

Royston v Platt

2018 NY Slip Op 30344(U)

February 22, 2018

Supreme Court, New York County

Docket Number: 152180/2017

Judge: Anthony Cannataro

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Redmond Royston,

Plaintiff,

Index No.: 152180/2017

- against -

Motion Seq.: 001

Michael Platt, Genuine Construction, Inc., CNY
Construction, LLC, and Certified of N.Y., Inc.,
Defendants.

DECISION & ORDER

Anthony Cannataro, J.:

In this slip-and-fall action, defendant Michael Platt moves to dismiss the complaint pursuant to CPLR 3211 (a) (7) and (a) (8). Plaintiff and defendant Genuine Construction, Inc. (Genuine) oppose the motion.

Briefly, this action arises out of a January 10, 2016 slip and fall on a staircase in the cooperative building located at 128 Central Park South in Manhattan. Plaintiff alleges that the accident was caused by an accumulation of water on the staircase that poured down from an adjoining penthouse owned by Platt. Platt, a citizen of the United Kingdom, alleges that he was not present in the United States at the time of the accident, but concedes that he had hired defendant Certified of NY, Inc. to perform "construction work" in the penthouse.

On his motion, Platt contends that the Court lacks personal jurisdiction over him because he is not a domiciliary of this State and the accident did not occur in his unit but rather the staircase which is maintained by the cooperative corporation. Platt further contends that the complaint fails to state a cause of action.

In opposition, plaintiff and co-defendant Genuine contend that, accepting the allegations in the complaint as true, plaintiff has sufficiently alleged a basis for jurisdiction over Platt. Both also contend that discovery remains outstanding on the jurisdictional issue. Lastly, plaintiff argues that the motion should be denied because Platt has not established on his motion that he is free from negligence as a matter of law.

It is well-established that, in the context of a motion to dismiss, the pleadings are necessarily afforded a liberal construction, and plaintiff is afforded “the benefit of every possible favorable inference” (*see Goshen v Mut. Life Ins. Co. of New York*, 98 NY2d 314, 326 [2002]). Further, while plaintiff ultimately bears the burden of proving personal jurisdiction, a motion to dismiss for lack of jurisdiction may be defeated by a mere showing that plaintiff’s jurisdictional position is not “frivolous” (*see Amigo Foods Corp. v Mar. Midland Bank-New York*, 39 NY2d 391, 395 [1976]). Moreover, on a motion to dismiss for failure to state a cause of action, the “factual allegations of the complaint are accepted as true” (*High Definition MRI, P.C. v Travelers Companies, Inc.*, 137 AD3d 602, 602 [1st Dept 2016]) and the court determines “only whether the facts as alleged manifest any cognizable legal theory” (*Elmaliach v Bank of China Ltd.*, 110 AD3d 192, 199 [1st Dept

2013)). Lastly, CPLR R. 3211 (d) provides that, “should it appear from affidavits submitted in opposition to a motion made under subdivision (a) or (b) that facts essential to justify opposition may exist but cannot then be stated, the court may deny the motion . . . to permit further affidavits to be obtained or disclosure to be had.”

Pursuant to CPLR § 302 (a), the court may exercise personal jurisdiction over a nondomiciliary “who in person or through an agent (1) transacts any business within the state . . . (2) commits a tortious act within the state . . . or (4) owns, uses, or possesses any real property situated within the state.” Here, plaintiff alleges that the water condition on the staircase that led to the accident originated from Platt’s penthouse. Additionally, plaintiff alleges that the accident arose from work negligently performed by one or more of Platt’s contractors. Hence, jurisdiction may be obtained over Platt based his transaction of business within this State because the negligence allegedly arises from the contract he entered into with co-defendant Certified. Other than conclusory statements, Platt also fails to sufficiently address his role, or lack thereof, in controlling or directing the work performed in his penthouse. Thus, jurisdiction over Platt may also exist because Platt may have committed a tortious act through his agent, *i.e.* co-defendant Certified. Contrary to Platt’s argument, the fact that the alleged dangerous condition was located outside his apartment does not divest the Court of jurisdiction, where, as here, it is alleged that the condition was caused by work taking place inside the apartment (*see 905 5th Assoc., Inc. v Weintraub*, 85 AD3d 667, 667–68 [1st Dept 2011]). Finally, it bears

mentioning that plaintiff claimed at oral argument that Platt's status as a nondomiciliary has not been entirely settled and that more disclosure is necessary. In sum, plaintiff has met its burden of showing that his jurisdictional position is not frivolous since amended complaint alleges facts which, if true, could serve as the basis for personal jurisdiction over Platt under CPLR § 302. Accordingly, it is

ORDERED that the motion is denied in its entirety; and it is further

ORDERED that the parties are directed to appear for a preliminary conference in Part 41 at 111 Centre Street, Room 490 on May 30, 2018 at 2:15 P.M.

This constitutes the judgment and order of the Court.

Dated: 2/22/18

ENTER:



Anthony Cannataro, JSC
HON. ANTHONY CANNATARO
J.S.C.