursuant to CPLR 3211(a)(7), seeking dismissal of the complaint brought by Hannah Buckstine ("plaintiff") (Motion Seq. 2) and plaintiff's cross-motion seeking to amend the complaint (Motion Seq 3):

<u>PAPERS</u>	<u>NUMBERED</u>
Notice of Motion, Affirmation, Exhibits A-E,	1 - 7
Notice of Cross-Motion, Affirmation in Opposition/ In Support, Memorandum of Law	8 - 10
Reply Affirmation in Support/Opposition	11

Upon the foregoing papers, the court determines as follows:

Plaintiff, in her amended complaint [Ex. D], seeks monetary damages as a result of the negligence of the three named defendants. She sustained physical injuries while a patron at a pizzeria operated by Jordan's of New Paltz LLC ("the LLC") at premises leased

to it by LCore Enterprise Corp., who has appeared, answered but not participated in this motion.<sup>1</sup> Jordan Schor is alleged to be the “corporate officer” of the LLC who has also appeared and answered, but not participated in this motion.

According to the amended complaint, plaintiff’s injuries were sustained on October 25, 2014 due to defendants’ failure to timely repair defects and dangerous conditions on the stairs located at the pizzeria, in breach of each defendant’s duty to maintain the stairs in “a reasonably safe condition”. Each of the defendants, in its or his own right, is alleged to have “negligently constructed, inspected, negligently cared for, negligently maintained, and negligently repaired the stairs. Plaintiff repeats the same allegations as to each defendant, claiming that each of the defendants had committed affirmative acts of negligence in the maintenance of the stairs, and that said acts were the proximate cause of plaintiff’s injuries.

On a motion to dismiss pursuant to CPLR 3211(a)(7), the standard is whether the pleading states a cause of action, not whether the proponent of the pleading has a cause of action. In considering such a motion, the court must accept the facts as alleged in the complaint as true, accord plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. *Law Ofcs. of Thomas F Liotti v State of New York*, 139 AD3d 812 [2d Dept 2016]. That is, such a motion to dismiss should be granted only where, even viewing the allegations as true, the plaintiff cannot establish a cause of action. *Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409 [2001]; *Leon v Martinez*, 84 NY2d 83, 87 [1994]; *Anderson v Armentano*, 139 AD3d 769 [2d Dept 2016].

At the outset, the court notes that both plaintiff and Schor refer to him as a shareholder of the LLC.<sup>2</sup> However, pursuant to Limited Liability Law § 102(q), assuming he has an equity interest in the LLC, defined as a membership interest [LLC Law § 102(r), then he is a member of the LLC. It is unknown at this time whether he is a manager of the LLC, as defined by LLC Law § 102(p). For purposes of this motion, the court will consider Schor a member of the LLC. The issue, therefore, is whether, at the pleading stage of this action, the complaint states a cause of action against him individually in his “corporate” (member) status.

Plaintiff has alleged that Schor, acting on his own, has been actively negligent in his maintenance of the stairs. The allegations against him are the same as those asserted against the LLC and Lcore. An action may be maintained against an officer of a

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<sup>1</sup> For purposes of this motion, the named defendants are referred to as “the defendants”.

<sup>2</sup> The New York Secretary of State website confirms that Jordan's of New Paltz LLC is registered as a domestic limited liability company located at 52 Main Street, New Paltz in Ulster County, New York.

corporation/defendant if there is evidence that the officer was exclusively charged with the duty of managing the premises, in which case the officer would have owed the plaintiff an independent duty to maintain the premises. *Tucker v Meola*, 170 AD2d 667 [2d Dept 1991]. This rule likewise applies to members of a limited liability company who may be held personally liable if they participate in the commission of a tort in furtherance of company business. *Smith v Delta Intern. Machinery Corp.*, 69 AD3d 840, 842 [2d Dept 2010].

Mindful of the court's role when addressing the viability of a complaint pre-answer, and applying that standard to this complaint, the court finds plaintiff has stated a cause of action against Schor. As such, issue must be joined and disclosure proceedings initiated, where the allegations of the complaint may be further examined. The court finds Schor is not entitled at this time to dismissal of the complaint as against him individually.

The cross-motion is denied, as moot, based upon this ruling, and due to plaintiff's failure to submit a proposed second amended complaint.

The court has considered the additional contentions of the parties not specifically addressed herein. To the extent any relief requested by either party was not addressed by the court, it is hereby denied. Accordingly, it is hereby

ORDERED that the motion of Jordan Schor, for dismissal of the complaint, as against him, made pursuant to CPLR 3211(a)(7), is denied; and it is further

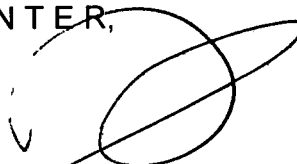
ORDERED that the motion of Hannah Buckstine, made pursuant to CPLR 3025, to file a second amended complaint, is denied as moot; and it is further

ORDERED that pursuant to the Preliminary Conference Stipulation, dated December 13, 2016, all parties to this action shall appear at the Compliance Conference in the Compliance Conference Part of the Court, Room 800, on February 28, 2017 at 9:30 a.m.

The foregoing constitutes the Decision/Order of the court.

Dated: White Plains, New York  
December 23, 2016

ENTER,

A handwritten signature in black ink, consisting of a stylized, cursive 'L' followed by 'AWRENCE H. ECKER'. The signature is written over a horizontal line.

HON. LAWRENCE H. ECKER, J.S.C.

**Appearances**

Law Office of Todd J. Kroumer  
Attorneys for Plaintiff  
Via NYSCEF

Miranda Sambursky Slone Sklarin Verveniotis, LLP  
Attorneys for Defendants Jordan Schor and Jordan's  
of New Paltz LLC  
Via NYSCEF

McCabe & Mack LLP  
Attorneys for Defendant LCore Enterprises Corp.  
Via NYSCEF