Sada v Safon Owner LLC
2021 NY Slip Op 33021(U)
December 1, 2021
Supreme Court, Richmond County
Docket Number: Index No. 152805/2019
Judge: Jr., Orlando Marrazzo
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

OLIVIA SADA,

Plaintiff(s),

-against-

SAFON OWNER LLC, WEST EDEN, NEW 19 WEST LLC, THE DOWNTOWN CLUB CONDOMINIUM and 20 WEST RETAIL LLC

Defendant(s)

WEST EDEN LLC,

Third-Party Plaintiff(s),

CONCORD RESTORATION INC. and CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

Third-Part Defendant(s)

DECISION/ORDER

ISA PART 26

HON. ORLANDO MARRAZZO, JR.

Index No.: 152805/2019
Motion No. 3, 4

The following numbered 1 to 4 were fully submitted on 28th day of October 2021

Papers Numbered

Defendant 20 West Retail LLC's Motion to Dismiss, with Supporting Papers and Exhibits, Dated, August 4, 2021 1

Affirmation in Opposition, With Supporting Papers and Exhibits, Dated, October 26, 2021 2

Defendant Safon Owner LLC's & New 19 West LLC's Motion to Dismiss, with Supporting Papers and Exhibits, Dated, September 16, 2021 3

Defendants 20 West Retail LLC, Safon Owner LLC and New 19 West LLC move pursuant to CPLR 3211(a)(1) and (7) for an order dismissing the action and all cross-claims asserted against them

As is set forth below, defendants 20 West Retail LLC, Safon Owner LLC and New 19 West LLC motions are granted. And the complaint and all cross-claims against these defendants are dismissed.

In the case at hand, trying to cast as wide a net as possible in this trip and fall personal injury action, plaintiff Olivia Sada ("Plaintiff") names five (5) different defendants, separately (yet identically and somewhat contradictorily) alleging that each defendant owned, had an ownership interest in, leased, controlled, operated, repaired, managed, and/or inspected the premises at which the alleged trip and fall (the "Incident") occurred.

However, it was not until plaintiff's Second Amended Verified Complaint (filed some thirteen (13) months after the filing of the original Verified Complaint) that plaintiff even first attempted to articulate with any specificity where it was that she allegedly tripped and fell. Now that plaintiff has more particularly identified the site of the Incident and has now even provided a Verified Bill of Particulars and

photographs to definitively show the Incident Site (i.e., a particular place on the public sidewalk on Washington Street where two buildings (18-20 West Street and 21 West Street, New York, New York) meet), one thing emerges as demonstratively and indisputably certain: the defendant-movants of motion 3 and motion 4 did not own, have an ownership interest in, lease, control, or operate the Incident Site, and did not (and had no obligation to) repair, manage, or inspect such premises.

The court emphasizes that conclusory allegations are insufficient to sustain a complaint. While it is often stated that, in deciding a motion to dismiss under CPLR § 3211, the Court "must accept as true the facts as alleged in the complaint and submissions in opposition to the motion, accord plaintiffs the benefit of every possible favorable inference and determine only whether the facts as alleged fit within any cognizable legal theory" (Widman v. Rosenthal, 40 A.D.3d 749 (2d Dept. 2007) (dismissing the complaint)), that principle is not without limitation. Indeed, it is beyond dispute that conclusory averments of wrongdoing are insufficient to sustain a complaint. See Elsky v. KM Ins. Brokers, 139 A.D.2d 691, 691 (2d Dep't 1988) ("While it is axiomatic that a court must assume the truth of the complaint's allegations, such an assumption must fail where there are conclusory allegations lacking in factual support ...." (citations omitted)); GDG Realty, LLC v. 149 Glen St. Corp., 155 A.D.3d 833, 835 (2d Dep't 2017) ("[E]ven accepting the plaintiff's allegations as true and affording it the benefit of every favorable inference, the

Supreme Court properly determined that the first three causes of action failed to fit into any legally cognizable theory, as they were based on speculative and conclusory factual allegations and bare legal conclusions ...."). Similarly, allegations "unequivocally contradicted by documentary evidence" are also not entitled to either a presumption of truth or a favorable inference. Leder v. Spiegel, 31 A.D.3d 266, 267 (1st Dep't 2006) (affirming dismissal of the plaintiff's claims). And further, factual assertions that are "inherently incredible" are also not entitled to be considered as true on such a motion. See Greene v. Doral Conference Ctr. Assocs., 18 A.D.3d 429, 430 (2d Dep't 2005) (affirming dismissal of the plaintiff's action); Tal v. Malekan, 305 A.D.2d 281, 281 (1st Dep't 2003) (affirming dismissal of the plaintiff's claims); Leder, 31 A.D.3d at 267 (affirming dismissal of the plaintiff's claims). As detailed below, plaintiff's claim against defendants in this action are based on nothing but speculative, conclusory, and sometimes plainly false assertions.

Further, plaintiff's assertion that the defendants was somehow responsible for repairs and maintenance of the subject sidewalk are flatly contradicted by documentary evidence. In addition, the cross-claims against defendants have no basis in fact and rely upon unsupported and incredible allegations of unspecified non-existent agreements.

Accordingly, the claims against defendants are insufficient and the court grants defendants' motion and dismisses the complaint and cross-claims against.

This constitutes the decision and order of the court.

Dated: November 1, 2021
Staten Island, New York

Orlando Marrazzo, Jr.,
Justice, Supreme Court