

Rosario v St. Barnabas Nursing Home

2019 NY Slip Op 35025(U)

August 20, 2019

Supreme Court, Bronx County

Docket Number: Index No. 33382/2018E

Judge: Julia I. Rodriguez

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX

-----X **Index No. 33382/2018E**

Rosa Rosario,
Plaintiff,

-against-

DECISION & ORDER

St. Barnabas Nursing Home, Inc. And
SBNH Acquisition LLC,

Defendants.

Present:
Hon. Julia I. Rodriguez
Supreme Court Justice

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Recitation, as required by CPLR 2219(a), of the papers considered in review of St. Barnabas Nursing Home Inc.'s motion to dismiss the complaint pursuant to CPLR 3211(a)(1) and (a)(7).

<u>Papers Submitted</u>	<u>Numbered</u>
Notice of Motion, Affirmation & Exhibits	1
SBNH Affirmation in Opposition & Exhibits	2
Plaintiff's Affirmation in Opposition	3
Reply Affirmation & Exhibits	4

In the instant action, plaintiff alleges she was injured on December 20, 2016 when she fell while entering an elevator in a building owned and/or operated by defendants (the "Premises").

Defendant St. Barnabas Nursing Home, Inc. ("St. Barnabas") now moves to dismiss the complaint as against it, pursuant to CPLR 3211(a)(1) and (a)(7), on the ground that St. Barnabas had no ownership or leasehold interest in the Premises ^{at} ~~at~~ time of plaintiff's alleged accident.

In support of dismissal, St. Barnabas submitted, *inter alia*, the affidavit of Jerusha Bonte, a Bill of Sale, Limited Guaranty and Closing Certificate. In his affidavit, Jerusha Bonte states as follows: He is Director of Finance of St. Barnabas Hospital. On November 3, 2016, St. Barnabas Nursing Home, Inc. was sold to SBNH Acquisition LLC. St. Barnabas Nursing Home, Inc. closed, effective November 3, 2016, thereby no longer operating in any capacity. By the alleged date of loss, December 20, 2016, St. Barnabas Nursing Home, Inc. had closed and was no longer in operation and had no ownership interest in the property located at 2175 Quarry Road, Bronx, New York. St. Barnabas Nursing Home, Inc. had no involvement with the alleged

defective elevator at 2175 Quarry Road on December 20, 2016 as it was no longer in operation in any capacity on that date.

The Bill of Sale, dated November 3, 2016, between St. Barnabas Nursing Home, Inc. (Seller) and SBNH Acquisition LLC (Buyer) states that it is “pursuant to the Amended and Restated Asset Purchase Agreement dated as of August 1, 2016 between Seller and Buyer (the ‘Agreement’)” and pertains to “the purchase by Buyer from Seller of the Purchased Assets (as defined in the Agreement).”

The Limited Guaranty states, in part, that “in consideration for, and as an inducement to St. Barnabas Nursing Home, Inc. . . . to enter into the Asset Purchase Agreement . . . for the purchase . . . of [its] nursing home business, located at 2175 Quarry Road, Bronx, New York, and certain assets associated therewith . . . Benjamin Landa . . . does hereby . . . absolutely and unconditionally guarantees . . . (I) the prompt and punctual payment of the amounts owed by SBNH Lending Partners, LLC under the Promissory Note”

The Closing Certificate, dated November 3, 2016, states, in part, that “[r]eference is made to that certain Amended and Restated Asset Purchase Agreement (the ‘Purchase Agreement’) . . . This Closing Certificate is being delivered to Seller pursuant to Section 6.1(b) of the Purchase Agreement.”

In opposition to the motion, defendant SBNH Acquisition LLC (“SBNH”) submitted, *inter alia*, a Bargain and Sale Deed and Memorandum of Lease Agreement. The Bargain and Sale Deed, dated June 1, 1992, indicates that St. Barnabas Hospital transferred a certain parcel of land at or about Third Avenue and East 181st Street, Bronx, NY, “with the buildings and improvements thereon erected,” to St. Barnabas Nursing Home, Inc.

