

**Bedell v CBRE, Inc.**

2019 NY Slip Op 34709(U)

November 21, 2019

Supreme Court, Nassau County

Docket Number: Index No. 610453/18

Judge: Antonio I. Brandveen

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This opinion is uncorrected and not selected for official publication.

ORIGINAL

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: ANTONIO I. BRANDVEEN
J. S. C.

JENNIFER M. BEDELL,

Plaintiff,

- against -

CBRE, INC., PARIS MAINTENANCE &
MANAGEMENT CO., INC., PARIS
MAINTENANCE COMMERCIAL CLEANING
CORP., PARIS MAINTENANCE SUPPLY CO.,
INC., and JONES LANG LASALLE AMERICA,
INC.,

Defendants.

TRIAL / IAS PART 25
NASSAU COUNTY

Action No. 1

Index No. 610453/18

Motion Sequence No. 001

The following papers having been read on this motion:

Table listing documents and page numbers: Notice of Motion, Affidavits, & Exhibits (1, 2, 3), Answering Affidavits (4, 5, 6), Replying Affidavits (7, 8, 9), Briefs: Plaintiff's / Petitioner's, Defendant's / Respondent's, Efiled document/exhibits (18, 19, 20, 25, 32, 39, 41, 44)

UPON the foregoing papers, this motion is decided as follows:

The defendant CBRE, Inc., the management company on the premises for Capital One Bank, moves for an order pursuant to CPLR 3212 granting it summary judgment, and dismissing the complaint and any cross claims against it. CBRE, Inc. asserts there are no triable issues of fact sufficient to defeat this motion. CBRE, Inc. also maintains the business relationship between it and Capital One Bank expired some months before the alleged incident. CBRE, Inc. requests to enter judgment with the Court Clerk against the plaintiff with statutory costs and disbursements.

All of the defendants and the plaintiff oppose this motion, and CBRE, Inc. replies to that opposition. The defense asserts this motion is premature because depositions have not yet been held in this action. The defense points out there is a companion action against Capital One Financial Corporation under Index number 4096/2016 is ongoing. The defense provides the deposition transcript of Capital One Financial Corporation given by Randy Levitt, who was responsible for the bank branch where the incident occurred. The defense notes Levitt testified, in contrast to the assertion by CBRE, Inc., that CBRE, Inc. was still on the premises contracting for facilities management at the time of the incident. The defense asserts, notwithstanding an affidavit dated December 14, 2018, by Donna Boatwright, CBRE, Inc. was still providing facility service at the subject branch on August 11, 2015, on the date of the subject accident. The defendants, Paris Maintenance & Management Co., Inc., Paris Maintenance Commercial Cleaning Corp., Paris Maintenance Company, Inc. and Paris Maintenance Supply Co., Inc. argue Boatright's affidavit is inadmissible because it does not comply with CPLR 2309(c) because no certificate of conformity is annexed to the moving papers.

In reply to opposition by Paris Maintenance & Management Co., Inc., Paris Maintenance Commercial Cleaning Corp., Paris Maintenance Company, Inc. and Paris Maintenance Supply Co., Inc., CBRE, Inc. asserts consideration of Boatright's affidavit presents no prejudice to the defendants, Paris Maintenance & Management Co., Inc., Paris Maintenance Commercial Cleaning Corp., Paris Maintenance Company, Inc. and Paris Maintenance Supply Co., Inc. CBRE, Inc. points out Paris Maintenance & Management Co., Inc., Paris Maintenance Commercial Cleaning Corp., Paris Maintenance Company, Inc. and Paris Maintenance Supply Co., Inc. have not submitted any evidence in admissible form which creates an issue of fact warranting the denial of summary judgment. CBRE, Inc. avers Levitt's testimony fails to refute CBRE, Inc.'s claim that it

did not provide facilities management services at the subject location at the time of the accident due to the termination agreement.

In reply to opposition by Jones Lang Lasalle Americas, Inc., CBRE, Inc. asserts consideration of Boatright's affidavit presents no prejudice to Jones Lang Lasalle Americas, Inc. CBRE, Inc. also indicates Jones Lang Lasalle Americas, Inc. has not submitted any evidence in admissible form which creates an issue of fact warranting the denial of summary judgment. CBRE, Inc. avers Levitt's testimony fails to refute CBRE, Inc.'s claim that it did not provide facilities management services at the subject location at the time of the accident due to the termination agreement.

The plaintiff alleged slipping and falling on a slippery or wet floor on August 11, 2015, at the Capital One Bank, ATM vestibule, 4374 Sunrise highway, Massapequa, New York. The plaintiff also alleged sustaining injuries as a result of that accident. CBRE, Inc. maintains it provided facilities management services prior to the date of the accident. CBRE, Inc. indicates the Capital One Bank account was terminated on January 30, 2015, six months before the plaintiff's accident. CBRE, Inc. contends summary judgment is appropriate because it was not providing facilities management services on the date of the accident.

The Court determines the motion is premature, under these circumstances (CPLR 3212[f]). Here, the plaintiff commenced a separate lawsuit against Capital One Financial Corporation and Capital One Financial Corporation Trading as Capital One Bank, in Supreme Court, County of Nassau, under index number 4096/2016. There is a pending plaintiff's motion assigned to this Court. In the instant matter, there has been no preliminary conference or any pretrial discovery.

Summary judgment is a drastic remedy that should be only granted where there is no doubt as to the existence of triable issues of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]).

CBRE, Inc. bears the initial burden of establishing its right to judgment as a matter of law (*see Winegard v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). The Second Department holds “the evidence is to be viewed in a light most favorable to the party opposing the motion, giving [it] the benefit of every favorable inference” (*Cartel v Educational Testing Serv.*, 251 AD2d 528 [2d Dept. 1998]). Here, this Court determines there are triable issues of fact that preclude granting of summary judgment to CARE, Inc. The evidence proffered by the parties indicates there is credibility issue regarding whether CBRE, Inc. was managing the premises at which plaintiff’s accident occurred. “Generally, questions of credibility on motions for summary judgment should not be determined by affidavit . . . Additionally, summary judgment should be denied where knowledge of the facts ”is ... peculiarly within the possession of the movant” [citation omitted] (*Frame v Mack Markowitz, Inc.*, 125 AD2d 442, 443 [2d Dept 1986]). It appears there is such knowledge here.

ORDERED that the motion is DENIED with leave to renew.

This decision constitutes the order of the Court. All applications not specifically addressed are denied.

So ordered.

Dated: **November 21, 2019**

ENTER: 

J. S. C.

NON FINAL DISPOSITION

**ENTERED**  
 DEC 02 2019  
 NASSAU COUNTY  
 COUNTY CLERK’S OFFICE