

Shenker v Kotlyar

2020 NY Slip Op 33392(U)

October 13, 2020

Supreme Court, Kings County

Docket Number: 502687/18

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73

Index No.: 502687/18
Motion Date: 9-28-20
Mot. Seq. No.: 4

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MARIA SHENKER,

Plaintiff,

-against-

DECISION/ORDER

IDA KOTLYAR,
TRUMP VILLAGE SECTION 3 INC.,
TRUMP VILLAGE APARTMENTS ONE LLC,
TRUMP VILLAGE APARTMENTS ONE OWNER LLC,
APARTMENT MANAGEMENT ASSOCIATE LLC,
CAMMEBY'S INTERNATIONAL LTD.,
CAMMEBY'S INTERNATIONAL LLC,
CAMMEBY'S FUNDING LLC, and
NELLI PAVLENIEHVILI,

Defendants.

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The following papers numbered 1 to 3 were read on this motion:

Papers:	Numbered:
Notice of Motion/Order to Show Cause	
Affidavits/Affirmations/Exhibits/Memo of Law.....	1
Answering Affirmations/Affidavits/Exhibits/Memo of Law.....	2
Reply Affirmations/Affidavits/Exhibits/Memo of Law.....	3
Other.....	

Upon the foregoing papers, the motion is decided as follows:

In this action to recover damages for personal injuries, defendants, TRUMP VILLAGE APARTMENTS ONE LLC, TRUMP VILLAGE APARTMENTS OWNER LLC, APARTMENT MANAGEMENT ASSOCIATE LLC, CAMMEBY'S INTERNATIONAL LTD., CAMMEBY'S INTERNATIONAL LLC, and CAMMEBY'S FUNDING LLC (hereinafter collectively referred to as "Trump One"), move for an order pursuant to CPLR § 3212 granting Trump One summary judgment dismissing the complaint and all crossclaims.

ms #04
XMG-

The plaintiff, Maria Shenker, commenced this action claiming that on August 9, 2017, she was injured when a motor vehicle operated by defendant Ida Kotlyar accidentally struck her. At her deposition, a copy of which was submitted in support of the motion, the plaintiff testified that on the day of the accident, after she and defendant Kotlyar had lunch together, they went back to defendant Kotlyar's building so that Kotlyar could park her car. Defendant Kotlyar parked her car in her designated parking space and apparently, was not satisfied with how the car was positioned after it was parked. Accordingly, she decided to re-park the car. At this point, plaintiff exited the vehicle and stood on a grassy area near the parking space. As defendant Kotlyar was re-parking her vehicle, she accidentally hit the gas pedal and struck the plaintiff in the chest area. Plaintiff alleges, among other things, that the curb portion of the parking space was too low and contributed to the happening of the accident.

Significantly, plaintiff testified that the accident happened in the parking lot in Trump Village Section Three where she resides. Trump Village Section Three consists of three buildings, 3A and 3B with addresses of 440, 444, and 448 Neptune Avenue, Brooklyn, New York. Plaintiff resides at 444 Neptune Avenue. The police report, which was also submitted in support of the motion, identified the "Road on which accident occurred" as 2940 Ocean Parkway.

The moving defendants also submitted the affidavit of Peter P. Neglia, the claims manager for Apartment Management Associates, LLC, who is the managing agent for Trump Village Apartments Owner LLC. Mr. Neglia averred that Ida Kotlyar was never employed by Trump One and was not performing any duty on behalf of Trump One at the time of the accident. He was shown the photographs which plaintiff identified at her deposition as depicting the

]location of the accident and averred that Trump One never owned, managed, supervised, operated, controlled or made any special use of the parking lot shown in the photographs.

Mr. Neglia explained the reference to 2940 Ocean Parkway in the police report. He stated as follows:

As for the police accident report, which never mentions Trump One as the location of the accident, there is a reference that the road upon which the accident occurred is 2940 Ocean Parkway. While the address of Trump One is 2940 Ocean Parkway, co-defendant, Trump Village Section Three abuts Trump One and thus is considered on the roadway that has an address of 2940 Ocean Parkway. However, as explained in this affidavit as well as my initial letter to plaintiff's counsel dated August 31, 2017 Trump One is not involved with the parking lot upon which this accident occurred.

The moving defendants also submitted the letter Mr. Neglia referred to in his affidavit.

It is axiomatic that to succeed on a motion for summary judgment, the moving party must first "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" (*Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572, citing *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642; see also CPLR 3212[b]). If the movant makes such a showing, in order to defeat the motion "the burden shift[s] to the party opposing the motion for summary judgment 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*, 68 N.Y.2d at 324, 508 N.Y.S.2d 923, 501 N.E.2d 572). If the movant fails to make such a showing, the motion must be denied regardless of the sufficiency of

the opposing papers” (*Vega*, 18 N.Y.3d at 503, 942 N.Y.S.2d 13, 965 N.E.2d 240 [internal quotation marks and alterations omitted]). In deciding a motion for summary judgment, the evidence must be viewed in the light most favorable to the party opposing the motion and all reasonable inferences must be drawn in that party’s favor (*see McNulty v. City of New York*, 100 N.Y.2d 227, 230, 762 N.Y.S.2d 12, 792 N.E.2d 162; *Boyd v. Rome Realty Leasing Ltd. Partnership*, 21 A.D.3d 920, 921, 801 N.Y.S.2d 340; *Erikson v. J.I.B. Realty Corp.*, 12 A.D.3d 344, 783 N.Y.S.2d 661).

Here, contrary to plaintiff’s contention, the moving defendants demonstrated their prima facie entitlement to summary judgment dismissing the complaint and all cross claims asserted against them. The moving defendants demonstrated, prima facie, that there was no basis to hold them vicariously liable for the negligence of defendant Ida Kotlyar. They also demonstrated, prima facie, that they did not have a duty to maintain the parking lot will the accident occurred in reasonably safe condition inasmuch as they did not own, operate, maintain, control or make special use of the parking lot. Mr. Neglia’s affidavit sufficiently clarified why be police report listed the roadway where the accident occurred as 2940 Ocean Parkway. The plaintiff failed to raise triable issue of fact.

Accordingly, it is hereby

ORDRED that the motion of defendants TRUMP VILLAGE APARTMENTS ONE LLC, TRUMP VILLAGE APARTMENTS OWNER LLC, APARTMENT MANAGEMENT ASSOCIATE LLC, CAMMEBY’S INTERNATIONAL LTD., CAMMEBY’S INTERNATIONAL LLC, and CAMMEBY’S FUNDING LLC for summary judgment

dismissing the complaint and all crossclaims is **GRANTED**.

This constitutes the decision and order of the Court.

Dated: October 13, 2020

PPS

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020

KINGS COUNTY CLERK
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