

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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Submitted - May 1, 2008

ROBERT A. LIFSON, J.P.
HOWARD MILLER
MARK C. DILLON
RANDALL T. ENG, JJ.

2007-03383

DECISION & ORDER

Richard Logatto, plaintiff-respondent, v City of New York, et al., defendants-respondents, Brooklyn Baseball Company, LLC, a/k/a The Brooklyn Cyclones, appellant.

(Index No. 46573/03)

Havkins Rosenfeld Ritzert & Varriale, LLP, New York, N.Y. (Carla Varriale of counsel), for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Barry P. Schwartz and Deborah A. Brenner of counsel), for defendant-respondent City of New York.

In an action to recover damages for personal injuries, the defendant Brooklyn Baseball Company, LLC, a/k/a The Brooklyn Cyclones, appeals from an order of the Supreme Court, Kings County (Solomon, J.), dated December 14, 2006, which denied that branch of its motion which was pursuant to CPLR 3211(a)(1) to dismiss the complaint and all cross claims insofar as asserted against it, with leave to renew after discovery.

ORDERED that the order is reversed, on the law, with costs, and that branch of the motion of the defendant Brooklyn Baseball Company, LLC, a/k/a The Brooklyn Cyclones, which was pursuant to CPLR 3211(a)(1) to dismiss the complaint and all cross claims insofar as asserted against it is granted.

The plaintiff averred that he sustained personal injuries when he tripped and fell due to an allegedly defective condition in the parking lot adjacent to Keyspan Park in Brooklyn. In the

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ensuing personal injury action, in lieu of answering, the defendant Brooklyn Baseball Company, LLC, a/k/a The Brooklyn Cyclones (hereinafter BBC), moved, inter alia, pursuant to CPLR 3211(a)(1) to dismiss the complaint and all cross claims insofar as asserted against it. The Supreme Court denied that branch of the motion, and BBC appeals. We reverse.

Dismissal under CPLR 3211(a)(1) is warranted where the “documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law” (*Leon v Martinez*, 84 NY2d 83, 88; see *Sheridan v Town of Orangetown*, 21 AD3d 365, 365-366; *Fast Track Funding Corp. v Perrone*, 19 AD3d 362, 362). In this case, among other things, BBC submitted a stadium lease between it and the defendant City of New York which conclusively demonstrated that BBC did not own, control, or lease, nor did it have any responsibility to maintain or repair, the parking lot area where the plaintiff allegedly fell. Accordingly, BBC conclusively demonstrated that it could not be liable for the allegedly defective condition (see *Schwalb v Kulaski*, 29 AD3d 563, 564), and the Supreme Court should have granted that branch of its motion which was pursuant to CPLR 3211(a)(1) to dismiss the complaint and all cross claims insofar as asserted against it.

LIFSON, J.P., MILLER, DILLON and ENG, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court