

Sams v New York City Hous. Auth.

2012 NY Slip Op 30387(U)

February 15, 2012

Supreme Court, New York County

Docket Number: 115965/10

Judge: Barbara Jaffe

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: BARBARA JAFFE *Jaffe*
J.S.C. Justice

PART 5

Index Number : 115965/2010
SAMS, LALAH
vs. *CAL # 110*
NYC HOUSING AUTHORITY
SEQUENCE NUMBER : 001
DISM ACTION/INCONVENIENT FORUM

INDEX NO. 115965/10
MOTION DATE 11/15/11
MOTION SEQ. NO. 001

The following papers, numbered 1 to 2, were read on this motion to/for Summary judgment

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ *J* | No(s). 1
Answering Affidavits — Exhibits _____ | No(s). 2
Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, It is ordered that this motion is

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

FILED

FEB 21 2012

Dated: 2/15/12
FEB 15 2012

NEW YORK
COUNTY CLERKS OFFICE, J.S.C.
B
BARBARA JAFFE

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
 DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

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 5

-----X
LALAH SAMS,

Plaintiff,

-against-

Index No. 115965/10

Motion Date: 11/15/11

Motion Seq. No.: 001

Motion Cal. No.: 110

NEW YORK CITY HOUSING AUTHORITY and NEW
YORK CITY FIRE DEPARTMENT,

Defendants.
-----X

DECISION AND ORDER

FILED

BARBARA JAFFE, J.S.C.:

FEB 21 2012

For plaintiff:

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For FDNY:

NEW YORK
ANTHONY BILA, ACC COUNTY CLERK'S OFFICE
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By notice of motion dated July 29, 2011, defendant New York City Fire Department (FDNY) moves pursuant to CPLR 3211(a)(7) and/or CPLR 3212 for an order dismissing the complaint and all cross-claims against it. Plaintiff opposes only insofar as defendant's motion seeks costs and other relief.

I. BACKGROUND

On October 13, 2009, plaintiff slipped and fell on water in the hallway of 2430 Adam Clayton Powell Boulevard, a defendant New York City Housing Authority (NYCHA)-owned housing development in Manhattan. (Affirmation of Anthony Bila, ACC, dated July 29, 2011 [Bila Aff.], Exhs. A, F).

On December 9, 2010, plaintiff commenced the instant action with the filing of a

summons and verified complaint, asserting negligence claims against defendants arising from their ownership, maintenance, and inspection of the subject premises. (*Id.*, Exh B). On January 3, 2011, FDNY joined issue with service of its answer. (*Id.*, Exh C). Sometime thereafter, NYCHA joined issue with service of its answer, asserting cross-claims for indemnification against FDNY. (*Id.*, Exh. D).

On November 14, 2011, plaintiff served defendants with a stipulation of discontinuance as to FDNY only. (Affirmation of Lennon C. Edwards, Esq., dated Nov. 14, 2011 [Edwards Aff.], Exh. A). FDNY refused to sign the stipulation absent assurance from NYCHA that it would discontinue its cross-claims; NYCHA never responded. (*Id.*).

II. CONTENTIONS

FDNY contends that it is not a proper party to this action, as it is a non-suable entity pursuant to New York City Charter § 396, and that in any event, it is immune from suit, as its decisions with respect to inspection of the subject premises were discretionary, that there existed no special relationship between it and plaintiff, and that the action is time-barred. (Bila Aff.).

Plaintiff does not oppose the motion but asserts that FDNY should not be awarded costs as she attempted to resolve the instant motion by discontinuing the action as to FDNY. (Edwards Aff.).

III. ANALYSIS

A party seeking summary judgment must demonstrate, *prima facie*, entitlement to judgment as a matter of law by presenting sufficient evidence to negate any material issues of fact. (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). If the movant meets this burden, the opponent must rebut the *prima facie* showing by submitting admissible evidence,

demonstrating the existence of factual issues that require trial. (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Bethlehem Steel Corp. v Solow*, 51 NY2d 870, 872 [1980]). Otherwise, the motion must be denied, regardless of the sufficiency of the opposition. (*Winegrad*, 64 NY2d at 853).

A. New York City Charter § 396

Section 396 of the New York City Charter provides that “[a]ll actions and proceedings for the recovery of penalties for the violation of any law shall be brought in the name of the city of New York and not in that of any agency, except where otherwise provided by law.” As a New York City agency, FDNY is not a suable entity. (*See Jones v Natl. Communication & Surveillance Networks*, 409 F Supp 2d 456, 469 [SD NY 2006] [FDNY is non-suable entity pursuant to section 396]; *Verponi v City of New York*, 31 Misc 3d 1230[A], 930 NYS2d 177 [Sup Ct, Kings County 2011] [same]). Therefore, it is entitled to summary judgment on plaintiff’s complaint and all cross-claims against it.

In light of this determination, FDNY’s contentions as to its immunity from suit and as to the statute of limitations need not be considered.

B. Costs

Pursuant to CPLR 8106, “[c]osts upon a motion may be awarded to any party, in the discretion of the court” As FDNY does not expressly seek costs, and as plaintiff sought to resolve this motion through its stipulation of discontinuance, I decline to award them.

IV. CONCLUSION

Accordingly, it is hereby

ORDERED, that defendant New York City Fire Department’s motion for summary

judgment is granted; and it is further

ORDERED, that the Trial Support Office is directed to reassign this case to a non-City part and remove it from the Part 5 inventory. Plaintiff shall serve a copy of this order on all other parties and the Trial Support Office, 60 Centre Street, Room 158. Any compliance conferences currently scheduled are hereby cancelled.

ENTER:

FILED


Barbara Jaffe, JSC
BARBARA JAFFE
J.S.C.

FEB 21 2012

NEW YORK
COUNTY CLERK'S OFFICE

DATED: February 15, 2012
New York, New York
FEB 15 2012