

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

	:	
PAULETTE FASICK	:	
	:	
v.	:	Civil Action No. DKC 13-2127
	:	
REGENCY CENTERS CORPORATION	:	
	:	

**MEMORANDUM OPINION AND ORDER**

Plaintiff Paulette Fasick commenced this action on June 5, 2013, by filing a complaint in the Circuit Court for Prince George’s County, Maryland, alleging negligence against Defendant Regency Centers Corporation. The complaint asserts that, “on or about June 17, 2010, at approximately 3:00 p.m., Plaintiff . . . was lawfully on the premises owned and/or maintained by Defendant, as an invitee at the subject property” - *i.e.*, Bowie Plaza Shopping Center, in Bowie, Maryland - when she “fell down a stairway that was in a hazardous condition and sustained serious injuries.” (ECF No. 2 ¶¶ 3, 4).

Defendant timely removed to this court, citing diversity of citizenship as the jurisdictional basis. On July 31, 2013, Defendant filed a motion to dismiss pursuant to Fed.R.Civ.P. 12(b)(6), arguing that it “did not own or operate Bowie Plaza Shopping Center” and, therefore, “owed no duty to [Plaintiff]

and has no liability for her injuries." (ECF No. 8 ¶ 6).<sup>1</sup> Plaintiff opposed Defendant's motion, arguing that multiple Regency entities shared a common address and resident agent, that these were "separate corporate entities in name only[,] and that this misnomer, if it be a misnomer at all, should be allowed to be corrected via amendment if necessary." (ECF No. 11 ¶ 11). On August 20, Plaintiff filed a motion for leave to amend the complaint, seeking to substitute "Regency Centers, L.P." as the defendant. (ECF No. 13 ¶ 2).

Pursuant to Fed.R.Civ.P. 15(a)(1)(B), "[a] party may amend its pleading once as a matter of course within . . . 21 days after service of a motion under Rule 12(b)[.]" Plaintiff's motion for leave to amend, which attached a proposed amended complaint (ECF No. 13-3), was filed twenty-one days after Defendant filed its motion to dismiss. Therefore, Plaintiff was entitled to file an amended complaint without seeking leave and

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<sup>1</sup> Although this motion is labeled as a motion to dismiss and expressly seeks dismissal of the complaint, it addresses the standard for summary judgment and attaches a number of exhibits, including the declaration of John Zuk, a property manager for Regency Centers, L.P., attesting that Regency Centers Corporation is not the owner or manager of the property (ECF No. 8-2 ¶¶ 4, 5), and a "Property Management and Leasing Agreement," suggesting that Regency Realty Group, Inc., a Florida corporation, is the property manager and leasing agent. (ECF No. 8-3, at 1, A-1). The court may not consider outside evidence in connection with a motion to dismiss under Fed.R.Civ.P. 12(b)(6). See *Kress v. Food Employers Labor Relations Ass'n*, 217 F.Supp.2d 682, 684 (D.Md. 2002).

Defendant's motion to dismiss the original complaint is rendered moot.

Accordingly, it is this 21<sup>st</sup> day of November, 2013, by the United States District Court for the District of Maryland, ORDERED that:

1. Plaintiff's motion for leave to amend the complaint (ECF No. 13) BE, and the same hereby IS, DENIED AS MOOT;

2. The clerk is directed to detach ECF No. 13-3 from the motion for leave to amend and file it separately as the first amended complaint;

3. Plaintiff is directed promptly to submit a summons to the clerk naming Regency Centers, L.P., as the defendant;

4. Defendant's motion to dismiss (ECF No. 8) BE, and the same hereby IS, DENIED AS MOOT;

5. The clerk is directed to transmit copies of this Memorandum Opinion and Order to counsel for the parties.

\_\_\_\_\_/s/\_\_\_\_\_  
DEBORAH K. CHASANOW  
United States District Judge