

Guzman v Promesa Found., Inc.
2016 NY Slip Op 31372(U)
June 29, 2016
Supreme Court, Bronx County
Docket Number: 308820/2008
Judge: Jr., Kenneth L. Thompson
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX IA 20 X
DAMARY GUZMAN,

Index No: 308820/2008

Plaintiff,

-against-

DECISION AND ORDER

Present:
HON. KENNETH L. THOMPSON, JR.

PROMESA FOUNDATION, INC., PROMESA
COMMUNITY COALITION FOR NEIGHBORHOOD
LEADERSHIP, INC., PROMESA HOMEFIRST
HOUSING DEVELOPMENT FUND COMPANY, INC.,
PROMESA RESIDENTIAL HEALTH CARE FACILITY,
INC., THE PROMESA HOUSING DEVELOPMENT
FUND CORPORATION, PROMESA ADMINISTRATIVE
SERVICES ORGANIZATION, INC., PROMESA
SYSTEMS INC., PUERTO RICAN ORGANIZATION TO
MOTIVATE, ENLIGHTEN, AND SERVE ADDICTS,
INC., THE HISPANIC ASSOCIATION FOR A DRUG
FREE SOCIETY, INC., CRIME DETERRENCE
AGENCY, INC. and MICHAEL ANGELO TORRES,

Defendants X

The following papers numbered 1 to 4 read on this motion for summary judgment

No	On Calendar of April 1, 2016	PAPERS NUMBER
Notice of Motion-Order to Show Cause - Exhibits and Affidavits Annexed-----		1, 2
Answering Affidavit and Exhibits-----		3, 4
Replying Affidavit and Exhibits-----		_____
Affidavit-----		_____
Pleadings -- Exhibit-----		_____
Memorandum of Law-----		_____
Stipulation -- Referee's Report --Minutes-----		_____
Filed papers-----		_____

Upon the foregoing papers and due deliberation thereof, the Decision/Order on this motion is as follows:

Defendants, Promesa Foundation, Inc., Promesa Community Coalition for Neighborhood Leadership, Inc., Promesa Homefirst Housing Development Fund Company Inc., Promesa Residential Health Care Facility, Inc., The Promesa Housing Development Fund Corporation, Puerto Rican Organization to Motivate, Enlighten And Serve Addicts, Inc., and The Hispanic Association for a Drug Free Society, Inc., move pursuant to CPLR 3212 for summary judgment dismissing the complaint as against them. Plaintiff cross-moves pursuant to CPLR 3212 for summary judgment on the issue of liability against Promesa Administrative Services Organization, Inc., (PASO).

Plaintiff does not oppose defendants' motion to the extent that it seeks dismissal of the complaint as against defendants, Promesa Foundation, Inc., Promesa Community Coalition for Neighborhood Leadership, Inc., Promesa Homefirst Housing Development Fund Company, Inc., and The Promesa Housing Development Fund Corporation.

Accordingly, the complaint as asserted against Promesa Foundation, Inc., Promesa Community Coalition for Neighborhood Leadership, Inc., Promesa Homefirst Housing Development Fund Company, Inc., and The Promesa Housing Development Fund Corporation, is hereby dismissed without opposition.

Pursuant to the Notice of Motion, there remains the following three movants whose motion for summary judgment is contested by plaintiff, Promesa Residential Health Care Facility, Inc., (Casa Promesa), Puerto Rican Organization to Motivate, Enlighten and Serve Addicts, Inc., (Promesa Inc.), and The Hispanic Association for a Drug Free Society, Inc., (Association).

This action arose as a result of personal injuries sustained by plaintiff when she sustained multiple stab wounds at the hands of co-defendant, Michaelangelo Torres, (Torres) in premises owned by defendant, Promesa Inc. The intentional assault took place on February 7, 2008. Plaintiff was employed as a substance abuse counselor for Promesa Inc. in its MTAR unit. Prior to the assault, plaintiff lived with Torres from January 2007 to June 2007, and was involved in a romantic physical relationship at a time when Torres was not a client. Plaintiff evicted Torres from her apartment after she found a syringe in his clothing and learned that he was a member of the Latin Kings. In December 2007, Torres re-entered the MTAR program and plaintiff continued to work for Promesa. No one at plaintiff's workplace knew of her relationship with Torres.

PROMESA INC.

It is undisputed that plaintiff was employed by Promesa Inc. and it is further undisputed that plaintiff has received Worker's Compensation benefits under her employer's policy.

Workers' compensation benefits are "[t]he sole and exclusive remedy of an employee against his employer for injuries in the course of employment" (*Gonzales v Armac Indus.*, 81 NY2d 1, 8 [1993]). This precludes suits against an employer for injuries in the course of employment.

