

Caesar v Harlem USA Stores, Inc.
2016 NY Slip Op 31420(U)
July 21, 2016
Supreme Court, New York County
Docket Number: 157852/2013
Judge: Anil C. Singh
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 45

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FRANK CAESAR,

Plaintiff,

-against-

HARLEM USA STORES, INC.,

Defendants.

-----X

DECISION AND
ORDER

Index No.
157852/2013

Mot. Seq. 005

HON. ANIL C. SINGH, J.:

In this action for negligence, Frank Caesar (“plaintiff”) seeks damages from defendant, Harlem USA Stores, Inc (“defendant”). Defendant moves for an order dismissing plaintiff’s claim pursuant to CPLR § 3211(a)(1) and § 3211(a)(7).

On October 1, 2011, plaintiff was shopping with his daughter and granddaughter on the premises at 2309 Frederick Douglas Boulevard. While there, plaintiff fell down several stairs. Plaintiff alleges that as a result, he sustained serious injuries.

Plaintiff filed a tort claim against defendant on August 27, 2013, stating a cause of action sounding in negligence. Defendant failed to answer the complaint. After hearing medical evidence, a Special Referee ordered that plaintiff was entitled to \$275,000.00 in damages. Plaintiff placed a hold on defendant’s bank account and

defendant was notified of the hold on December 29, 2015 by J.P. Morgan Chase. Prior to the notification by the bank, defendant alleges to have been previously unaware of any action pending against it.

Defendant then, on February 2, 2016, filed an order to show cause for Preliminary Injunction and Temporary Restraining Order. Defendant sought to restrain plaintiff from further interfering with its bank accounts and to restore all the amounts already removed from its bank accounts. Defendant also moved to vacate the judgment and to receive an extension for the time to answer. On April 18, 2016, the Court granted defendant's motion and ordered plaintiff and the marshal to place any funds already removed from defendant's bank accounts into an escrow account. The Court also permitted defendant to file an answer to the original complaint within twenty days of April 18, 2016.

Thus, on May 3, 2016, defendant Harlem USA Stores, Inc. moved pursuant to CPLR 3211(a)(1) and (7) for an order dismissing plaintiff Frank Caesar's complaint in its entirety. Defendant does not contest that plaintiff fell on the premises of 2309 Frederick Douglass Boulevard and sustained serious injuries. However, defendant does contest that the fall was due to defendant's negligence. Defendant is a New York State Corporation that was incorporated pursuant to New York law in 1998 and serves as a holding company for Harlem Underground. Defendant alleges that its principal place of business is 2027 Fifth Avenue and operates two physical

locations, one at 20 East 125th Street and the other at 2217 Frederick Douglass Boulevard. Defendant further alleges that neither location has a staircase accessible to the shopping public and that the 2217 Frederick Douglass location was not open for business until August 2012, after plaintiff's fall. Further, defendant cites the public record, which indicates that HUSA Management, not defendant Harlem USA Stores, Inc., held the rights to the premises at 2309 Frederick Douglass.

Analysis

On a motion to dismiss based on the ground that the defenses are founded upon documentary evidence pursuant to CPLR 3211(a)(1), the evidence must be unambiguous, authentic, and undeniable. See Fountanetta v. Doe, 73 A.D.3d 78 (2d Dept 2010). "To succeed on a [CPLR 3211(a)(1)] motion ... a defendant must show that the documentary evidence upon which the motion is predicated resolves all factual issues as a matter of law and definitively disposes of the plaintiff's claim." Ozdemir v. Caithness Corp., 285 A.D.2d 961, 963 (2d Dept 2001), leave to appeal denied 97 N.Y.2d 605. Alternatively, "documentary evidence [must] utterly refute plaintiff's factual allegations, conclusively establishing a defense as a matter of law." See, Goshen v. Mutual Life Ins. Co. of New York, 98 N.Y.2d 314, 326 (2002).

On a motion to dismiss a complaint for failure to state a cause of action pursuant to § 3211(a)(7), all factual allegations must be accepted as true, the complaint must be construed in the light most favorable to plaintiffs, and plaintiffs

must be given the benefit of all reasonable inferences. Allianz Underwriters Ins. Co. v. Landmark Ins. Co., 13 A.D.3d 172, 174 (1st Dept 2004). The court determines only whether the facts as alleged fit within any cognizable legal theory. Leon v. Martinez, 84 N.Y.2d 83, 87-88 (1994). The court must deny a motion to dismiss, “if, from the pleading’s four corners, factual allegations are discerned which, taken together, manifest any cause of action cognizable at law.” 511 West 232nd Owners Corp. v. Jennifer Realty Co., 98 N.Y.2d 144, 152 (2002).

