Rivera v G&T Consulting Co.
2016 NY Slip Op 30697(U)
March 1, 2016
Supreme Court, Bronx County
Docket Number: 301000/2012
Judge: Sharon A.M. Aarons
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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF BRONX - PART IA- 24

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EDWIN RIVERA,

Plaintiff(s),

- against - INDEX NO: 301000/2012

G&T CONSULTING COMPANY, LLC, THE HEIGHTS MANAGEMENT COMPANY, LLC and SDA, INC., DECISION/ORDER

Defendant(s),

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G&T CONSULTING COMPANY, LLC and THE HEIGHTS MANAGEMENT COMPANY, LLC, INDEX NO: 83825/2012

Third-Party Plaintiffs,

- against -

SDA INC., and R&S STRAUSS/STRAUSS INC.,

Third-Party Defendants.

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HON. SHARON A. M. AARONS

The motion of the third-party defendants for summary judgment pursuant to CPLR 3212 is decided as follows:

On October 21, 2011 at 10:00 p.m., plaintiff alleges that he lost control of his motorcycle as a result of an oil slick on the surface of the parking lot of a multi-tenant shopping center located at 1630 Bruckner Boulevard, Bronx, NY. The parking lot was adjacent to premises leased by third-party defendants.

Third-party defendants were commercial tenants at the strip mall; they leased the property from defendant, third-party plaintiff G&T Consulting Company, LLC. Plaintiff testified that the oil that caused the accident was a result of work being performed by "street mechanics," and third-party defendants business was the shop where people bought items to repair cars.

Third-party defendants seek summary judgment on the grounds that they were merely tenants at the subject premises and that they did not own, occupy or make special use of the parking lot where the accident occurred. In support of their motion, the third-party defendants provided an affidavit from their former president, Joseph Catalano, who attests to the fact that third-party defendants were merely one of many commercial tenants at the strip mall and that the lease between third-party defendants and defendant, third-party plaintiff G&T Consulting required the latter to "operate, manage, clean equipment, police light repair and maintain the parking lot." Further, Mr. Catalano affirmed that third-party defendants did not employ mechanics at the store and did not employ anyone who performed repairs on vehicles in the parking lot in October 2011[1].

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[1] Paragraphs 9 and 10 of affidavit -- the only substantive averments materials to this motion – state that:

"# 9. The SDA, Inc/Strauss Auto at this location was a retail store only, meaning it did not employ mechanics of any nature.

10. SDA, Inc., did not employ any individuals who performed repairs to vehicle in the parking lot at 1630 Bruckner Boulevard, Bronx, NY 10462 on October 11.

In opposition to the motion, plaintiff argues that the affidavit of Mr. Catalano is conclusory and insufficient to establish the third-party defendants' entitlement to summary judgment. Specifically, plaintiff asserts that as President and Chief Operating Manager of third-party defendants, Mr. Catalano had no personal knowledge or familiarity with the particular location where the accident occurred and that there is no specific evidence that he was familiar with the day-to-day operations of the particular store at issue.

Defendant, third-party plaintiff G&T Consulting opposes the motion, arguing that there is a question of fact as to who was responsible for overseeing activities that took place in the parking lot. Specifically, defendant, third-party plaintiff asserts that third-party defendant's may have breached the lease, violated a New York City Administrative Code provision regarding motor vehicle repairs in public streets, or both.

On a motion for summary judgment, the moving party has the burden to establish "a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issue of fact." See Alvarez v. Prospect Hospital, 68 NY2d, 320, 324 (1986).

Here, the only evidence submitted by the third-party defendants that directly relates to the issues raised by the parties is the affidavit of Mr. Catalano. But this affidavit is conclusory, containing only a few brief sentences addressing the central issues that are at heart of this litigation. Such conclusions are

insufficient to satisfy the third-party defendant's initial burden on summary judgment. See Vega v. Restani, 18 NY3d 499 (2012). On the record adduced on this motion, questions of fact exist as to who created the oil slick condition and whether third-party defendants made special use of the parking lot.

Accordingly, the third-party defendants motion for summary judgment is denied.

This constitutes the decision and order of the Court.

Dated: March 1, 2016

SAM

Sharon A.M. Aarons, J.S.C.