

Ahona v Marriott Intl., Inc.

2020 NY Slip Op 30202(U)

January 28, 2020

Supreme Court, New York County

Docket Number: 162115/2018

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. KATHRYN E. FREED **PART** **IAS MOTION 2EFM**

Justice

-----X

INDEX NO. 162115/2018

GEOVANNA AHONA,

Plaintiff,

MOTION SEQ. NO. 002

- v -

MARRIOTT INTERNATIONAL, INC., TIMES SQUARE
HOTEL OPERATOR, INC., CWI TIMES SQUARE HOTEL,
LLC, and SBCO-NYC OWNER, LLC,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 28, 29, 30, 31
were read on this motion to/for AMEND CAPTION/PLEADINGS.

In this personal injury action commenced by plaintiff Geovanna Ahona against defendants Marriott International, Inc. (“Marriott”), Times Square Hotel Operator, Inc. (“TSHO”), CWI Times Square Hotel, LLC (“CWI”), and SBCO-NYC Owner, LLC (“SBCO”) (collectively “defendants”), Marriott, TSHO, and CWI move: 1) to amend the caption to remove SBCO as a defendant; and 2) in effect, for summary judgment dismissing the complaint against Marriott. After a review of the motion papers, as well as the applicable statutes and case law, the motion, which is unopposed, is decided as follows.

Plaintiff commenced this action by filing a summons and verified complaint against defendants on December 26, 2018. Doc. 1. In her complaint, plaintiff alleged that she was injured on January 2, 2016 at a “Courtyard by Marriott” hotel, located at 307 West 37th Street in Manhattan, due to the negligence of the defendants, which allegedly owned, operated, managed, and/or controlled the premises. The parties were thereafter served with process. Although

Marriott, TSHO, and CWI joined issue in this action, SBCO did not and plaintiff moved for a default judgment against it. Doc. 16. By order entered September 27, 2019, this Court denied plaintiff's motion for a default judgment against SBCO "with leave to renew upon proper papers within 30 days, upon penalty of dismissal of its claims against said defendant." Doc. 27. Following the issuance of the order, plaintiff did not renew its motion for a default against SBCO.

Although this motion is denominated as one seeking to amend the caption, it is, in effect, an application for summary judgment dismissing the complaint as against Marriott and SBCO. However, since plaintiff failed to renew its default application against SBCO, the complaint against said defendant is dismissed and the caption is to be amended to reflect this dismissal.¹

Additionally, Marriott established its prima facie entitlement to summary judgment by submitting the 2014 relicensing franchise agreement it had with TSHO. Doc. 31. That agreement provided that either the licensee or a managing agent appointed by Marriott was to manage and operate the hotel. Doc. 31 at Article 9. However, "[t]he mere existence of a franchise agreement is insufficient to impose vicarious liability on the franchisor for the acts of its franchisee; there must be a showing that the franchisor exercised control over the day-to-day operations of its franchisee (*Schoenwandt v Jamfro Corp.*, 261 AD2d 117, 689 NYS2d 461 [1999]; *Hong Wu v Dunkin' Donuts, Inc.*, 105 F Supp 2d 83 [EDNY 2000], *aff'd* 4 Fed Appx 82 [2d Cir 2001])." *Martinez v Higher Powered Pizza, Inc.*, 43 AD3d 670, 671 (1st Dept 2007). Since Marriott's motion is unopposed, there is no evidence that it exercised any control over the operations of the hotel and plaintiff's claims against it are therefore dismissed.

In light of the foregoing, it is hereby:

¹ It is thus unnecessary for this Court to address movants' argument that the claims against SBCO must be dismissed on the ground that it sold the premises in 2014 and thus had no involvement with the alleged incident.

ORDERED that the motion is granted in all respects; and it is further

ORDERED the complaint is dismissed as against defendants Marriott International, Inc. and SBCO-NYC Owner, LLC, and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that the caption shall be amended as follows:

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

GEOVANNA AHONA,

Plaintiff,

-against-

Index Number 162115/18

TIMES SQUARE HOTEL OPERATOR, INC. and

CWI TIMES SQUARE HOTEL, LLC,

Defendants.

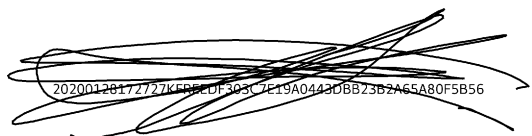
and it is further

ORDERED that, within 20 days of entry of this order, counsel for defendants is directed to serve a copy of the same, with notice of entry, upon the Clerk of the Court and upon the Clerk of the General Clerk's office in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh), who are directed to amend their records to reflect the change in the caption herein; and it is further

ORDERED that, within 20 days of the entry of this order, counsel for defendants is also directed to serve a copy of the same, with notice of entry, on counsel for plaintiff; and it is further

ORDERED that this constitutes the decision and order of the court.

1/28/2019
DATE



KATHRYN E. FREED, J.S.C.

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|-----------------------|-------------------------------------|----------------------------|-------------------------------------|-----------------------|
| CHECK ONE: | <input type="checkbox"/> | CASE DISPOSED | <input checked="" type="checkbox"/> | NON-FINAL DISPOSITION |
| | <input checked="" type="checkbox"/> | GRANTED | <input type="checkbox"/> | GRANTED IN PART |
| APPLICATION: | <input type="checkbox"/> | SETTLE ORDER | <input type="checkbox"/> | OTHER |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> | REFERENCE |
| | | | <input type="checkbox"/> | FIDUCIARY APPOINTMENT |
| | | | <input type="checkbox"/> | DENIED |