“[N]evertheless, allegations consisting of bare legal conclusions, as well as factual claims either inherently incredible or contradicted by documentary evidence, are not entitled to such consideration.” Quatrochi v. Citibank, N.A., 210 A.D.2d 53, 53 (1st Dept 1994) (internal citation omitted).

Plaintiff’s claim cannot be dismissed under 3211(a)(1). Defendant has not met its burden to make a showing that “documentary evidence upon which the motion is predicated resolves all factual issues as a matter of law and definitively disposes of the plaintiff’s claim.” Ozdemir, 285 A.D.2d at 963. Under the standard to dismiss pursuant to 3211 (a)(1), the evidence given by defendant, a Department of State printout of defendant’s address for the mailing of process (Exhibit F) and an uncertified copy of defendant’s Certificate of Assumed Name listing defendant’s principal place of business (Exhibit G), in support of the motion to dismiss is not sufficient documentary evidence as a matter of law. Neither piece of evidence

conclusively establishes that defendant did not own or possess the premises at 2309 Frederick Douglass Boulevard and did not owe a duty of care to the plaintiff for the 2309 Frederick Douglass location. A business may conduct business out of multiple locations and one mailing address for receipt of process does not foreclose the possibility of owning or renting other business locations.

Further, an affidavit given by an executive in support of a motion to dismiss is not documentary evidence within the meaning of the statute. See, Asmar v. 20th and Seventh Associates, LLC., 125 A.D.3d 563 (1st Dept 2015) (“An affidavit from its vice president, does not constitute ‘documentary evidence’ within the meaning of the statute.”). Therefore, as a matter of law, Leon Ellis’ affidavit simply stating that Harlem USA Stores, Inc. did not own the rights to the premises in question cannot constitute documentary evidence as to the ownership of the premises at 2309 Frederick Douglass.

Plaintiffs have also sufficiently pled all of the elements required for a negligence cause of action. The claim cannot be dismissed under § 3211(a)(7). Plaintiff’s complaint sets out the four corners of a cognizable negligence cause of action by alleging that plaintiff fell at 2309 Frederick Douglass, sustained serious injury and that the accident was due to defendant’s negligence on premises it owned or operated.

Defendant argues that it owed no duty of care to the plaintiff and thus plaintiff has not stated a cognizable cause of action sounding in negligence. Defendants contend that liability for the defective condition of property is predicated upon ownership and since defendant did not own the property, it cannot be held liable for the injuries plaintiff sustained. See, Araujo v. Mercer Square Owners Corp., 95 A.D.3d 624, 624 (1st Dept 2012) (“The LLC...is not an ‘owner’...thus, it is not liable for injuries sustained.”).

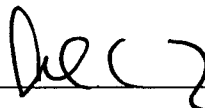
Defendant argues that the public record is evidence enough to establish that defendant had no ownership, occupancy, control or special use of the property in question. Thus, defendant contends, it owed no duty of care to the plaintiff and plaintiff cannot state a cause of action under § 3211(a)(7). Defendant cites to Exhibit H, or the public record, to show that HUSA Management Co., LLC held the rights to 2309 Frederick Douglass at the time of the accident.¹ Defendant states that there is no relationship between it and HUSA Management Co., LLC. However, defendants have not made a showing to establish the lack of that relationship. Plaintiff has sufficiently pleaded the elements of a negligence cause of action and defendant’s assertions about HUSA Management Co. are unsupported.

¹ Defendant cites Exhibit H as the public record. However, Exhibit H brought by defendant in its motion to dismiss is a copy of the Inquest Minutes from the inquest taken before a Judicial Referee. Exhibit E from motion sequence 004 is the public record that defendant misstates as Exhibit H. However, defendant has not brought the public record as evidence in this motion to dismiss.

ORDERED that defendant's motion to dismiss plaintiff's complaint pursuant to CPLR § 3211(a)(1) and (7) is denied; and it is further

ORDERED that this matter is randomly assigned to the general IAS part as it does not meet the criteria for matters to be brought before the commercial division.

Date: July 21, 2016
New York, New York



Anil C. Singh