

Villa v 233rd St. Realty Corp.

2019 NY Slip Op 32923(U)

October 4, 2019

Supreme Court, New York County

Docket Number: 45220/2018

Judge: Carol R. Edmead

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

-----X
EDWARD BIANCAVILLA,

Plaintiff,

-against-

233RD STREET REALTY CORP.,

Defendant.

-----X
EDWARD BIANCAVILLA,

Plaintiff,

-against-

MONTEFIORE NEW ROCHELLE HOSPITAL,
MONTEFIORE MOUNT VERNON HOSPITAL,
MONTEFIORE SCHAFFER EXTENDED CARE
CENTER, MONTEFIORE SS HOLDINGS, LLC,
MONTEFIORE MV HOLDINGS, LLC,
MONTEFIORE HA HOLDINGS, LLC,
LOCKWOOD REALTY, LLC,
"JOHN DOES" and "JANE DOES" 1- 15,
said names Being fictitious and presently unknown,

Defendants.

-----X

CAROL R. EDMEAD, J.S.C.:

MEMORANDUM DECISION

In this negligence matter, defendants in Action #2, Montefiore Mount Vernon Hospital,
Montefiore Schaffer Extended Care Center, Montefiore Schaffer Extended Care Center,

DECISION AND ORDER

Action #1

Index No.: 452220/2018

Motion Sequence 001

Action #2

Index No.: 20048/2017

Montefiore SS Holdings, LLC, Montefiore MV Holdings, LLC and Montefiore HA Holdings, LLC (collectively, "Montefiore Mount Vernon Entities") move for dismissal of the complaint in Action #2 as against them. Plaintiff Edward Biancavilla opposes the motion.

BACKGROUND FACTS

This motion stems from an accident that occurred on January 14, 2014, when Plaintiff fell while inspecting the subject property at 1600 East 233rd Street in the Bronx for his employer, Utica National Insurance. On the date of the accident, Action #1 defendant 233rd Street Realty Corp. owned the subject property and had leased it to Action #2 defendant Montefiore New Rochelle Hospital. On January 3, 2017, Plaintiff filed Action #2 in Bronx County against Montefiore New Rochelle Hospital, Montefiore Mount Vernon Entities, and Lockwood Realty, LLC on the grounds that they possessed the property and Plaintiff's accident was due to their negligent maintenance of the accident site. The Actions were consolidated for joint trial by order of this Court dated December 5, 2017.

Plaintiff and counsel for Montefiore Mount Vernon Entities have been engaged in settlement and mediation conferences in the interim years since the actions were consolidated. Montefiore Mount Vernon Entities contend that while Montefiore New Rochelle Hospital was the tenant on the date of the accident, they have no nexus to the site of the accident and should be dismissed as they did not own, lease, occupy, control, maintain, or otherwise make use of the property on or before the accident date. Plaintiff, however, has argued that Montefiore Mount Vernon Entities purchased the property pursuant to a bankruptcy stipulation in the United States Bankruptcy Court for the Southern District New York (Case No. 13-22840) for the matter titled *In re Sound Shore Medical Center of Westchester, et. al.* In the stipulation, entered December 20, 2013, Montefiore Mount Vernon Entities were among the named buyers of the property from the

previous bankrupt owner, Sound Shore Health Systems, Inc. (NYSCEF doc No. 96). The parties have thus been unable to come to a resolution. Montefiore Mount Vernon Entities has now filed this motion for summary judgment seeking dismissal from the case.

DISCUSSION

Summary judgment is granted when “the proponent makes ‘a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact,’ and the opponent fails to rebut that showing” (*Brandy B. v Eden Cent. School Dist.*, 15 NY3d 297, 302 [2010], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Once the proponent has made a prima facie showing, the burden then shifts to the motion's opponent to “present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact” (*Mazurek v Metropolitan Museum of Art*, 27 AD3d 227, 228 [1st Dept 2006], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; see also, *DeRosa v City of New York*, 30 AD3d 323, 325 [1st Dept 2006]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]; *Grossman v Amalgamated Hous. Corp.*, 298 AD2d 224, 226 [1st Dept 2002]). When the proponent fails to make a prima facie showing, the court must deny the motion, “regardless of the sufficiency of the opposing papers” (*Smalls v AJI Indus., Inc.*, 10 NY3d 733, 735 [2008], quoting *Alvarez*, 68 NY2d at 324).

A property owner seeking summary judgment in a negligence action is “required to establish that it maintained its [property] in a reasonably safe manner, and that it did not create a dangerous condition which posed a foreseeable risk of injury to individuals expected to be present on the property” (*Westbrook v WR Activities-Cabrera Mkts.*, 5 AD3d 69, 71 [1st Dept 2003]). In a trip and fall action, the defendant who moves for summary judgment must

demonstrate “that it neither created the hazardous condition, nor had actual or constructive notice of its existence. Once a defendant establishes prima facie entitlement to relief as a matter of law, the burden shifts to plaintiff to raise a triable issue of fact as to the creation of the defect or notice thereof” (*Smith v Costco Wholesale Corp.*, 50 AD3d 499, 500 [1st Dept 2008] [internal citations omitted]; *Manning v Americold Logistics, LLC*, 33 AD3d 427, 427 [1st Dept 2006]; *Mitchell v City of New York*, 29 AD3d 372, 374 [1st Dept 2006]; *Zuk v Great Atl. & Pac. TeaCo., Inc.*, 21 AD3d 275, 275 [1st Dept 2005]).

