Rojas v Vacca Grill & Lounge
2017 NY Slip Op 31017(U)
May 12, 2017
Supreme Court, New York County
Docket Number: 157513/16
Judge: Kathryn E. Freed
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - PART 2

----------X

OBDULIO NICOLAS ROJAS,

Plaintiff,

-against-

VACCA GRILL & LOUNGE, INWOOD PARTNERS, LLC, GLOBAL SECURITY SERVICES and 5 POINTS SECURITY CORP.,

Defendants.

----------X

DECISION AND ORDER

Index No.: 157513/16
Mot. Seq. No.: 001

KATHRYN E. FREED, J.S.C.

RECITATION, AS REQUIRED BY CPLR 2219 (a), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS MOTION, REFERENCED THROUGHOUT ACCORDING TO THE DOCUMENT NUMBERS ASSIGNED TO THEM BY THE NEW YORK STATE COURTS ELECTRONIC FILING SYSTEM (NYSCEF):

PAPERS	NUMBERED
NOTICE OF MOTION AND AFF. IN SUPPORT	1-2 (Exs. A-G)

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THE MOTION IS AS FOLLOWS:

In this personal injury action commenced by plaintiff Obdulio Nicolas Rojas, defendant Inwood Partners 2, LLC, incorrectly sued herein as Inwood Partners, LLC, moves, pursuant to CPLR 3212, for summary judgment dismissing all claims and crossclaims against it. The motion is unopposed. Following a review of the papers submitted, as well as the relevant statutes and case law, **the motion is granted**.

Plaintiff alleges that, on December 22, 2015, he was seriously injured when assaulted by bouncers at the defendant Vacca Grill & Lounge ("Vacca"), located at 416 West 203rd Street, New York, New York. Ex. A. On September 8, 2016, plaintiff commenced the captioned action against

defendants Vacca, the tenant at the premises; Inwood Partners 2, LLC, incorrectly sued herein as Inwood Partners, LLC ("Inwood"), the owner/landlord of the premises; and Global Security Services ("Global") and 5 Points Security Corp. ("5 Points"), which allegedly provided security at the premises. Id. In the complaint, plaintiff set forth causes of action for assault and battery, negligence, and negligent hiring and training. Ex. A.

Inwood joined issue by service of its verified answer on or about November 1, 2016. Ex. B. Ex. C. Vacca joined issue by service of its verified answer on or about January 4, 2017. In its answer, Vacca cross-claimed against the other defendants for contribution and contractual and common law indemnification. Ex. C. Global and 5 Points have not answered.

"The proponent of a summary judgment motion must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law." *Dallas-Stephenson v Waisman*, 39 AD3d 303, 306 (1st Dept 2007), citing *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 (1985). The failure to make such a showing requires denial of the motion. *Id.* Summary judgment is a drastic remedy and should only be granted if the movant has sufficiently established that such relief is warranted as a matter of law. *See Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 (1986).

Inwood argues that it is entitled to summary judgment based on copies of the pleadings (Exs. A, B and C), the triple net lease agreements for 416 and 420 West 203rd Street, New York, New York (Exs. E and F), and the sworn affidavit of Jason Sorkin, Vice-President of Sierra Assets Group, Ltd. ("Sierra"), Inwood's managing agent for the premises since 2009. Ex. D.

Separate triple net leases were in effect for the 416 and 420 West 203rd Street, respectively,

as of the date of the alleged incident. Exs. D, E, and F.[1] Pursuant to a lease dated August, 2011, and expiring August 31, 2021, Inwood Partners 2, LLC rented 420 West 203rd Street to Geory Cruz, an owner of Vacca, as tenant. Exs. D, E. Pursuant to the rider to the lease, Cruz was responsible for security at the building. Ex. E, Rider at par. 75. Cruz was also required to indemnify and hold harmless Inwood from, inter alia, any injury to a person at the premises occurring during the term of the lease. Ex. E, Rider at par. 80. Additionally, the lease required Cruz to name Inwood and its managing agent as additional insureds on its commercial general liability policy. Ex. E, Rider at par. 49(a)(i). The lease permitted Inwood to enter the demised premises in the event of an emergency, or at other reasonable times, to make repairs. Ex. E, at par. 13.

On August 1, 2013, Inwood Partners 2, LLC, as landlord, entered into a lease with Dario Oleaga, an owner of Vacca, as tenant, for 416 West 203rd Street. Ex. D, Ex. F. The expiration date of the lease was July 31, 2028. Id. Pursuant to the rider to the lease, Oleaga was responsible for security at the building. Ex. F, at Rider par. 75 . Oleaga was also required to indemnify and hold harmless Inwood from, inter alia, any injury to a person occurring at the premises during the term of the lease. Ex. F, at Rider par. 80. In addition, the lease required Oleaga to name Inwood and its managing agent as additional insureds on its commercial general liability policy. Ex. F, Rider at par. 49(a)(i). The lease permitted Inwood to enter the demised premises in the event of an emergency, or at other reasonable times, to make repairs. Ex. F, at par. 13.

In his affidavit in support of the motion, Sorkin identifies the leases in effect as of the date of the alleged incident and represents, among other things, that neither Inwood nor Sierra was

---

[1]Although plaintiff alleges that the alleged assault occurred at 416 West 203rd Street (Ex. A), Sorkin states in his affidavit that Vacca was the sole tenant of 416-420 West 203rd Street as of the date on which the alleged incident occurred. Ex. D.

involved in any way with security procedures at Vacca. Ex. D. He further stated that he was not at Vacca at the time of the alleged assault. Id.

Inwood, an out-of-possession landlord, has established its prima facie entitlement to summary judgment by demonstrating that it did not control the premises where plaintiff was allegedly assaulted. *See Arreaga v 112 Dyckman Rest., Inc.*, 143 AD3d 646, *citing D'Amico v Christie*, 71 NY2d 76, 85 (1987). "An owner of premises generally owes no duty to control the conduct of its tenants for the benefit of third persons." *Azam v MacDougal Assoc., LLC*, 2014 Slip Op 33659(U), quoting 85 N.Y. Jur. 2d Premises Liability, section 161. An out-of-possession landlord with limited right of re-entry, such as Inwood, cannot be held liable for an assault which occurs on its premises. *See Drotar v 60 Sweet Thing, Inc.*, 106 AD3d 426 (1st Dept 2013); *Regina v Broadway-Bronx Motel Co.*, 23 AD3d 255, 256 (1st Dept 2005).

Given the foregoing, this Court finds that Inwood cannot be held liable under the circumstances herein and that the claims and all crossclaims against it must be dismissed. In dismissing the complaint against Inwood Partners, LLC, this Court notes that plaintiff neither named Inwood Partners 2, LLC, the party which actually entered into the leases, as a direct defendant nor cross-moved upon this motion to name it as a correct defendant.

In accordance with the foregoing, it is hereby:

ORDERED that the motion by the defendant sued herein as Inwood Partners, LLC, for summary judgment pursuant to CPLR 3212 dismissing the complaint and all crossclaims against it, is granted, and the complaint and all crossclaims are dismissed as to the party sued herein as Inwood Partners, LLC, with costs and disbursements to said defendant as taxed by the Clerk of the Court,

and the Clerk is directed to enter judgment in favor of the party named herein as Inwood Partners, LLC; and it is further,

ORDERED that the remainder of the action shall continue; and it is further,

ORDERED that this constitutes the decision, order and judgment of the court.

DATED: May 12, 2017

ENTER:

KATHRYN E. FREED, J.S.C.

HON. KATHRYN FREED
JUSTICE OF SUPREME COURT