

**Muqattash v Choice One Pharm. Corp.**

2015 NY Slip Op 30821(U)

April 14, 2015

Supreme Court, Bronx County

Docket Number: 303542/14

Judge: Mark Friedlander

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**NEW YORK SUPREME COURT-COUNTY OF BRONX  
PART IA-25**

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ISAM MUQATTASH and ALBA MUQATTASH,

Plaintiff,

-against-

CHOICE ONE PHARMACY CORPORATION, 1550  
REALTY, LLC, NYC PARTNERSHIP HOUSING  
DEVELOPMENT FUND COMPANY, INC.,  
WASHINGTON BRIDGE, LLC, WBV APARTMENT  
CORP. and MASTERMIND MANAGEMENT, LTD.,

Defendants.

**MEMORANDUM  
DECISION/ORDER**  
Index No.: 303542/14

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HON. MARK FRIEDLANDER

Defendants, NYC Partnership Housing Development Fund Company, Inc. (“NYC Partnership”) and Mastermind Management, LTD. (“Mastermind”), move for an order, pursuant to CPLR§3211(a), dismissing plaintiff’s complaint against them. No papers were submitted by the co-defendants in opposition to the motion. The motion is decided as hereinafter indicated.

This is an action by plaintiff, Isam Muqattash (“Isam”), to recover monetary damages for personal injuries allegedly sustained by him on March 12, 2014, while performing certain labor, alteration, repair, construction and/or renovation work, as an employee of Macintosh Electric Corp., inside a store known as Choice One Pharmacy, located in a building, at 1550 University Avenue (also known as 1550 Martin Luther King Jr. Boulevard and 150 Featherbed Lane) Bronx, New York (“Building”). Isam’s complaint alleges causes of action against all defendants for common law negligence, and violation of Labor Law Sections 200, 240(1) and 241(6). Co-plaintiff, Alba Muqattash, the spouse of Isam, asserts a derivative claim for loss of services,

society and consortium of her husband. The complaint alleges, in addition to defendants' violation of the aforementioned Labor Law sections, that all defendants were negligent "in the ownership, management, maintenance, operation, construction, maintenance, repair, equipping and/or control of the aforesaid premises, property and/or building."

In support of their pre-answer motion, defendants NYC Partnership and Mastermind submit a copy of the pleadings, the affidavits of Shelia Martin ("Martin"), an officer of NYC Partnership, and Radame Jose Perez ("Perez"), a principal of Mastermind, and two deeds.

Perez states in his affidavit that the Building is a condominium and cooperative known as a "Condom," with 48 residential units and a commercial unit on the first floor, used by defendant, Choice One Pharmacy Corporation as a pharmacy. When the Building was converted into a Condom, defendant Washington Bridge, LLC ("Washington") was the sponsor and Mastermind was the sponsor's sole member. On conversion, the commercial unit was transferred from defendant NYC Partnership to Washington by deed dated May 20, 2011. Approximately three weeks later, Washington transferred the commercial unit to defendant 1550 Realty, LLC, by deed dated May 31, 2011. Perez further states that, on the date of Isam's alleged accident, March 12, 2014, neither NYC Partnership nor Mastermind owned, possessed, used, controlled or otherwise had any involvement in the Building.

Martin states in her affidavit that she has read the Perez's affidavit in support of the motion and concurs with the statements made therein, and that NYC Partnership did not own, control, possess, use or repair the Building on March 12, 2014, the date of Isam's alleged accident.

In opposition to the motion, plaintiffs assert a lack of specificity, in that the Notice of

Motion does not recite the subdivision of CPLR§3211(a) upon which movants rely, and that the motion papers are deficient, in that they do not rely solely on documentary evidence, but include affidavits.

On the face of their Notice of Motion, movants do not specify under which section of CPLR§3211(a) they seek relief. However, the motion papers clearly establish that movants are seeking relief under subsections (1) (documentary evidence) and/or (7) (failure to state a cause of action) thereof, and plaintiffs are not prejudiced by movants' lack of precision.

CPLR§3211(a)(1) does not explicitly define "documentary evidence." Documentary evidence, as used by this statutory provision, is a "fuzzy term," and what is documentary evidence for one purpose, might not be documentary evidence for another. *Fontanetta v. John Doe 1*, 73 A.D.3d 78, 84 (2<sup>nd</sup> Dept 2010). "[T]o be considered documentary evidence, evidence must be unambiguous and of undisputed authenticity" (*id.* at 86, citing Siegel, Practice Commentaries, McKinney's Cons. Laws of NY, Book 7B, CPLR 3211:10, at 21-22). Typically, this means judicial transactions, such as judgments and orders, as well as documents reflecting out-of-court transactions, such as contracts, releases, *deeds*, wills, mortgages and any other papers, "the contents of which are essentially undeniable" (*id.* at 84-85). (*Italics added*).

The criterion for a motion to dismiss under CPLR§3211(a)(7) is whether the proponent of the pleading has a cause of action, not whether he or she has stated one. *Lin v. County of Sullivan*, 100 A.D.3d 1076 (3<sup>rd</sup> Dept. 2012). Affidavits and other evidentiary evidence material may be considered to establish that the plaintiff has no cause of action. *Id.* at 1077.

Here, movants clearly establish through deeds, and the affidavits of Perez and Martin, that almost three years prior to Isam's alleged accident, movants transferred ownership of the

commercial unit where Isam's alleged accident took place, and that NYC Partnership and Mastermind thereafter had no connection with the subject property. Accordingly, plaintiffs have no viable cause of action against defendants NYC Partnership and Mastermind under any cognizable legal theory. *Garrasi v. Dean*, 75 A.D.3d 1138 (4<sup>th</sup> Dept. 2010); *Adamkiewicz v. Lansing*, 288 A.D.2d 531 (3<sup>rd</sup> Dept. 2001).

The motion of defendants NYC Partnership and Mastermind is granted, and plaintiffs' complaint against NYC Partnership and Mastermind, only, is dismissed.

The foregoing constitutes the Decision and Order of the Court.

Dated: 4/14/15

  
MARK FRIEDLANDER, J.S.C.