

Jimenez v Doubletree Hotel Sys., LLC
2018 NY Slip Op 31660(U)
May 18, 2018
Supreme Court, Queens County
Docket Number: 1232/2017
Judge: Leslie J. Purificacion
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NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE LESLIE J. PURIFICACION IA Part 39
Justice

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RUTH JIMENEZ, HECTOR ESPINAL,
MIGUEL MURILLO, RAISHA MOGOLLON
and LUIS ANTONIO BRAVO,

Index
Number 1232/2017

OS

Plaintiffs,

Motion Seq. #1

-against-

DOUBLETREE HOTEL SYSTEMS, LLC,
HILTON WORLDWIDE, INC. and PARK
HOTELS & RESORTS, INC.,

Defendants.

FILED
JUN - 5 2018
COUNTY CLERK
QUEENS COUNTY

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The following papers numbered 1 to 10 read on this motion by defendant Hilton Worldwide, Inc. an order pursuant to CPLR § 3211(a) (1) and (7) dismissing the complaint or, alternatively, dismissing the complaint pursuant to CPLR § 327.

PAPERS
NUMEERED

N.M., Aff., Exhibits and Service.....	1-4
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Reply Aff., Exhibits and Service.....	8-10

Upon the foregoing papers, it is ordered that this motion is decided as follows:

The summons and complaint in this action were filed on February 6, 2017. Plaintiffs allege that on or about April 7, 2015, at premises located at 200 Atrium Drive, Somerset, New Jersey (a/k/a "Doubletree by Hilton Somerset Hotel Conference Center"), more specifically the Somerset Ballroom, they sustained personal injuries as a result of defendants' negligence. With respect to movant Hilton Worldwide, Inc. ("Hilton"), the complaint asserts that it owned and/or operated and/or controlled the subject premises. The complaint sets forth five causes of action, one for each of the plaintiffs, and sets forth essentially identical facts, to wit: each of the plaintiffs was an employee of non-party

Sharmel Catering, Inc. that was retained by defendants to cater a Passover event; the event was to take place in the Somerset Ballroom; that defendants provided propane and/or liquid butane canisters to plaintiffs' employer to be used for the event; that one of the canisters exploded creating a "flash" fire causing injury to each of the plaintiffs; that defendants had actual and constructive notice of the condition prior to the accident; and, none of the plaintiffs contributed to causing the accident.

Defendants have moved to dismiss the complaint pursuant to CPLR § 3211 (a)(1), based upon documentary evidence, and pursuant to CPLR § 3211 (a)(7), for failure to state a cause of action. CPLR § 3211(a)(1) provides that "[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that ... a defense is founded upon documentary evidence..." "To successfully move to dismiss a complaint pursuant to CPLR § 3211(a)(1), the movant must present documentary evidence that 'resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim'" (AGCS Mar. Ins. Co. v Scottsdale Ins. Co., 102 AD3d 899, quoting Nevin v Laclede Professional Prods., 273 AD2d 453; see Leon v Martinez, 84 NY2d 83; Lakhi Gen. Contractor, Inc. v. N.Y. City Sch. Const. Auth., 147 AD3d 917).

In this case, movant Hilton asserts that it is a franchisor of its "brand" name to DTS 287, LLC the owner of the premises and the franchisee. Hilton further asserts that pursuant to the franchise agreement DTS 287, LLC is solely responsible for the operation of the premises. Movant, however, has failed to annex a copy of the franchise agreement to the moving papers filed with the court, and its inclusion in reply papers is improper and may not be considered.

Accordingly, that branch of the motion to dismiss pursuant to CPLR § 3211(a)(1) is denied.

CPLR § 3211 (a)(7) provides that a party may move to dismiss an action on the ground that "the pleading fails to state a cause of action." "On a motion to dismiss pursuant to CPLR § 3211 (a) (7), the pleading is to be afforded a liberal construction" (Kempf v Magida, 37 AD3d 763, 764; see Yusin v Saddle Lakes Home Owners Assn., Inc., 73 AD3d 1168, 1170). "The court must accept the facts as alleged in the complaint as true, accord the plaintiff[] the benefit of every possible favorable inference, and determine whether the facts as alleged fit within any cognizable legal theory" (id.; see Feldman v Finkelstein & Partners, LLP, 76 AD3d 703, 704).

The attorney's affirmation in support of the motion and the memorandum of law both fail to address this branch of the motion.

Accordingly, the branch of the motion to dismiss pursuant to CPLR § 3211(a)(7) is denied.

The branch of the motion to dismiss pursuant to CPLR § 327 at this juncture is also denied.

Among the factors the court must weigh are "the residency of the parties, the potential hardship to proposed witnesses, the availability of an alternative forum, the situs of the underlying action, and the burden which will be imposed upon the New York courts, with no one single factor controlling" (Wentzel v. Allen Mach., 277 A.D.2d 446).

While it is claimed that the owner of the premises is not amenable to New York jurisdiction, no proof has been submitted that the owner of the premises where the accident occurred is a New Jersey corporation. In addition, although movant refers to the incident being investigated by New Jersey law enforcement and/or fire department personal, movant fails to state the names of potential witness and any hardship those witness would face if this matter was adjudicated in New York. Movant has also failed to

demonstrate that New York's retention of this case would pose an unacceptable burden on the New York courts.

This is the decision and order of the court.

Date: May 18, 2018



Hon. Leslie J. Purificacion, J.S.C.

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