SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. JOHN J. KELLEY** **PART** **IAS MOTION 56EFM**

Justice

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ANNMARIE CELANO,

Plaintiff,

- v -

CITIGROUP TECHNOLOGY, INC., and CUSHMAN AND WAKEFIELD, INC.,

Defendants.

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INDEX NO. 158988/2019

MOTION DATE 08/05/2020

MOTION SEQ. NO. 001

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number 13, 14, 15, 16, 17, 18, 19, 20, and 21 (Motion 001)

were read on this motion to/for SUMMARY JUDGMENT.

In this action to recover damages for personal injuries arising from a slip-and-fall accident, the defendant Citigroup Technology, Inc. (CTI), moves pursuant to CPLR 3212 for summary judgment dismissing the complaint and all cross claims insofar as asserted against it. The plaintiff opposes the motion. The motion is denied.

The plaintiff, an employee of Citibank, N.A., allegedly slipped and fell at an office building in Manhattan owned by CTI, a subsidiary of Citibank, N.A., in the course of walking in the lobby of the building. In her bill of particulars, and on her claim for Workers' Compensation benefits, the plaintiff identified "Citibank" as her employer. Although depositions and document discovery have yet to be conducted, CTI moves for summary judgment dismissing the complaint and all cross claims asserted against it, contending that the exclusivity provisions of Workers' Compensation Law § 11 bar the plaintiff's cause of action against it.

In support of its motion, CTI submits an attorney's affirmation and a copy of a United States Securities and Exchange Commission "10K" filing for Citigroup, Inc., the parent corporation of Citibank, N.A. As relevant here, that filing shows only that Citibank, N.A., is a

subsidiary of Citigroup, Inc., and that CTI is, in turn, a subsidiary of Citibank, N.A. CTI's attorney asserts that, based on this corporate chart, CTI has established that, by asserting a cause of action against CTI, the plaintiff is essentially asserting a personal injury claim against her employer, Citibank, N.A., in violation of Workers' Compensation Law § 11. In opposition, the plaintiff argues, in effect, that CTI failed to establish its prima facie entitlement to judgment as a matter of law. She also contends that, inasmuch as no significant discovery has been conducted, including discovery into the true nature of the relationship between Citibank, N.A., and CTI, CTI's motion is, at the very least, premature.

> "The protection against lawsuits brought by injured workers which is afforded to employers by Workers' Compensation Law §§ 11 and 29(6) also extends to entities which are alter egos of the entity which employs the plaintiff. A defendant moving for summary judgment based on the exclusivity defense of the Workers' Compensation Law under this theory must show, prima facie, that it was the alter ego of the plaintiff's employer. A defendant may establish itself as the alter ego of a plaintiff's employer by demonstrating that one of the entities controls the other or that the two operate as a single integrated entity. A parent corporation may be deemed to be an employer of an employee of a subsidiary corporation for Workers' Compensation purposes if the subsidiary functions as the alter ego of the parent. *However, a mere showing that the entities are related is insufficient where a defendant cannot demonstrate that one of the entities controls the day-to-day operations of the other*"

(*Batts v IBEX Constr., LLC*, 112 AD3d 765, 766-767 [2d Dept 2013] [citations and internal quotation marks omitted] [emphasis added]; *see Quizhpe v Luvin Constr. Corp*., 103 AD3d 618, 618-619 [2d Dept 2013]; *Morato-Rodriguez v Riva Constr. Group, Inc*., 88 AD3d 549, 549 [1st Dept 2011]; *Carty v East 175th St. Hous. Dev. Fund Corp*., 83 AD3d 529, 529 [1st Dept 2011]; *Samuel v Fourth Ave. Assoc., LLC*, 75 AD3d 594, 594-595 [2d Dept 2010]; *Cappella v Suresky at Hatfield Lane, LLC*, 55 AD3d 522, 522-523 [2d Dept 2008]; O*rtega v Noxxen Realty Corp*., 26 AD3d 361, 362 [2d Dept 2006]; *Constantine v Premier Cab Corp.*, 295 AD2d 303, 304 [2d Dept 2002]; *Dennihy v Episcopal Health Servs.*, 283 AD2d 542, 543 [2d Dept 2001]; *Ploszaj v Cooper Tank & Welding Corp*., 213 AD2d 385 [2d Dept 1995]).

This approach to the analysis of Workers' Compensation exclusivity in the parent-subsidiary context flows from the well-settled rule that there is a presumption of corporate

separateness between parent and subsidiary entities (*see Meshel v Resorts Intl. of N.Y., Inc*., 160 AD2d 211 [1st Dept 1990]). As a general rule, a parent corporation is not liable for the acts of a subsidiary (*see McCloud v Bettcher Indus., Inc*., 90 AD3d 1680, 1681 [4th Dept 2011]). Indeed, liability can never be predicated solely upon the fact that a parent corporation owns a controlling interest in the shares of its subsidiary (*see Billy v Consolidated Mach. Tool Corp*., 51 NY2d 152, 163 [1980]; *McCloud v Bettcher Indus., Inc*., 90 AD3d at 1681; *Lowendahl v Baltimore & O.R.C*., 247 App Div 144, 155 [1st Dept 1936], *affd* 272 NY 360 [1936]). Even complete ownership of a subsidiary's stock is insufficient, by itself, to pierce the corporate veil (*see Oxbow Calcining USA, Inc. v American Indus. Partners*, 96 AD3d 646, 649 [1st Dept 2014]).

