

Sharpe v Shabbat LLC
2013 NY Slip Op 30272(U)
February 4, 2013
Supreme Court, New York County
Docket Number: 109311/2011
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: _____
Justice

PART 5

Index Number : 109311/2011
SHARPE, RONALD
vs.
SHABBAT LLC
SEQUENCE NUMBER : 003
PRECLUDE *Case # 89*

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

FILED


FEB 06 2013

COUNTY CLERK'S OFFICE
NEW YORK

RECEIVED IN ACCORDANCE WITH
ALL CHAMBERS DECISION / ORDER

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

Dated: 2-14-13
FEB 14 2013



_____, 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 5

-----X
RONALD SHARPE,

Plaintiff,

-against-

SHABBAT LLC; SHIMON AVRAHAMI; BANK OF
NEW YORK MELLON, BORAH GOLDSTEIN,
ALTCHULER, NAHINS & GOIDEL, P.C., JOSEPH
JUSEWITZ, M.M. SH LLC, MERCURY CREDIT
CORP., NYC DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT, and
NEDIVA SCHWARZ,

Defendants.

-----X
HON. KATHRYN E. FREED:

DECISION/ORDER

Index No.: 109311/2011

Seq. No.: 003

PRESENT:

HON. KATHRYN E. FREED

J.S.C.

FILED
FEB 06 2013
COUNTY CLERKS OFFICE
NEW YORK

RECITATION, AS REQUIRED BY CPLR §2219(a), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS MOTION.

PAPERS	NUMBERED
NOTICE OF MOTION AND AFFIDAVITS ANNEXED.....1-2.....
ORDER TO SHOW CAUSE AND AFFIDAVITS ANNEXED.....
ANSWERING AFFIDAVITS.....
REPLYING AFFIDAVITS.....
EXHIBITS..... 3-4.....
STIPULATIONS.....
OTHER.....

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

Defendant NYC Department Of Housing Preservation And Development, (hereinafter, “HPD”), moves or an Order transferring this matter to a DCM Part, assigned to matters involving the City of New York and its agencies such as HPD. HPD also moves for an Order pursuant to CPLR§3211 dismissing the complaint or, in the alternative, for summary judgment pursuant to

CPLR§3212, in that plaintiff has failed to comply with General Municipal Law 50-I, and that HPD is not an entity amenable to suit, and also that HPD does not own, operate, or control the premises in which the alleged accident occurred. No opposition has been submitted by any of the other parties to this suit.

After a review of the papers presented, all relevant statutes and caselaw, the Court grants the motion for summary judgment.

Factual and procedural background:

Plaintiff seeks damages for physical injuries he allegedly sustained on August 18, 2008, when he was struck by a bicyclist on the sidewalk at 525 West 45th Street, in New York. He commenced the instant action by filing a Summons and Complaint with Notice on August 1, 2011. On August 30, 2011, he served a copy of same on HPD. On August 31, 2011, HPD served a written demand for a compliant. Plaintiff then served a complaint on HPD via mail on January 6, 2012. Issue was then joined when HPD served its Answer on January 30, 2012. To date, HPD has not received Verified Answers from any of the other named defendants. However, co-defendants Borah, Goldstein, Altschuler, Nahins & Goidel, Shabbat LLC, Mercury Credit Corp., Nediva Schwatz and The Bank of New York, Mellon, as Trustee have appeared.

It should be noted that HPD's request that the case be transferred to the DCM or "City Part," was granted, via written Order on September 11, 2012. Therefore, this issue is now moot.

HPD next argues that the complaint and any cross-claims against it necessitate dismissal because it is not an entity amenable to suit. It refers to and relies on the New York City Charter §§ 2901 et seq., section 396, which provides that agencies of the City are not legal entities for the purpose of suit and therefore, cannot be named as parties.

Conclusions of law:

“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 A.D.3d 303, 306 [1st Dept. 1985] citing Wincgrad v. New York Univ. Med. Ctr., 64 N.Y.2d 851, 853 [1985]). Once the proponent has proffered evidence establishing a prima facie showing, the burden then shifts to the opposing party to present evidence in admissible form raising a triable issue of material fact (*see* Zuckerman v. City of N.Y., 49 N.Y.2d 557 [1989]; People ex rel Spitzer v. Grasso, 50 A.D.3d 535 [1st Dept. 2008]). “Mere conclusory assertions, devoid of evidentiary facts, are insufficient for this purpose, as is reliance upon surmise, conjecture or speculation” (Morgan v. New York Telephone, 220 A.D.2d 728, 729 [2d Dept. 1985]). If there is any doubt as to the existence of a triable issue of fact, summary judgment must be denied (Rotuba Extruders v. Ceppos, 46 N.Y.2d 223 [1978]; Grossman v. Amalgamated Hous. Corp., 298 A.D.2d 224 [1st Dept. 2002]).

It is well settled that HPD is an agency within a public corporation, the City of New York (*see* Rosenbaum v. City of New York, 8 N.Y.3d 1 [2006]). “Under New York law, departments which are merely administrative arms of a municipality do not have a legal identity separate and apart from the municipality and cannot sue or be sued” (Hall v. City of White Plains, 185 F. Supp.2d 293, 303 (S.D.N.Y. 2002); *see also* New York City Charter, Ch. 17 § 396; Lauro v. Charles, 219 F.3d 202, 205 n. 2 (2nd Cir. 2000)).

In the case at bar, since HPD is not an entity liable to suit as it is an administrative branch of New York City. Indeed, this is even more obvious by plaintiff’s failure to sue the City of New York proper. Moreover, there is no evidence that HPD owns, operates or controls the premises

wherein the alleged accident occurred.

Therefore in accordance with the foregoing, it is hereby

ORDERED that defendant NYC Department of Housing Preservation and Development's motion for summary judgment is granted and the complaint and any cross-claims are hereby severed and dismissed as against said defendant, and the Clerk is directed to enter judgment in favor of said defendant; and it is further

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

ORDERED that the Trial Support Office is directed to reassign this case to a non-City part and remove it from the Part 5 inventory. Plaintiff shall serve a copy of this order on all other parties and the Trial Support Office, 60 Centre Street, Room 158. Any compliance conferences currently scheduled are hereby cancelled and it is further

ORDERED that this constitutes the decision and order of the Co

DATED: February 4, 2013

FEB 04 2013

FILED

FEB 05 2013

ENTER:

COUNTY CLERK'S OFFICE
NEW YORK



Hon. Kathryn E. Freed
J.S.C.

HON. KATHRYN FREED
JUSTICE OF SUPREME COURT