

**Martinez v Board of Mgrs. of the Soho Tower**

2014 NY Slip Op 31263(U)

May 13, 2014

Supreme Court, New York County

Docket Number: 157217/2013

Judge: Eileen A. Rakower

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 15

-----X  
JUAN MARTINEZ,

Plaintiff,

Index No.:  
157217/2013

- against -

Decision and  
Order

Mot. Seq.: 01

BOARD OF MANAGERS OF THE SOHO TOWER,  
THE SOHO TOWER, SOHO TOWER, LLC,  
475 BROADWAY SOHO LLC,  
NEW BEDFORD MANAGEMENT CORP.,  
ESTATE OF RAYMOND VISAN,  
and TRAJA VISAN

Defendants.

-----X  
HON. EILEEN A. RAKOWER, J.S.C.

Plaintiff, Juan Martinez (“Plaintiff”) brings this action for personal injuries allegedly sustained on August 9, 2013, when Plaintiff fell from a height while purportedly performing renovation work within unit 7W (the “Unit”) of the building known as “The Soho Tower,” located at 48 Mercer Street, New York, New York (a/k/a 475 Broadway, New York, New York) (the “Premises”). Plaintiff asserts negligence and statutory causes of action under New York Labor Law §§ 200, 240, and 241(6) against defendants, Board of Managers of the Soho Tower, The Soho Tower, Soho Tower, LLC, 475 Broadway Soho LLC, New Bedford Management Corp., Estate of Raymond Visan, and Traja Visan (collectively “Defendants”).

Defendant, 475 Broadway Soho, LLC (“Movant”), now moves for an Order, pursuant to CPLR §§ 3211(a)(1) and (a)(7), dismissing Plaintiff’s complaint as

against 475 Broadway Soho, LLC on the basis of documentary evidence and failure to state a claim upon which relief may be granted, and; for an Order, pursuant to the Rules of the Chief Administrative Judge Part 130 Section 130-1.1, granting costs, fees, and sanctions.

Plaintiff opposes, only to the extent that Movant seeks sanctions.

CPLR § 3211 provides, in relevant part:

(a) a party may move for judgment dismissing one or more causes of action asserted against him on the ground that:

(1) a defense is founded upon documentary evidence;

(7) the pleading fails to state a cause of action.

On a motion to dismiss pursuant to CPLR §3211(a)(1), “the court may grant dismissal when documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law.” (*Beal Sav. Bank v. Sommer*, 8 NY3d 318, 324 [2007]) (internal citations omitted). A movant is entitled to dismissal under CPLR § 3211 when his or her evidentiary submissions flatly contradict the legal conclusions and factual allegations of the complaint. (*Rivietz v. Wolohojian*, 38 A.D.3d 301 [1st Dept. 2007]) (citation omitted). “When evidentiary material is considered, the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one.” (*Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 275 [1977]).

In determining whether dismissal is warranted for failure to state a cause of action, the court must “accept the facts alleged as true ... and determine simply whether the facts alleged fit within any cognizable legal theory.” (*People ex rel. Spitzer v. Sturm, Ruger & Co., Inc.*, 309 AD2d 91[1st Dept. 2003]) (internal citations omitted) (*see* CPLR § 3211[a][7]).

Movant submits a copy of the deed which shows that Movant owns the commercial condominium unit located on the first floor of the Premises, and that Movant did not acquire title to this commercial condominium unit until April 5, 2011. Movant argues that this deed constitutes documentary evidence warranting the dismissal of Plaintiff’s complaint against 475 Broadway LLC, because Movant does

not own the unit in which Plaintiff's accident allegedly occurred, and because Movant did not acquire any ownership interest in the Premises until April 5, 2011, almost eight months after the accident in question took place.

Here, Movant urges that its evidentiary submission, the deed to the commercial condominium unit located on the first floor of the Premises, flatly contradicts the legal conclusions and factual allegations of Plaintiff's complaint, namely, that Movant owed any "duty to the Plaintiff, in the ownership, operation, management, and control of the Premises and the work being performed thereat" at the time of the alleged incident.

Additionally, Movant submits the affirmation of Movant's attorney, Lisa D. Leveine-Shapiro, Esq., in which Lisa D. Leveine-Shapiro avers that she provided Plaintiff's attorney, Christopher James Patsos, Esq., with a copy of Movant's deed of ownership, and further avers that she made several requests to Plaintiff's attorney that Movant be voluntarily dismissed from Plaintiff's case. Movant's attorney also avers that she provided Mr. Patsos, at his request, with a stipulation of discontinuance pertaining solely to Movant, and that Mr. Patsos failed to return telephone calls regarding this stipulation. Copies of this correspondence and the stipulation of discontinuance are annexed to Movant's affirmation.

While Movant seeks reasonable attorneys' fees incurred in making this motion, Movant fails to submit any documentation or evidence of the fees incurred.

Wherefore it is hereby,

ORDERED that the motion to dismiss Plaintiff's complaint as against defendant, 475 Broadway LLC, is granted, and it is further

ORDERED that the Complaint is dismissed as against defendant, 475 Broadway LLC, and the Clerk is directed to enter judgment accordingly, with costs and disbursements to defendant, 475 Broadway LLC, as taxed by the Clerk; and it is further

ORDERED that the remainder of the action is severed and shall proceed.

This constitutes the decision and order of the Court. All other relief requested

is denied.

Dated: May 13, 2014



---

Eileen A. Rakower, J.S.C.