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| <b>Craig v Royalton 44 Hotel, LLC</b>  |
| 2021 NY Slip Op 32673(U)   |
| December 15, 2021  |
| Supreme Court, New York County   |
| Docket Number: Index No. 159396/2020   |
| Judge: John J. Kelley  |
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. JOHN J. KELLEY PART 56M**

*Justice*

-----X  
STEVEN CRAIG, INDEX NO. 159396/2020  
MOTION DATE 08/27/2021  
MOTION SEQ. NO. 001  
Plaintiff,

- v -

ROYALTON 44 HOTEL, LLC, ROYALTON HOTEL  
MANAGEMENT, LLC, and ROCKPOINT GROUP, LLC,  
Defendants.

**DECISION + ORDER ON  
MOTION**

-----X  
The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7  
were read on this motion to/for DISMISS

In this action to recover damages for personal injuries, arising from an insect infestation at a hotel during the week of September 9, 2017, the defendant Rockpoint Group, LLC (Rockpoint), moves pursuant to CPLR 3211(a)(1) and (7) to dismiss the complaint insofar as asserted against it on the ground that it did not own or have an interest in the hotel at any time relevant to the complaint. The plaintiff does not oppose the motion. The motion is granted.

Liability for failing to maintain premises in a safe condition must be based on occupancy, ownership, control, special use, statutory obligation, or contractual obligation (*see Jackson v Board of Educ. of City of N.Y.*, 30 AD3d 57 [1st Dept 2006]). On this motion, Rockpoint asserted that it has never occupied, owned, controlled, or had a special use of the subject hotel, and that it had never assumed either a contractual or statutory obligation to maintain it.

Under CPLR 3211(a)(1), a dismissal is warranted "if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law" (*Leon v Martinez*, 84 NY2d 83, 88 [1994]; *see Ellington v EMI Music, Inc.*, 24 NY3d 239 [2014]). In order for evidence to qualify as "documentary," it must be unambiguous, authentic, and "essentially undeniable" (*Dixon v 105 W. 75th St., LLC*, 148 AD3d 623, 629 [1st Dept 2017]).

citing *Fontanetta v John Doe 1*, 73 AD3d 78 [2d Dept 2010]). Documents such as deeds, which reflect out-of-court transactions and are essentially unassailable, qualify as “documentary evidence” (see *Granada Condominium III Assn. v Palomino*, 78 AD3d 996, 997 [2d Dept 2010]; *Suchmacher v Manana Grocery*, 73 AD3d 1017, 1017 [2d Dept 2010]; *Fontanetta v John Doe 1*, 73 AD3d at 86). Conversely, affidavits do not qualify as documentary evidence (see *Serao v Bench-Serao*, 149 AD3d 645, 646 [1st Dept 2017]; *Art & Fashion Group Corp. v Cyclops Prod., Inc.*, 120 AD3d 436, 438 [1st Dept 2014]; *Granada Condominium III Assn. v Palomino*, 78 AD3d at 997; *Suchmacher v Manana Grocery*, 73 AD3d at 1017; *Fontanetta v John Doe 1*, 73 AD3d at 85).

When assessing the adequacy of a pleading in the context of a motion to dismiss under CPLR 3211(a)(7), the court’s role is “to determine whether [the] pleadings state a cause of action” (*511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 151-152 [2002]). To determine whether a claim adequately states a cause of action, the court must “liberally construe” it, accept the facts alleged in it as true, accord it “the benefit of every possible favorable inference” (*id.* at 152; see *Romanello v Intesa Sanpaolo, S.p.A.*, 22 NY3d 881 [2013]; *Simkin v Blank*, 19 NY3d 46 [2012]), and determine only whether the facts, as alleged, fit within any cognizable legal theory (see *Hurrell-Harring v State of New York*, 15 NY3d 8 [2010]; *Leon v Martinez*, 84 NY2d 83 [1994]; *Weil, Gotshal & Manges, LLP v Fashion Boutique of Short Hills, Inc.*, 10 AD3d 267 [1st Dept 2004]; CPLR 3026). “The motion must be denied if from the pleading’s four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law” (*511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d at 152 [internal quotation marks omitted]; see *Leon v Martinez*, 84 NY2d at 87-88; *Guggenheimer v Ginzburg*, 43 NY2d 268 [1977]).

Where, however, the court considers evidentiary material beyond the complaint, as it does here, the criterion becomes “whether the proponent of the pleading has a cause of action, not whether he [or she] has stated one” (*Guggenheimer v Ginzburg*, 43 NY2d at 275), but

dismissal will not eventuate unless it is “shown that a material fact as claimed by the pleader to be one is not a fact at all” and that “no significant dispute exists regarding it” (*id.*). Nonetheless, “conclusory allegations—claims consisting of bare legal conclusions with no factual specificity—are insufficient to survive a motion to dismiss” (*Godfrey v Spano*, 13 NY3d 358, 373 [2009]).

Rockpoint established, through documentary evidence consisting of a deed, that it did not own the subject premises during the period of time complained of. It demonstrated that, rather, the defendant 44th Street Hotel Owner, L.P., had acquired the hotel property from the defendant Royalton 44 Hotel, LLC, on or about August 1, 2017, approximately one month prior to the incident complained of by the plaintiff. Rockpoint further established, through the affidavit of its vice president and general counsel, that it had never occupied, owned, controlled, or had a special use of the subject hotel, and that it had never assumed either a contractual or statutory obligation to maintain it. That affidavit further established that Rockpoint did not employ anyone at the hotel and did not provide any vending or other services to the hotel and any time. It has thus shown that a material fact claimed by the plaintiff, specifically, that it owned, operated, controlled, or maintained the subject premises, was not a fact at all; by failing to oppose the motion, the plaintiff effectively conceded that there was no significant dispute concerning Rockpoint’s contention in this regard.

Rockpoint thus has demonstrated that it cannot be held liable or responsible for the plaintiff’s injuries (*see Neill v Cinema de Lux*, 198 AD3d 974 [2d Dept 2021]), that the plaintiff does not have a cause of action against it, and that the complaint must be dismissed insofar as asserted against it.

Accordingly, it is

ORDERED that the motion of the defendant Rockpoint Group, LLC, to dismiss the complaint insofar as asserted against it is granted, without opposition, and the complaint is dismissed insofar as asserted against the defendant Rockpoint Group, LLC.

This constitutes the Decision and Order of the court.

12/15/2021  
DATE

  
JOHN J. KELLEY, J.S.C.

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|-----------------------|-------------------------------------|----------------------------|--------------------------|--------|-------------------------------------|-----------------------|--------------------------|-----------|
| CHECK ONE:            | <input type="checkbox"/>            | CASE DISPOSED              | <input type="checkbox"/> | DENIED | <input checked="" type="checkbox"/> | NON-FINAL DISPOSITION | <input type="checkbox"/> | OTHER     |
| APPLICATION:          | <input checked="" type="checkbox"/> | GRANTED                    | <input type="checkbox"/> |        | <input type="checkbox"/>            | GRANTED IN PART       | <input type="checkbox"/> |           |
| CHECK IF APPROPRIATE: | <input type="checkbox"/>            | SETTLE ORDER               | <input type="checkbox"/> |        | <input type="checkbox"/>            | SUBMIT ORDER          | <input type="checkbox"/> |           |
|                       | <input type="checkbox"/>            | INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> |        | <input type="checkbox"/>            | FIDUCIARY APPOINTMENT | <input type="checkbox"/> | REFERENCE |