

Hussain v JP Morgan Chase & Co.

2019 NY Slip Op 34349(U)

September 17, 2019

Supreme Court, Suffolk County

Docket Number: Index No. 607138/2017

Judge: Joseph Farneti

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ORIGINAL

SHORT FORM ORDER

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**SUPREME COURT - STATE OF NEW YORK
I.A.S. TERM, PART 37 - SUFFOLK COUNTY**

PRESENT:

**HON. JOSEPH FARNETI
Acting Justice Supreme Court**

SAJJAD HUSSAIN and LUBNA HUSSAIN,

Plaintiffs,

-against-

JP MORGAN CHASE & CO., BEST BUY
STORES, L.P. and BRIGHTVIEW
LANDSCAPES, LLC,

Defendants.

ORIG. RETURN DATE: DECEMBER 19, 2017
FINAL SUBMISSION DATE: DECEMBER 21, 2017
MTN. SEQ. #: 001
MOTION: MG

PLAINTIFF'S ATTORNEY:

LAW FIRM OF VAUGHN, WEBER
& PRAKOPE, P.L.L.C.
393 JERICHO TURNPIKE - SUITE 208
MINEOLA, NEW YORK 11501
516-858-2620

ATTORNEY FOR DEFENDANT

JP MORGAN CHASE & CO.:
RUSSO & TONER, LLP
33 WHITEHALL STREET - 16TH FLOOR
NEW YORK, NEW YORK 10004
212-482-0001

ATTORNEY FOR DEFENDANT

BEST BUY STORES, L.P.:
DURKIN & DURKIN, LLC
80 BROAD STREET - 5TH FLOOR
NEW YORK, NEW YORK 10004
212-349-8173

ATTORNEY FOR DEFENDANT

BRIGHTVIEW LANDSCAPES, LLC:
CHESNEY & NICHOLAS, LLP
485 UNDERHILL BOULEVARD - SUITE 308
SYOSSET, NEW YORK 11791
516-378-1700

Upon the following papers numbered 1 to 7 read on this motion _____

FOR SUMMARY JUDGMENT

Notice of Motion and supporting papers 1-3 ; Affirmation in Opposition and supporting papers 4, 5 ; Reply Affirmation and supporting papers 6, 7 ; it is,

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ORDERED that this motion by defendant BEST BUY STORES, L.P. ("Best Buy") for an Order, pursuant to CPLR 3212, granting Best Buy summary judgment and dismissing plaintiffs' complaint and any and all cross-claims, upon the grounds that there is no genuine issue to be resolved at trial as against Best Buy, and that Best Buy is entitled to judgment as a matter of law, is hereby **GRANTED** for the reasons set forth hereinafter. The Court has received opposition to this application from plaintiffs SAJJAD HUSSAIN and LUBNA HUSSAIN.

This action arises from an incident that allegedly occurred on December 16, 2016, at approximately 7:00 p.m., on the sidewalk in front of a Chase Bank owned by defendant JP MORGAN CHASE & CO. ("JP Morgan") and maintained by defendant BRIGHTVIEW LANDSCAPES, LLC ("Brightview") located at 150 Walt Whitman Road, Huntington Station, New York ("Premises"). Plaintiff SAJJAD HUSSAIN alleges that he slipped and fell on a pile of ice melt and/or salt on a sidewalk while exiting the Chase Bank. The complaint alleges that the building in which the Chase Bank is located is maintained by "JP Morgan and Best Buy," and that Brightview performed snow removal services at the Premises. Plaintiffs further allege that JP Morgan and Brightview contracted to remove snow and ice from the Premises. Plaintiffs claim that defendants caused the subject incident in that they "negligently managed, maintained, operated and/or controlled the premises by negligently creating a dangerous condition by placing ice melt and/or rock salt and/or a foreign substance on the sidewalk and in the path of prospective customers."