In its motion, CTI showed only that it was related to, or "affiliated with," the plaintiff's employer, Citibank, N.A., and that both were related to, or "affiliated with," Citigroup, Inc. It made no showing that Citibank, N.A., was the alter ego of CTI, or vice versa. CTI also made no showing that Citibank, N.A., controlled and dominated its operations, that the two corporations operated as a single, integrated entity, or that they were covered by the same Workers' Compensation policy.

It is well settled that the movant on a summary judgment motion "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (*Winegrad v New York Univ. Med. Ctr*., 64 NY2d 851, 853 [1985] [citations omitted]). The motion must be supported by evidence in admissible form (*see Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]), as well as the pleadings and other proof such as affidavits, depositions, and written admissions (*see* CPLR 3212). The facts must be viewed in the light most favorable to the non-moving party (*see Vega v Restani Constr. Corp*., 18 NY3d 499, 503 [2012]). In other words, "[i]n determining whether summary judgment is appropriate, the motion court should draw all reasonable inferences in favor of the nonmoving party and should not pass on issues of credibility" (*Garcia v J.C.*

Duggan, Inc., 180 AD2d 579, 580 [1st Dept 1992]). Once the movant meets its burden, it is incumbent upon the non-moving party to establish the existence of material issues of fact (*see Vega v Restani Constr. Corp*., 18 NY3d at 503). A movant's failure to make a prima facie showing requires denial of the motion, regardless of the sufficiency of the opposing papers (s*ee id*.; *Medina v Fischer Mills Condo Assn.,* 181 AD3d 448, 449 [1st Dept 2020]).

"The drastic remedy of summary judgment, which deprives a party of his [or her] day in court, should not be granted where there is any doubt as to the existence of triable issues or the issue is even 'arguable'" (*De Paris v Women's Natl. Republican Club, Inc*., 148 AD3d 401, 403-404 [1st Dept 2017]; *see Bronx-Lebanon Hosp. Ctr. v Mount Eden Ctr*., 161 AD2d 480, 480 [1st Dept 1990]). Thus, a moving defendant does not meet its burden of affirmatively establishing entitlement to judgment as a matter of law merely by pointing to gaps in the plaintiff's case. It must affirmatively demonstrate the merit of its defense (s*ee Koulermos v A.O. Smith Water Prods*., 137 AD3d 575, 576 [1st Dept 2016]; *Katz v United Synagogue of Conservative Judaism,* 135 AD3d 458, 462 [1st Dept 2016]).

CTI failed to establish its prima facie entitlement to judgment as a matter of law based on the exclusivity provisions of Workers' Compensation Law § 11. Its motion must thus be denied, regardless of the sufficiency of the plaintiff's opposition papers.

In any event, the true nature of the relationship between Citibank, N.A., and CTI is a matter exclusively within the knowledge of CTI. As such, summary judgment must also be denied on the ground that no significant discovery on that issue has yet to be conducted, and such discovery would be necessary for the plaintiff properly to oppose the motion (see CPLR 3212[f] *Global Mins. & Metals Corp. v. Holme*, 35 AD3d 93, 102 [1st Dept 2006]). The court notes, however, that the rule against successive summary judgment motions would bar another summary judgment motion by CTI asserting Workers' Compensation exclusivity as the ground for dismissal (*see Amill v Lawrence Ruben Co., Inc.*, 117 AD3d 433, 433 [1st Dept 2014]). Successive summary judgment motions should only be entertained where there is a "showing of

newly discovered evidence or other sufficient justification" (*Jones v 636 Holding Corp*., 73 AD3d 409, 409 [1st Dept 2010]). The evidence on which CTI would need to rely cannot conceivably be "newly discovered," as it is already within its knowledge and possession.

Accordingly, it is

ORDERED that the motion of the defendant Citigroup Technology, Inc., for summary judgment dismissing the complaint and all cross claims insofar as asserted against it is denied.

This constitutes the Decision and Order of the court.

8/11/2020
DATE

JOHN J. KELLEY, J.S.C.

CHECK ONE:		**CASE DISPOSED**		**X**	**NON-FINAL DISPOSITION**		
		GRANTED	**X** **DENIED**		**GRANTED IN PART**		**OTHER**
APPLICATION:		**SETTLE ORDER**			**SUBMIT ORDER**		
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**			**FIDUCIARY APPOINTMENT**		**REFERENCE**