

Hidalgo v JT MH 1250 Owner, LP

2016 NY Slip Op 32284(U)

November 4, 2016

Supreme Court, New York County

Docket Number: 159818/2015

Judge: Lucy Billings

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

GINA HIDALGO,

Index No. 159818/2015

Plaintiff

- against -

DECISION AND ORDER

JT MH 1250 OWNER, LP, MURRAY HILL
PROPERTIES LLC, JAMESTOWN PROPERTIES
CORP., CUSHMAN & WAKEFIELD, INC., and
CUSHMAN & WAKEFIELD REALTY, LLC,

Defendants

-----x
LUCY BILLINGS, J.S.C.:

Plaintiff sues to recover damages for personal injuries sustained when she slipped and fell in the lobby of 1250 Broadway, New York County, February 11, 2013, due to defendants' negligent ownership, operation, maintenance, and control of the premises. Defendant Jamestown Properties Corp. moves to dismiss the complaint and cross-claims against Jamestown Properties, based on its General Counsel's affidavit. Her affidavit admits that Jamestown Properties is the parent corporation of the premises' owner, defendant JT MH 1250 Owner, LP, but denies that Jamestown Properties ever owned, operated, maintained, or controlled the premises before or on February 11, 2013. She does not authenticate or lay a foundation for the admissibility of any document establishing Jamestown Properties' relationship to the owner or, more importantly, its noninvolvement in the ownership, operation, maintenance, or control of the premises before or on February 11, 2013.

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The General Counsel's affidavit does not fall within the scope of the limited admissible documentary evidence the court may rely on to dismiss the complaint under C.P.L.R. § 3211(a)(1). United States Fire Ins. Co. v. North Shore Risk Mgt., 114 A.D.3d 408, 409 (1st Dep't 2015); Regini v. Board of Mgrs. of Loft Space Condominium, 107 A.D.3d 496, 497 (1st Dep't 2013); Flowers v. 73rd Townhouse LLC, 99 A.D.3d 431, 431 (1st Dep't 2012); Correa v. Orient-Express Hotels, Inc., 84 A.D.3d 651 (1st Dep't 2011). Nor do affidavits support dismissal under C.P.L.R. § 3211(a)(7). Lawrence v. Graubard Miller, 11 N.Y.3d 588, 595 (2008); Asmar v. 20th & Seventh Assoc., LLC, 125 A.D.3d 563, 564 (1st Dep't 2015); Art & Fashion Group Corp. v. Cyclops Prod., Inc., 120 A.D.3d 436, 438 (1st Dep't 2014). See Weil, Gotshal & Manges, LLP v. Fashion Boutique of Short Hills, Inc., 10 A.D.3d 267, 271 (1st Dep't 2004).

Under C.P.L.R. § 3211(a)(7), the court must accept plaintiff's allegations as true and may not rely on facts outside the complaint alleged by Jamestown Properties where they dispute the complaint's allegations against it. Migliano v. Bally Total Fitness of Greater N.Y., Inc., 20 N.Y.3d 342, 351 (2013); Lawrence v. Graubard Miller, 11 N.Y.3d at 595. Accepting plaintiff's allegations as true, while her complaint does not allege Jamestown Properties' ownership of the premises, the complaint does allege that Jamestown Properties was the managing agent for the premises and managed, operated, maintained, and controlled them February 11, 2013. C.P.L.R. § 3211(a)(7); JF

Capital Advisors, LLC v. Lightstone Grp., LLC, 25 N.Y.3d 759, 764 (2015); Migliano v. Bally Total Fitness of Greater N.Y., Inc., 20 N.Y.3d at 351; Nonnon v. City of New York, 9 N.Y.3d 825, 827 (2007); Drug Policy Alliance v. New York City Tax Comm'n, 131 A.D.3d 815, 816 (1st Dep't 2015). The denial by Jamestown Properties' attorney in this action that his client was ever the managing agent and his insistence that no employees of his client worked at the premises before or on February 11, 2013, even if the attorney has personal knowledge of such facts, see Rodriguez v. Board of Educ. of City of N.Y., 107 A.D.3d 651, 652 (1st Dep't 2013); Murray v. City of New York, 74 A.D.3d 550, 550 (1st Dep't 2010); Coleman v. Maclas, 61 A.D.3d 569, 569 (1st Dep't 2009); 2084-2086 BPE Assoc. v. State of N.Y. Div. of Hous. & Community Renewal, 15 A.D.3d 288, 289 (1st Dep't 2005), is equally unavailing to support dismissal of the complaint based on its failure to allege a claim. C.P.L.R. § 3211(a)(7); Lawrence v. Graubard Miller, 11 N.Y.3d at 595; Asmar v. 20th & Seventh Assoc., LLC, 125 A.D.3d at 564; Art & Fashion Group Corp. v. Cyclops Prod., Inc., 120 A.D.3d at 438.

Moreover, even based on the General Counsel's affidavit, her admission that Jamestown Properties is the parent corporation of the premises' owner, which plaintiff may rely on in opposition to the motion, see Nonnon v. City of New York, 9 N.Y.3d at 827; Cron v. Hargro Fabrics, 91 N.Y.2d 362, 366 (1998); Ray v. Ray, 108 A.D.3d 449, 452 (1st Dep't 2013); Thomas v. Thomas, 70 A.D.3d 588, 591 (1st Dep't 2010), suggests another basis for Jamestown

Properties' liability. While a parent corporation is not liable for its subsidiary's conduct unless the parent corporation has intervened directly in the subsidiary's management in disregard of its separate corporate form, Billy v. Consolidated Mach. Tool Corp., 51 N.Y.2d 152, 163 (1980); Silver Oak Capital L.L.C. v. UBS AG, 82 A.D.3d 666, 668 (1st Dep't 2011); Sheridan Broadcasting Corp. v. Small, 19 A.D.3d 331, 332 (1st Dep't 2005), plaintiff alleges that the parent corporation was the managing agent for premises owned in the subsidiary's name, but managed, operated, and controlled by the parent corporation. Liberally construing her allegations, and drawing all reasonable inferences in her favor, they are consistent with the parent corporation's direct intervention into the subsidiary's management, operation, and control. E.g., Broxmeyer v. United Capital Corp., 79 A.D.3d 780, 784 (2d Dep't 2010). See JF Capital Advisors, LLC v. Lightstone Grp., LLC, 25 N.Y.3d at 764; Migliano v. Bally Total Fitness of Greater N.Y., Inc., 20 N.Y.3d at 351; Nonnon v. City of New York, 9 N.Y.3d at 827; Drug Policy Alliance v. New York City Tax Comm'n, 131 A.D.3d at 816.

For the various reasons explained above, the court denies defendant Jamestown Properties Corp.'s motion to dismiss the complaint and cross-claims against Jamestown Properties based on its General Counsel's affidavit. C.P.L.R. § 3211(a)(1) and (7). This decision constitutes the court's order.

DATED: November 4, 2016



LUCY BILLINGS, J.S.C.