Rivera v Gaia House, LLC
2015 NY Slip Op 30707(U)
April 28, 2015
Supreme Court, New York County
Docket Number: 161059/13
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

----------x,

ALAN RIVERA,

Plaintiff,

Index No. 161059/13

-against-

DECISION/ORDER

GAIA HOUSE, LLC, ROTAVELE ELEVATOR, INC. and 200 11th 11S LLC,

Defendants.

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HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for :

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	1
Affirmations in Opposition and Cross-Motion.....	2,3,4
Replying Affidavits.....	5
Exhibits.....	6

Plaintiff Alan Rivera commenced the instant action seeking damages for injuries he allegedly sustained after an elevator accident at the premises located at 200 Eleventh Avenue, New York, New York (the "subject premises") on November 26, 2012. Defendant 200 11TH 11S LLC ("200 11th") now moves for an Order pursuant to CPLR § 3212 for summary judgment dismissing the amended complaint and all cross-claims asserted against it on the ground that it had no ownership, maintenance or control of the subject premises at the time of plaintiff's accident. Defendant Gaia House, LLC ("Gaia") cross-moves for an Order pursuant to CPLR § 3212 for summary judgment dismissing the amended complaint on identical grounds. Gaia's cross-motion is unopposed. For the reasons set forth below, 200 11th's motion is granted and Gaia's cross-motion is granted.

The relevant facts are as follows. The subject premises, also known as the 200 Eleventh Avenue Condominium, is a condominium complex consisting of sixteen residential units pursuant to a condominium offering plan accepted by the New York State Office of the Attorney General (the "AG") on December 29, 2006 (the "Offering Plan"). The Offering Plan identifies the Sponsor of the condominium as defendant Gaia. Pursuant to the Offering Plan, Gaia maintained control, maintenance, operation and services to the condominium so long as it elected a majority of the members of the condominium's Board of Managers. Pursuant to the fifteenth amendment to the Offering Plan, control over the Board of Managers was transferred from Gaia to the Unit Owners at a Board meeting on October 21, 2010. On or about January 10, 2011, the AG accepted for filing the fifteenth amendment to the Offering Plan.

On or about July 19, 2011, Gaia transferred ownership of Unit 11S at the subject premises to 200 11th. Thereafter, on or about April 27, 2012, 200 11th transferred ownership of Unit 11S at the subject premises to Matthew Durand Dornguart and Diane Dornguart. Consistent with this transfer, 200 11th cancelled its insurance policy with respect to Unit 11S at the subject premises, effective April 27, 2012. Thereafter, in or around November 2013, plaintiff, an employee of defendant Rotavele Elevator, Inc. ("Rotavele"), commenced the instant action asserting negligence claims and violations of New York Labor Law to recover for injuries he allegedly sustained on November 26, 2012 when he was struck by a falling elevator door while he was working at the subject premises. Specifically, the Amended Complaint alleges that as plaintiff was entering a freight elevator at the subject premises, the elevator door dropped and struck him causing him to sustain injuries.

In or around December 2014, 200 11th moved to dismiss the complaint and all cross-claims asserted against it on the ground that it did not own, maintain or control the subject premises at the time of plaintiff's accident. In support of its motion, it provided the court with a deed which

established that on April 27, 2012, it transferred its ownership interest in Unit 11S at the subject premises to third parties and an affidavit of its President who affirmed that 200 11th no longer had ownership of Unit 11S at the subject premises at the time of plaintiff's accident. However, this court denied 200 11th's motion on the grounds that the deed did not establish that 200 11th did not own, maintain or control the subject premises and/or the work site at the subject premises on the date of plaintiff's accident and that the affidavit was insufficient to dispose of plaintiff's claims against 200 11th as it could not be considered on a motion to dismiss pursuant to CPLR § 3211. 200 11th now moves for summary judgment pursuant to CPLR § 3212 dismissing the amended complaint and all cross-claims asserted against it. Gaia cross-moves for summary judgment pursuant to CPLR § 3212 dismissing the amended complaint.

The court first turns to 200 11th's motion for summary judgment dismissing the amended complaint and all cross-claims asserted against it. On a motion for summary judgment, the movant bears the burden of presenting sufficient evidence to demonstrate the absence of any material issues of fact. *See Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986). Summary judgment should not be granted where there is any doubt as to the existence of a material issue of fact. *See Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). Once the movant establishes a *prima facie* right to judgment as a matter of law, the burden shifts to the party opposing the motion to "produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim." *Id.*

In the instant action, 200 11th has established its *prima facie* right to summary judgment dismissing the amended complaint and all cross-claims asserted against it on the ground that it had no ownership, maintenance or control of the subject premises at the time of plaintiff's accident. 200 11th has provided the affidavit of Glauco Lolli-Ghetti, its President, who affirms that "[s]ince April

27, 2012, [200 11th] has had no ownership, maintenance or control over any unit in the condominium" and that "it has never maintained ownership, maintenance or control over any of the common elements" of the subject premises. Further, Mr. Lolli-Ghetti affirms that "200 11th has never had any involvement at any time in the organization, direction, supervision, management or control of the worksite at the subject premises." Rather, Mr. Lolli-Ghetti affirms that "since October 21, 2010, ownership, maintenance and control of the common elements at the [subject premises]...and the worksite at the subject premises...have been administered by the Board of Managers, as elected by the unit owners of the condominium." Finally, Mr. Lolli-Ghetti affirms that there has never "been any contractual relationship by and between 200 11th and [Rotavele], plaintiff's employer at the worksite."

In response, plaintiff and defendant Rotavele have failed to raise an issue of fact sufficient to defeat 200 11th's motion for summary judgment. As an initial matter, their assertion that the instant motion should be denied on the ground that it is, for all intents and purposes, identical to the motion to dismiss brought by 200 11th in December 2014 is without merit as the standard on a motion to dismiss pursuant to CPLR § 3211 is different from the standard on a motion for summary judgment pursuant to CPLR § 3212 and the evidence that may be considered by a court in deciding a motion pursuant to those standards is different. Additionally, plaintiff and defendant Rotavele's assertion that the instant motion should be denied on the ground that discovery is outstanding is without merit. It is well settled that "a claimed need for discovery, without some evidentiary basis indicating that discovery may lead to relevant evidence, is insufficient to avoid an award of summary judgment." *Hariri v. Amper*, 51 A.D.3d 146, 152 (1st Dept 2008). Here, plaintiff and Rotavele fail to provide any evidentiary basis indicating that discovery may lead to relevant evidence. Rather, they merely assert that further discovery may lead to information indicating that

200 11th does somehow maintain an ownership interest in the subject premises. However, such assertion is insufficient to raise an issue of fact to defeat 200 11th's motion for summary judgment.

Finally, defendant Gaia's cross-motion for summary judgment dismissing the amended complaint on the ground that it did not own, operate, maintain or control the subject premises on the date of plaintiff's accident is granted without opposition.

Accordingly, it is hereby

ORDERED that the Clerk is directed to enter judgment in favor of defendants 200 11th and Gaia and against plaintiff dismissing the amended complaint as against said defendants; and it is further

ORDERED that all cross-claims asserted against 200 11th are severed and dismissed; and it is further

ORDERED that the caption be amended as follows:

----------x,
ALAN RIVERA,

Plaintiff,

-against-

ROTAVELE ELEVATOR, INC.,

Defendant.
----------x

This constitutes the decision and order of the court.

Dated: 4/28/15

Enter: _____

CYNTHIA S. KERN J.S.C.