Plaintiffs commenced this action by the filing of a summons and verified complaint on April 17, 2017. JP Morgan joined issue by service of an answer dated May 5, 2017. Best Buy joined issue with the service of an answer dated September 6, 2017. Brightview joined issue with the service of an answer dated June 12, 2017.

Best Buy has filed the instant application for summary judgment, alleging that it operates a store at the far end of a common parking lot that abuts the Walt Whitman Mall and is commonly known as 148 Walt Whitman Road, Huntington Station, New York. Best Buy informs the Court that pursuant to a Purchase Agreement between Best Buy and JP Morgan dated November 21, 2014, JP Morgan purchased "all of Best Buy's right, title and interest" in the Premises, including the abutting sidewalks and curbs, and that JP Morgan has owned the Premises since that time. As such, Best Buy argues that plaintiffs

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incorrectly assert that Best Buy was the owner, operator and manager of the Premises at the time of the subject incident.

In opposition, plaintiffs indicate that an investigation as to the owner of the Premises was conducted, and it revealed that pursuant to a deed dated February 11, 2002, and filed with the Suffolk County Clerk on February 16, 2002, Best Buy was the owner of the Premises. However, plaintiffs acknowledge that after commencement of this action, their counsel received a copy of the deed dated November 21, 2014, which transferred ownership of the Premises to JP Morgan. However, plaintiffs argue that a question of fact exists as to whether Best Buy or JP Morgan owns the Premises in the absence of a legal description of the boundaries of the Premises.

On a motion for summary judgment the Court's function is to determine whether issues of fact exist not to resolve issues of fact or to determine matters of credibility (see *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957]; *Tunison v D.J. Stapleton, Inc.*, 43 AD3d 910 [2007]; *Kolivas v Kirchoff*, 14 AD3d 493 [2005]). Therefore, in determining the motion for summary judgment, the facts alleged by the nonmoving party and all inferences that may be drawn are to be accepted as true (see *Doize v Holiday Inn Ronkonkoma*, 6 AD3d 573 [2004]; *Roth v Barreto*, 289 AD2d 557 [2001]; *Mosheyev v Pilevsky*, 283 AD2d 469 [2001]). The failure of the moving party to make such a *prima facie* showing requires denial of the motion regardless of the insufficiency of the opposing papers (see *Dykeman v Heht*, 52 AD3d 767 [2008]; *Sheppard- Mobley v King*, 10 AD3d 70 [2004]; *Celardo v Bell*, 222 AD2d 547 [1995]). Once the movant's burden is met, the burden shifts to the opposing party to establish the existence of a material issue of fact (see *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]; *Zuckerman v New York*, 49 NYS2d 557 [1980]). However, mere allegations, unsubstantiated conclusions, expressions of hope or assertions are insufficient to defeat a motion for summary judgment (see *Zuckerman v City of New York*, *supra*; *Blake v Guardino*, 35 AD2d 1022 [1970]).

Here, the Court finds that Best Buy has established *prima facie* that it is entitled to judgment as a matter of law dismissing the complaint as asserted against it. The burden then shifted to plaintiffs to raise a triable issue of fact. Plaintiffs have failed to do so. Best Buy has established that as of November 21, 2014, it was no longer the owner or operator of the Premises. The deed of November 21, 2014, transferred ownership of "Lot 2" or "Parcel 2" (the Premises)

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to JP Morgan and, further, the "Declaration of Easements, Covenants and Restrictions" of even date recites that JP Morgan was responsible for, among other things, the maintenance and repair of the sidewalks thereupon, as well as the removal of snow and ice from the sidewalks and curbs.

Accordingly, this motion by Best Buy for summary judgment dismissing the complaint and any and all cross-claims as asserted against it is **GRANTED**.

The foregoing constitutes the decision and Order of the Court.

Dated: September 17, 2019



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Acting Justice Supreme Court

____ FINAL DISPOSITION

X NON-FINAL DISPOSITION