

Baker v Iron Rail Holdings, LLC
2018 NY Slip Op 34072(U)
August 17, 2018
Supreme Court, Albany County
Docket Number: Index No. 906793-17
Judge: Denise A. Hartman
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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

KATHLEEN BAKER,

Plaintiff,

-against-

IRON RAIL HOLDINGS, LLC, J. J. CILLIS BUILDERS, INC., JJ CILLIS GROUP, LLC, CILLIS BUILDERS, INC., TED CILLIS BUILDERS, LLC, CAMP BOW WOW, CAPITAL CITY DOGGY DAY CARE, LLC a/k/a and/or d/b/a CAMP BOW WOW, CAMP BOW WOW OF LONG ISLAND, INC., a/k/a and/or d/b/a CAMP BOW WOW, CAMP BOW WOW FRANCHISING, INC., a/k/a and/or d/b/a CAMP BOW WOW, and VCA ANIMAL HOSPITALS, INC.,

Defendants.

DECISION AND
ORDER

Index No. 906793-17

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HON. DENISE A. HARTMAN, AJSC

APPEARANCES

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New York, New York 10007

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STOCKTON, BARKER & MEAD, LLP
Robert S. Stockton, of Counsel
Attorneys for Defendant Ted Cillis Builders, LLC
433 River Street, Suite 6002
Troy, New York 12180

NO OTHER APPEARANCES ON THE MOTIONS DECIDED HEREIN

Hartman, J.

Plaintiff commenced this slip-and-fall personal injury action by e-filing a summons with notice on October 17, 2017. Defendant Cillis Builders, Inc. e-filed a notice of appearance and demand for the complaint on February 22, 2018. On March 15, 2018, defendant Ted Cillis Builders, LLC e-filed a notice of appearance and demand for complaint. Plaintiff e-filed the complaint on April 4, 2018. The next day, Cillis Builders, Inc. filed a notice that it rejected the complaint as untimely.

Defendants Iron Rail Holdings, LLC; J.J. Cillis Builders, Inc. and JJ Cillis Group, LLC; and Camp Bow Wow, Capital City Doggy Day Care, Camp Bow Wow Franchising, Inc., and VCA Animal Hospitals, Inc. answered, asserting cross-claims against the other defendants for negligence, indemnity, and contribution.

Cillis Builders, Inc. moves to dismiss the complaint against it based on plaintiff's failure to timely serve the complaint and requests sanctions against plaintiff. Ted Cillis Builders, LLC moves to dismiss the complaint against it

pursuant to CPLR 3211 (a) (7). Plaintiff cross moves for sanctions against Cillis Builders, Inc. The remaining defendants have not appeared on this motion.

Plaintiff offers no meaningful opposition to Cillis Builders, Inc.'s motion to dismiss. Plaintiff e-filed the complaint 41 days after Cillis Builders, Inc. e-filed its demand—21 days late (*see* CPLR 3012 [b]). Accordingly, the complaint must be dismissed against Cillis Builders, Inc. (*see Marcello v Flecher*, 150 AD3d 1457, 1458 [3d Dept 2017]).

In support of its motion to dismiss, Ted Cillis Builders, LLC, has submitted the affidavit of its managing member and owner Theodore J. Cillis, Jr. Mr. Cillis avers that neither he nor his company ever owned, managed, or worked on the building where plaintiff was injured. Plaintiff does not oppose his motion. Accordingly, the complaint against Ted Cillis Builders, LLC is dismissed.

Finally, the Court declines to grant sanctions or attorneys' fees to any party. Accordingly, it is

ORDERED that defendant Cillis Builders, Inc.'s motion to dismiss the complaint against it is granted, the complaint and all cross-claims against Cillis Builders, Inc. are dismissed, and Cillis Builders, Inc. is awarded costs and disbursements pursuant to CPLR 8101;


ORDERED that defendant Cillis Builders, Inc.'s request for sanctions and attorneys' fees is denied;

ORDERED that defendant Ted Cillis Builders, LLC's motion to dismiss the complaint against it is granted, and the complaint and all cross-claims against Ted Cillis Builders, LLC are dismissed, and Ted Cillis Builders, LLC is awarded costs and disbursements pursuant to CPLR 8101;

ORDERED that plaintiff's cross-motion for sanctions and attorneys' fees is denied.

This constitutes the decision and order of the Court. The original decision and order is being transmitted to counsel for Cillis Builders, Inc. All other papers are being transmitted to the County Clerk for filing. The signing of this decision and order does not constitute entry or filing under CPLR 2220 and counsel are not relieved from the applicable provisions of that rule respecting filing and service.

Dated: Albany, New York
August 17, 2018


HON. DENISE A. HARTMAN
Acting Justice of the Supreme Court

Papers Considered

1. Notice of Motion by Cillis Builders, Inc. to Dismiss, Party Affidavit of Theodore J. Cillis, III, with Attachments, and Attorney Affidavit of Daniel L. Doherty
2. Supplemental Notice of Motion by Cillis Builders, Inc. to Dismiss
3. Notice of Motion by Ted Cillis Builders, LLC to Dismiss
4. Attorney Affidavit of Robert S. Stockton, with Exhibit A

5. Notice of Cross-Motion of Plaintiff for Legal Fees and Sanctions Against Cillis Builders, Inc.
6. Attorney Affirmation of Corey I. Zimmerman in Support of Cross-Motion, with Exhibits A-G
7. Attorney Affirmation of Corey I. Zimmerman in Opposition to Cillis Builders, Inc.'s Motion to Dismiss and in Support of Cross-Motion, with Exhibits A-G
8. Cillis Builders, Inc. Attorney Reply of Daniel J. Doherty Affidavit and Notice of Cross-Motion
9. Reply Affirmation of Corey I. Zimmerman in Support of Cross-Motion, with Exhibits A-D
10. Answer of Capital City Doggy Day Care, Camp Bow Wow Franchising, Inc., and VCA Animal Hospitals, Inc.
11. Answer of Iron Rail Holdings, LLC
12. Answer of J. J. Cillis Builders, Inc. and JJ Cillis Group, LLC