

Blanco v Prada USA Corp.

2009 NY Slip Op 33030(U)

December 21, 2009

Supreme Court, New York County

Docket Number: 101644/07

Judge: Joan A. Madden

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
HON. JOAN A. MADDEN

PRESENT: _____ J.S.C. _____

PART 11

Index Number : 101644/2007

BLANCO, ROBERT

INDEX NO. _____

vs

PRADA USA

MOTION DATE _____

Sequence Number : 003

MOTION SEQ. NO. _____

SUMMARY JUDGMENT

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion *is determined in accordance with the annexed decision and order.*

FILED

DEC 30 2009

NEW YORK
COUNTY CLERK'S OFFICE

Dated: _____

December 24, 2009

J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate:

DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

-----X
ROBERT BLANCO,

Plaintiff,

INDEX NO. 101744/07

-against-

PRADA USA CORP., AMERICAN EAGLE
OUTFITTERS, INC., 575 BROADWAY LLC,
575 BROADWAY ASSOCIATES L.P. and 575
BROADWAY CORPORATION and
A.R.I. INVESTORS, INC.,

Defendants.
-----X

FILED
DEC 30 2009
NEW YORK
COUNTY CLERK'S OFFICE

JOAN A. MADDEN, J.:

In this action for damages for personal injuries, defendant Prada USA Corp. ("Prada") moves for an order pursuant to CPLR 3212 dismissing the complaint and all cross-claims asserted against it. Plaintiff has discontinued the action as against Prada. Although co-defendants 575 Broadway Associates, L.P. i/s/h/a 575 Broadway LLC and 575 Broadway Corp. (collectively "575 Broadway") originally submitted an affirmation in opposition to Prada's motion, they have withdrawn their opposition and have agreed to discontinue their cross-claims against Prada. Thus, the motion is moot as to plaintiff and defendant 575 Broadway. Defendant A.R.I. Investors, Inc. has not responded to the motion. Only defendant American Eagle Outfitters, Inc. ("American Eagle") opposes the motion.

Plaintiff is a firefighter who responded to a four alarm fire on January 21, 2006 at approximately midnight, at the building known as 575-578 Broadway in Manhattan. Plaintiff alleges he was injured when he was searching for the origin of the fire, and his foot got snagged

in a hole, and he was caused to fall. Defendant 575 Broadway is the owner of the building and defendant A.R.I Investors, Inc., is the property manager. Defendants Prada and American Eagle are both tenants of the building, where they occupy separate street level premises and operate retail stores.

Prada is entitled to summary judgment dismissing the cross-claims asserted by American Eagle. Based on affidavits and the deposition testimony of numerous witnesses, Prada has made a sufficient prima facie showing that it had no involvement or connection to the cause or origin of the fire, which indisputably started in the premises occupied and leased by American Eagle. Specifically, Prada submits an affidavit of its maintenance director, Tomasso Ivagnes, that at approximately 10:15 p.m. he received a telephone call that an alarm had been activated and he should go to the Prada store. He explained that store had been closed since 7:00 p.m. and no employee would have been present past 8:00 p.m. When Ivagnes arrived at the store, he was denied access to the store by Fire Department personnel, who directed him to "stay out of the way."

Prada also submits an affidavit and deposition testimony from several fire investigators, who consistently concluded that the fire originated in American Eagle's marketing room; none of them found or even suggested that Prada was connected to or responsible for the fire, or that the fire originated in Prada's premises. For example, in his affidavit, James Kelty, a certified fire investigator with Thomas J. Russo Consultants, states that he "participated in an examination and investigation" of the subject fire, in order to "ascertain the origin and/or cause of the fire." His company prepared a report as to the results of the investigation, which is annexed to his affidavit.

Kelty states that he “is of the opinion that the subject fire originated in the southwest quadrant of the American Eagle’s marketing room, which building management of the landlord referred to as the HVAC/shaft room.”

The manager of the building, Peter Zanelli, testified that Prada and American Eagle were both tenants of the “first floor” the building, with Prada occupying the south portion, American Eagle occupying the north portion, and the two portions separated by a brick wall and 16 feet of lobby area. John Stewart, an American Eagle employee, testified that at the time of the fire, more than 45 American Eagle employees were engaged in a “clothing inventory floor change.” Stewart also testified that around 10:00 or 10:30 p.m., he heard an alarm, and another employee advised him of a “weird smell” in a back room known as the “marketing room.” After that employee “yelled fire,” Stewart walked over to the marketing room, saw flames and a lot of smoke, and grabbed a fire extinguisher.

Prada also submits the Fire Incident Report prepared by the New York City Fire Department’s Bureau of Fire Investigation, which corroborates the deposition testimony that the fire originated in American Eagle’s marketing room. The report lists American Eagle as the “occupant of tenant of incident location,” and states that “[e]xamination showed the fire originated in the subject premise, on the first floor, north side, in the HVAC duct shaft (marketing room), in the area of the ceiling, in combustible mater (wood joist and sub-floor).” The Fire Department’s report is silent as to Prada and Prada’s premises.

Based on the foregoing testimonial and documentary evidence, Prada has met its burden of establishing non-liability as a matter of law. In opposition, American Eagle fails to sustain its

burden of demonstrating a triable issue of material fact as to whether Prada had any connection to or responsibility for the fire. American Eagle objects that Prada has yet to be deposed, but concedes that the fire originated in the ceiling above American Eagle's marketing room. Counsel for American Eagle advances a theory that a electrical short could have started in a faulty "BX cable" above Prada's premises and traveled to the cable above American Eagle's marketing room. American Eagle, however, has not offered an expert affidavit in support of such theory, or any other theory connecting Prada's premises to the fire.

Prada, therefore, is entitled to summary judgment dismissing the counterclaims asserted against it by American Eagle. In the absence of opposition from defendant A.R.I. Investors, Inc., Prada is also entitled to summary judgment dismissing the counterclaims asserted against it by A.R.I. Investors, Inc.

Accordingly, it is hereby


ORDERED that the motion by defendant Prada USA Corp. for summary judgment is granted to the extent of severing and dismissing the counterclaims asserted against it by co-defendants American Eagle Outfitters, Inc. and A.R.I. Investors, Inc., and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that the balance the motion by defendant Prada USA Corp. for summary judgment dismissing the complaint and the counterclaims asserted against it by co-defendants 575 Broadway Associates, L.P. i/s/h/a 575 Broadway LLC and 575 Broadway Corp., is denied as moot, since plaintiff and such co-defendants have stipulated to discontinue their claims and cross-claims against Prada USA Corp.; and it is further

ORDERED that the balance of this action shall continue and the remaining parties are directed to appear for the status conference previously scheduled for February 9, 2010.

DATED: December 21, 2009

ENTER:


J.S.C.

FILED
DEC 30 2009
NEW YORK
COUNTY CLERK'S OFFICE