

Stasiv v Macy's Retail Holdings, Inc.

2020 NY Slip Op 33961(U)

November 30, 2020

Supreme Court, New York County

Docket Number: 153919/2016

Judge: Anthony Cannataro

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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. ANTHONY CANNATARO

PART IAS MOTION 41EFM

Justice

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MARKO STASIV,

Plaintiff,

- v -

MACY'S RETAIL HOLDINGS, INC., MACY'S EAST, INC., VERSACE USA, INC., HUDSON BLACK INC., LUCAS JACOBSON, INC. D/B/A LJI PROJECTS, BUSSOLA & RALPH USA, LTD., BUSSOLA & RALPH INTERNATIONAL S.R.L., BUSSOLA & RALPH (CHINA) CO. LTD.,

Defendant.

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VERSACE USA, INC.

Plaintiff,

-against-

LUCAS JACOBSON, INC. D/B/A LJI PROJECTS

Defendant.

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LUCAS JACOBSON, INC. D/B/A LJI PROJECTS, LUCAS JACOBSON, INC. D/B/A LJI PROJECTS

Plaintiff,

-against-

BUSSOLA & RALPH USA, LTD., BUSSOLA & RALPH INTERNATIONAL S.R.L., BUSSOLA & RALPH (CHINA) CO. LTD.

Defendant.

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HUDSON BLACK INC.

Plaintiff,

-against-

DECISION + ORDER ON MOTION

INDEX NO. 153919/2016

MOTION DATE 11/01/2019

MOTION SEQ. NO. 003

Third-Party Index No. 595663/2016

Second Third-Party Index No. 595175/2017

Third Third-Party Index No. 595323/2019

ANDERSEN INTERIOR CONTRACTING, INC.

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 93, 94, 95, 96, 97, 98, 99, 100, 101, 109, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 130, 132, 133

were read on this motion to/for DISMISS.

The instant action involves an accident that occurred on November 8, 2015 in the Versace clothing department at Macy’s Herald Square when plaintiff, Marko Stasiv, was allegedly injured by a display rack. Plaintiff sued several parties including defendant and third-party plaintiff, Lucas Jacobson, Inc. d/b/a LJI Projects (“LJI”). LJI brought a third-party action against Bussola & Ralph USA, Ltd. (“B&R USA”) for contribution and indemnification claiming that B&R USA designed, fabricated, and manufactured the subject display rack and was negligent in performing such work. Plaintiff amended its complaint to include B&R USA as a first party defendant claiming that it had a had a duty to maintain the subject premises.

Defendant and second third-party defendant, B&R USA, moves pursuant to CPLR 3212 for summary judgment dismissing both the primary and third-party action against it. B&R USA asserts that it had nothing to do with the manufacture, installation, or servicing of the display rack and that it never maintained or had a duty to maintain the fixture or the premises. B&R USA also asserts that it did not owe plaintiff or LJI a duty of care and was not a proximate cause of plaintiff’s accident. B&R USA further argues that it is not liable for the alleged actions of Bussola & Ralph (China) Co. Ltd. (“B&R China”) as they are separate and distinct entities.

LJI argues that since the subject rack was allegedly manufactured by B&R China, B&R USA must provide evidence demonstrating that it is not responsible nor associated in any way with plaintiff’s claim. LJI asserts that based on the company’s website,

online presence, and joint letterhead, B&R USA and B&R China are indistinct entities. Finally, LJI argues that summary judgment is premature as additional discovery is needed on B&R USA's corporate structure. Plaintiff has not submitted any opposition to the instant motion.

"The proponent of a summary judgment motion must 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 NY2d 320, 324 [1986]). Once the proponent has met this showing, "the burden shifts 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" (*Id.*).

B&R USA has presented sufficient evidence to demonstrate that it is a distinct entity from B&R China. "As a general rule, the law treats corporations as having an existence separate and distinct from that of their shareholders..." (*Billy v Consol. Mach. Tool Corp.*, 51 NY2d 152, 163 [1980], citing *Port Chester Elec. Corp. v Atlas*, 40 NY2d 652, 656). The sharing of letterhead between two corporations is insufficient to establish joint liability (*See Am. Real Estate Holdings Ltd. Partnership v Citibank, N.A.*, 45 AD 3d 277, 278 [1st Dept 2007]). Here, LJI relies upon the September 11, 2015 proposal to manufacture the subject display rack which is written on "Bussola & Ralph" letterhead and indicates the address of B&R Italy, China, and USA. However, "pay to Bussola China" is written on the proposal and B&R USA's former Finance and Operations Manager testified in a deposition that the proposal involved B&R China. Thus, the use of this letterhead is insufficient to establish the liability of B&R USA. Further, LJI's reliance on the interconnected internet presence of B&R USA and B&R China does not create an issue of fact as to whether these are distinct entities when the lack of parent-

subsidiary or other corporate relationship has been attested to in Probst's deposition and in the affidavit of Joseph Cangialosi, General Manager of Defendant.

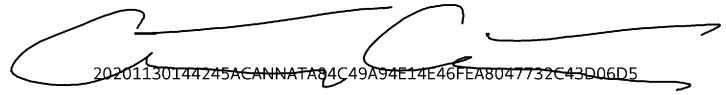
The instant motion for summary judgment is not premature and no additional discovery is required. To defeat a motion for summary judgment, "mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). LJI asserts, without basis, that B&R China utilizes B&R USA as a local office. And while the prior motion for summary judgment was denied without prejudice, discovery cannot continue endlessly here. B&R USA is a small corporation, described as only having four employees. LJI has received evidence from a former and current employee who have attested to conducting a throughout search of company records and finding no connection between B&R USA and LJI and describing the relationship between B&R USA and B&R China as that of a vendor and vendee. The Court cannot justify the continuation of a discovery expedition in the hope that it might raise an issue of fact or uncover some evidence linking B&R USA and LJI.

Given that B&R USA is a separate and distinct entity from B&R China and there is no evidence of any connection between B&R USA and the display rack in question, there can be no possible finding of a duty of care between B&R USA and either LJI or plaintiff.

Accordingly, it is

ORDERED that defendant Bussola & Ralph USA, Ltd.'s motion for summary judgment is granted and plaintiff's forth amended complaint and second third-party plaintiff Lucas Jacobson, Inc.'s second amended verified complaint are dismissed as to Bussola & Ralph USA, Ltd. With costs and disbursements to Bussola & Ralph USA, Ltd. as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.



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11/30/2020

DATE

ANTHONY CANNATARO, 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