

Rivera v 1775 Grand Concourse LLC

2018 NY Slip Op 31022(U)

May 22, 2018

Supreme Court, New York County

Docket Number: 151681/2016

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2

Justice

-----X

JOSEPH RIVERA,

Plaintiff,

- v -

1775 GRAND CONCOURSE LLC, CORPORATE INTERIORS
CONTRACTING, INC., VERIZON NEW YORK INC., JJ
OPERATING INC., HOULIHAN-PARNES REALTORS LLC,

Defendants.

-----X

1775 GRAND CONCOURSE LLC, and JJ OPERATING INC.,

Defendants/Third Party Plaintiffs,

-v-

CORPORATE INTERIORS CONTRACTING, INC.,

Third Party Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 003) 59, 60, 61, 62, 63, 64, 65, 66, 67

were read on this motion to/for

SUMMARY JUDGMENT

Upon the foregoing documents, it is ordered that the motion is granted without opposition.

Plaintiff Joseph Rivera sues for personal injuries incurred on or about March 6, 2013 while he was working at 1775 Grand Concourse, Bronx, New York.

Defendant Verizon New York Inc. ("Verizon") moves for an order pursuant to

CPLR 3212 granting it summary judgment dismissing plaintiff's complaint and all cross-claims against it.

Verizon annexes a copy of the summons and complaint (Docs. No. 1 and 61),¹ its verified answer (Doc. No. 62), and answers from 1775 Grand Concourse LLC/JJ Operating Inc. and third party defendant Corporate Interiors with cross-claims (Doc. No. 63). Verizon additionally annexes an affidavit from Osborne P. Martin, Jr., employed as an asset manager of global real estate by Verizon Corporate Services, Corp. which manages real estate assets for Verizon and its affiliates. Doc. No. 66.

Verizon notes that, in the summons and complaint, plaintiff alleged that Verizon owned, operated, controlled and maintained the premises where plaintiff was injured, and further alleged that Verizon had contracted with other parties to perform the work done at the location where plaintiff was allegedly injured. It points out that plaintiff in both his Bill of Particulars (Doc. No. 64) and his Supplemental Bill of Particulars (Doc. No. 65) alleged that the injury was incurred in the garage of 1775 Grand Concourse. In his affidavit (Doc. No. 66), Martin avers that he is responsible for managing a portfolio of real estate assets that

¹ Unless otherwise noted all references are to the documents filed with NYSCE in connection with this case.

consists of condominiums including Verizon New York's property interest in 1775 Grand Concourse and represents that Verizon does not own or maintain any property interest in the garage space at 1775 Grand Concourse. He further avers that Verizon did not perform any work in the garage at the subject premises and that Verizon did not contract with any party to do work there. Thus, asserts Verizon, it is entitled to dismissal of all claims against it.

Verizon annexes to its motion papers a Stipulation of Discontinuance executed by plaintiff (Doc. No. 67). The stipulation discontinued his action against Verizon without prejudice. However, since co-defendants and third party defendants did not execute the stipulation, Verizon moves not only to dismiss the complaint against it with prejudice, but also to dismiss any and all cross-claims against it, including all cross-claims for contribution and common law and contractual indemnification. Verizon further notes that no party has produced a contract with Verizon in this matter and no parties have served or filed opposition to this motion.

LEGAL CONCLUSIONS:

The movant on a motion for summary judgment must satisfy its initial burden to "make a prima facie showing of entitlement to judgment as a matter of law,

tendering sufficient evidence to demonstrate the absence of any material issues of fact,” after which the burden shifts to the opposing party “to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action.” *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 (1986); *see Schmidt v One N.Y. Plaza Co. LLC*, 153 AD3d 427, 428 (1st Dept 2017); *Bartolacci-Meir v Sassoon*, 149 AD3d 567, 570 (1st Dept 2017).

In his affidavit, Martin sets forth sufficient proof that Verizon has no interest of any kind in the garage space at 1775 Grand Concourse. Given the foregoing, as well as the stipulation of discontinuance and the absence of any opposition to the instant motion, Verizon has established its prima facie entitlement to summary judgment that it was not involved with, or responsible for, plaintiff’s injuries.

In light of the foregoing, it is hereby:

ORDERED that the motion by defendant Verizon New York Inc. for summary judgment dismissing the complaint and all cross-claims against it, pursuant to CPLR 3212 is granted; and it is further

ORDERED that the said claims and cross-claims against defendant Verizon New York Inc. are severed and the balance of the action shall continue; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of defendant Verizon New York Inc. dismissing the claims and cross-claims made against it in this action, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that this constitutes the decision and order of the court.

5/22/2018

DATE

KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE