

Powell v Helmsley Hotels, Inc.
2010 NY Slip Op 34072(U)
February 16, 2010
Supreme Court, New York County
Docket Number: 103542/2009
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: DEBRA A. JAMES
Justice

PART 59

NADIA POWELL,
Plaintiff,

Index No.: 103542/2009

Motion Date: 11/24/09

- v -

Motion Seq. No.: 001

HELMSLEY HOTELS, INC., HELMSLEY
ENTERPRISES, INC., HELMSLEY MANAGEMENT
INC., SUPERVISORY MANAGEMENT INC., CARLTON
HOUSE, INC., THE NEW YORK HELMSLEY HOTEL
and AUGUSTO LOPEZ,

Motion Cal. No.: _____

Defendants

The following papers, numbered 1 to 3 were read on this motion for summary judgment.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits _____
Answering Affidavits - Exhibits _____
Replying Affidavits - Exhibits _____

FILED
FEB 24 2010

PAPERS NUMBERED	
_____	1
_____	2
_____	3

Cross-Motion: Yes No

Upon the foregoing papers, and upon further deliberation following oral argument, it is ordered that this motion to dismiss pursuant to CPLR 3211(a)(1) and (7) is GRANTED.

Plaintiff brings this action seeking damages for personal injuries suffered claiming that on July 18, 2008 she was assaulted by defendant Augusto Lopez, an employee of Helmsley Hotels, Inc. at the New York Helmsley Hotel, which is located at 212 East 42nd Street, New York County (the "Hotel").

In her complaint, plaintiff alleges that as of July 18, 2008

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

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

defendants Helmsley Hotels, Inc., Helmsley Enterprises, Inc., Supervisory Management Inc., Carlton House, Inc., Harley of New York Associates ("the Helmsley Defendants"), owned the Hotel and hired and supervised its employees. Her claims are that the Helmsley Defendants breached their duty to provide adequate security and to secure the safety of persons at the Hotel and were negligent and careless in hiring, retaining and supervising its employee, the defendant Lopez, which caused her injuries.

It is not disputed that at the time of the occurrence, plaintiff was working at the Hotel, as an employee of an entity known as Supervisory Management Corp. Nor does plaintiff contest that the Workers' Compensation Board awarded her damages for injuries suffered on July 18, 2008 while in the employ of the Hotel.

The Helmsley Defendants move to dismiss the complaint for failure to state a cause of action and on a defense based on the documentary evidence. They argue that plaintiff is barred from maintaining this action because the benefits that she was awarded under the Workers Compensation Law are her exclusive remedy.

While she concedes that she was employed by Supervisory Management Corp. at the time of the occurrence, plaintiff argues that the affidavit and Workers' Compensation Board Decisions proffered by the Helmsley Defendants do not constitute irrefutable evidence that she was employed by them.

This court concurs with the Helmsley Defendants that when viewed in the light of irrefutable documentary evidence of the Workers Compensation Policy of Insurance under which plaintiff was paid benefits and which covered the defendant Harley Associates of New York as the Insured, as well as the other Helmsley Defendants, the complaint fails to state a cognizable claim against such defendants. Plaintiff's allegations that each of the Helmsley Defendants owned, controlled and managed the Hotel and hired and supervised its employees-- which necessarily included plaintiff-- in view of the payments made under that Workers' Compensation Policy of Insurance, irrefutably establish that the Helmsley Defendants comprised a single integrated entity for the purposes of workers' compensation. Ramanarine v Memorial Center for Cancer and Allied Diseases, 281 AD2d 218 (1st Dept 2001).

The Helmsley Defendants have established a defense based on documentary evidence that plaintiff is relegated to her remedy under the Workers' Compensation Law.

Accordingly, it is

ORDERED that the motion of defendants Helmsley Hotels, Inc., Helmsley Enterprises, Inc., Supervisory Management Corp., Harley of New York Associates and the New York Helmsley Hotel for a judgment dismissing the complaint against such defendants is GRANTED, and the Clerk is directed to enter judgment dismissing

the complaint against defendants Helmsley Hotels, Inc., Helmsley Enterprises, Inc., Supervisory Management Corp., Harley of New York Associates and the New York Helmsley Hotel; and it is further

ORDERED that the action against defendants Helmsley Management, Inc. and Augusto Lopez is hereby severed and shall continue against such defendants; and it is further

ORDERED that remaining parties shall appear for a preliminary conference at 111 Centre Street, New York, New York on March 16, 2010, 9:30 AM.

This is the decision and order of the court.

Dated: February 16, 2010

ENTER:

Debra A. Jones
DEBRA A. JONES J.S.C.

FILED
FEB 24 2010
NEW YORK
COUNTY CLERK'S OFFICE