The Memorandum of Lease Agreement, dated December 19, 2018, between 2175 Quarry Road, LLC (Lessor) and SBNH Acquisition LLC (Lessee) states that on March 27, 2016 Lessor and Lessee entered into an Agreement to Sublease for the property located at 2175 Quarry Road (the “Premises”), that St. Barnabas Nursing Home, Inc. was the Ground Lessor and “fee owner of the Premises,” and that St. Barnabas Nursing Home, Inc. was subject to a ground lease between 2175 Quarry, LLC and St. Barnabas Nursing Home, Inc. dated March 28, 2016.

In reply, St. Barnabas submitted the affidavit of Yanet Guzman and a Real Property Transfer Tax Return. In his affidavit, Yanet Guzman states as follows: He is the Associate Director of Finance of St. Barnabas Hospital. St. Barnabas Nursing Home, Inc. did not have any interest in the building located at 2175 Quarry Road after November 3, 2016. When St. Barnabas Nursing Home, Inc. sold its nursing home business, it remained the owner of the lot upon which the subject building located at 2175 Quarry Road stands. Because the actual lot that belongs to St. Barnabas Nursing Home, Inc. is much larger than the building located at 2175 Quarry Road, St. Barnabas Hospital “formed a new subdivision of the property as the footprint of the building . . . This new subdivision was formed after the nursing home business was sold to SBNH . . . As a result, there are two relevant addresses: 2175 Quarry Road (address of the nursing home business) and 4428 3rd Avenue, Block, Lot 10 (new subdivision of the land upon which the subject building located at 2175 Quarry Road stands upon).” While St. Barnabas Nursing Home, Inc. “remains the lot owner of 4428 3rd Avenue, Block 3064, Lot 10 to this present day, it has not had any leasehold interest in the subject building located at 2175 Quarry Road since November 3, 2016. St. Barnabas Nursing Home Inc. “transferred 100% of its Leasehold Interest in the subject building located at 2175 Quarry Road to SBNH Acquisition LLC on November 3, 2016.”

The Real Property Transfer Tax Return, dated November 3, 2016, indicates that St. Barnabas Nursing Home, Inc. transferred a 100% leasehold interest in the property located at 4428 3rd Avenue, Block 3064, Lot 10 in exchange for \$21,000,000 cash.

* * * * *

On a motion to dismiss pursuant to CPLR §3211(a)(1) and (a)(7), the court must accept the facts as alleged in the complaint as true, accord plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. *Leon v. Martinez*, 84 N.Y.2d 83, 614 N.Y.S.2d 972 (1994). However, “allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not entitled to any such consideration.” *See Maas v. Cornell*, 94 N.Y.2d 87, 91, 699 N.Y.S.2d 716 (1999). Dismissal is warranted only if the documentary evidence submitted

utterly refutes plaintiff's factual allegations and conclusively establishes a defense to the asserted claims as a matter of law. *See Goshen v. Mutual Life Ins. Co. of N.Y.*, 98 N.Y.2d 314, 326, 746 N.Y.S.2d 858 (2002); *Weil, Gotshal & Manges, LLP v. Fashion Boutique of Short Hills, Inc.*, 10 A.D.3d 267, 270 (1st Dept. 2004). Affidavits submitted by a defendant to attack the sufficiency of a pleading "will seldom if ever warrant the relief he seeks unless . . . the affidavits establish conclusively that plaintiff has no cause of action." *See Rovello v. Orofino Realty Co., Inc.*, 40 N.Y.2d 633, 636, 389 N.Y.S.2d 314 (1976).

Here, based upon the documentary evidence submitted by the parties, including the deed for the subject lot and improvements thereon indicating that St. Barnabas Nursing Home, Inc. is the owner of same, issues of fact exist as to whether, at the time of the alleged accident, St. Barnabas Nursing Home, Inc. had an ownership interest in the building wherein plaintiff alleges she was injured. Also, the affidavits of Jerusha Bonte and Yanet Guzman do not conclusively establish that plaintiff has no cause of action against St. Barnabas Nursing Home, Inc. As such, defendant St. Barnabas Nursing Home, Inc. has failed to establish that the complaint fails to state a cause of action against it.

Accordingly, St. Barnabas Nursing Home, Inc.'s motion to dismiss, pursuant to CPLR 3211(a)(1) and (a)(7), is **denied**.

Dated: Bronx, New York
August 20, 2019



Hon. Julia I. Rodriguez, J.S.C.