"In exchange for the security of knowing that fixed benefits will be paid without the need to resort to expensive and sometimes risky litigation, . . . the employee has been asked to pay a price in the form of the loss of his common-law right to sue his employer in tort and perhaps to enjoy a more substantial recovery through a jury award" (*Billy v Consolidated Mach. Tool Corp.*, 51 NY2d 152, 159-160 [1980]).

Weiner v. City of New York, 19 N.Y.3d 852, 854 [2012]).

Plaintiff argue that "defendants contend that Torres attacked Ms. Guzman due to the fact they has a personal relationship." Defendants deny that Torres attacked plaintiff solely due to their personal relationship. Moreover, plaintiff's position is that she was stabbed by Torres for her providing a list of gang members to her supervisor. (Transcript, p. 470-471). The remedy of Worker's compensation is appropriate if "there is any nexus, however slender, between the motivation for the assault and the employment." *Perez v. Victory Motor Inn*, 2 A.D.3d 963, 964, [3rd Dept 2003]).

Accordingly, the motion is granted to the extent that the complaint is dismissed as against defendant, Puerto Rican Organization to Motivate, Enlighten and Serve Addicts, Inc.

CASA PROMESA

Plaintiff testified that Casa Promesa was a nursing home for HIV/AIDS patients in the last level of the disease and on methadone. Casa Promesa was housed in a building adjacent to Promesa Inc. with a connecting hall with a locked door. Casa Promesa had a separate address at 308 East 175th Street, Bronx, NY, while plaintiff's employer, Promesa Inc.'s address is 1776

Clay Ave, Bronx, NY. Torres was a client in the MTAR program which was located at 1776 Clay Ave. building, and was a residential program.

After 8PM, if there was any problems with the MTAR unit where Torres was housed, there would be a call to security in Casa Promesa. (Transcript, Jesus Pedrosa, Jr. pp. 142-143). Plaintiff was stabbed after 11:30 on February 7, 2008. Due to budget cuts, the 24 hour security that was present at 1776 Clay Ave., was eliminated in favor of shared security. (Transcript, Jesus Pedrosa, Jr, p. 26), a short time before the attack herein. Plaintiff's security expert opines that the attack could have been prevented if there had been a live surveillance feed to the security desk of Casa Promesa.

Accordingly, the branch of defendants' motion that seeks dismissal of the complaint as against Casa Promesa, is denied.

THE HISPANIC ASSOCIATION FOR A DRUG FREE SOCIETY, INC.

It is undisputed that The Hispanic Association for a Drug Free Society, Inc., is "an inactive corporation. It has no employees, assets or management. It was the predecessor company to P.R.O.M.E.S.A., Inc." (Affidavit of Tomas Del Rio, par. 12).

Accordingly, the branch of defendants' motion that seeks dismissal of the complaint as against The Hispanic Association for a Drug Free Society, Inc., is granted.

PLAINTIFF'S CROSS-MOTION AGAINST PASO

Plaintiff cross-moves for summary judgment against PASO on grounds that PASO failed to provide adequate security to prevent Torres' attack upon plaintiff. It is undisputed that PASO was responsible for the security at 1776 Clay Avenue. PASO was "subject to the common-law duty to take minimal precautions to protect tenants from foreseeable harm." *Jacqueline S. by Ludovina S. v. City of New York*, 81 N.Y.2d 288, 293-94 [1993]).

It is undisputed that there were no similar violent attacks at 1776 Clay Ave. involving a

knife or gun for the preceding three years. It is also undisputed that there have been altercations between clients in which the police were summoned. However, in *Jacqueline S.* the Court of Appeals held there was a triable issue of fact with respect to foreseeability, despite the fact that the "Housing Authority police, it appeared, had responded to numerous reports of forcible rapes and robberies." *Id.* at 495.

• Accordingly, plaintiff's cross-motion is denied.

CONCLUSION

Defendants' motion is granted to the extent that the complaint as asserted against Promesa Foundation, Inc., Promesa Community Coalition for Neighborhood Leadership, Inc., Promesa Homefirst Housing Development Fund Company, Inc., and The Promesa Housing Development Fund Corporation, is hereby dismissed without opposition. The motion is further granted to the extent that the complaint is hereby dismissed as against defendant, Puerto Rican Organization to Motivate, Enlighten and Serve Addicts, Inc. and The Hispanic Association for a Drug Free Society, Inc.

Defendants' motion is denied to the extent the motion seeks dismissal of the complaint as against Promesa Residential Health Care Facility, Inc.

Plaintiff's cross-motion is denied.

The foregoing shall constitute the decision and order of the Court.

Dated: JUN 29 2016



KENNETH L. THOMPSON JR. J.S.C.