Of course, for a property owner to be liable for a dangerous condition, they must own the property in the first place. Here, Montefiore Mount Vernon Entities contend they are entitled to summary judgment as they did not own or otherwise use the property during the period in time from the November 6, 2013 acquisition of property interest in the bankruptcy agreement up to the date of the accident, January 14, 2014. On the date of the accident, a lease was in effect that was entered November 1, 2013 between Montefiore New Rochelle Hospital and Action #1 defendant, 233rd Street Realty Corp (NYSCEF doc No. 59). The lease term was for four years from the effective date and lists no assumption or assignment provision. Montefiore Mount Vernon Entities have submitted an affidavit from Edward Pflaging, the senior vice president of Facilities and Real Estate for Montefiore Health System, Inc., who attested that the parties did not own or otherwise make use of the space during that time period (NYSCEF doc No. 57 at 6-10).

In opposition, Plaintiff argues that there is an issue of fact as to whether Montefiore Mount Vernon Entities held a possessory interest on the date of the accident, as the bankruptcy stipulation in which Montefiore Mount Vernon Entities were named as buyers was filed December 20, 2013, after the November 1 lease was executed and before the accident date.

Plaintiff argues the stipulation granted Montefiore Mount Vernon Entities an assignment to and the assumption of the lease. Plaintiff further contends that the affidavit of Mr. Pfeging should be given no weight, as he is not employed by any of the named defendants and has only worked for Montefiore Health System since 2015, after the accident took place (*id.* at ¶ 2).

However, Plaintiff mischaracterizes the interest acquired by Montefiore Mount Vernon Entities in the bankruptcy stipulation. The order does not state that Montefiore Mount Vernon Entities ever took possession of the property but rather that they acquired an executory right to take an interest. The December 20, 2013 order provides for the assignment of a lease between Sound Shore Medical Center and the Buyers (which includes Montefiore Mount Vernon Entities) but notes that the deadline to assume or reject the lease is extended until January 13, 2014. While Montefiore Mount Vernon Entities did acquire property interests from Sound Shore Health Systems, Inc. in the bankruptcy agreement, these interests were in Westchester County and did not include the subject property at 1600 East 233rd Street in the Bronx (NYSCEF doc No. 58, ¶ 9).

There is also no dispute that 233rd Street Realty Corp. was the owner of the building at the time of the accident, which is evidenced by that party's own admission and a search of the New York City Department of Finance Office of the City Register (NYSCEF doc No. 64, ¶¶ 4-8). Thus, to be potentially liable for Plaintiff's accident, Montefiore Mount Vernon Entities would have needed to assume the lease and maintained a tenancy in the building. There is no evidence that they ever did so, as no lease has been produced through the course of this action other than the one between 233rd St Realty Corp. and Montefiore New Rochelle Hospital. The Court is also not inclined to disregard Mr. Pfeging's affidavit, as he is clearly familiar with

Montefiore Health System's lease and ownership history for their properties in his capacity as senior vice president of Facilities and Real Estate regardless of his term of employment.

Montefiore Mount Vernon Entities have successfully established that there is not a triable issue of fact as to their use and occupancy of the subject property. The bankruptcy stipulation relied on by Plaintiff demonstrates that Montefiore Mount Vernon Entities, among other parties, were granted executory rights in a bankruptcy stipulation. However, Plaintiff has failed to offer any evidence that even suggests the possibility that said executory rights translated into an actual leasehold or possessory interest on the accident site. Therefore, Montefiore Mount Vernon Entities are entitled to dismissal from the action.¹

¹ Following the submission of their motion for dismissal, Montefiore Mount Vernon Entities filed a motion to sever Plaintiff's claims and any cross-claims as against them, or to compel Plaintiff to comply with discovery requests (Motion Seq. 002). However, as the Court is granting dismissal, this motion is now resolved as moot.

CONCLUSION

Based on the foregoing, it is hereby

ORDERED that the motion for dismissal by defendants Montefiore Mount Vernon Hospital, Montefiore Schaffer Extended Care Center, Montefiore Schaffer Extended Care Center, Montefiore SS Holdings, LLC, Montefiore MV Holdings, LLC and Montefiore HA Holdings, LLC (Motion Seq. 001) is granted; and it is further

ORDERED that the motion to sever claims or compel discovery (Motion Seq. 002) is advanced and resolved as moot;

ORDERED that the Clerk shall enter judgment accordingly; and it is further

ORDERED that counsel for Defendants shall serve a copy of this decision, along with notice of entry, on all parties within 10 days of entry.

Dated: October 4, 2019



Hon. Carol R. Edmead, J.S.C.

HON. CAROL R. EDMEAD
J.S.C.