

Sluder v City of New York

2020 NY Slip Op 32113(U)

July 1, 2020

Supreme Court, New York County

Docket Number: 153472/2019

Judge: Laurence L. Love

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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:	<u>HON. LAURENCE L. LOVE</u>	PART	IAS MOTION 62
	<i>Justice</i>		
-----X		INDEX NO.	<u>153472/2019</u>
RONALD SLUDER,		MOTION DATE	<u>4/16/2020</u>
Plaintiff,		MOTION SEQ. NO.	<u>001</u>

- v -

THE CITY OF NEW YORK, NEW YORK CONVENTION
OPERATING AUTHORITY, THE NEW YORK
CONVENTION CENTER OPERATING CORPORATION,
NEW YORK CONVENTION CENTER DEVELOPMENT
CORPORATION

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44

were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44

were read on this motion to/for DISMISS.

Upon the foregoing documents, plaintiff’s motion to consolidate and defendant, the City of New York’s motion to dismiss are decided as follows:

Plaintiff commenced the instant action by the filing of his summons and verified complaint on April 3, 2019, seeking to recover for personal injuries allegedly sustained on October 29, 2018, when a freestanding wall collapsed onto him on the fourth floor of the Jacob K. Javits Convention Center at 655 West 34th Street in the County, City and State of New York. Issue was joined by service of a Verified Answer on behalf of The City of New York on or about June 18, 2019 and by service of a Verified Answer on behalf of the New York Convention Center defendants on May 2, 2019. On July 15, 2019, Plaintiff commenced a second action against CSI Worldwide, LLC by purchasing Index No. 156907/2019 and e-filing a Summons and Verified Complaint. Issue in

Action No. 2 was joined by service of CSI Worldwide, LLC's Answer on October 28, 2019. A review of the pleadings establishes that both actions arise out of the same accident. Plaintiff now moves to consolidate the above actions and defendant, the City of New York cross-moves to dismiss this action pursuant to CPLR R. 3211 (a)(1) and (7).

In support of the City's cross-motion to dismiss, David Schloss, a Senior Title Examiner, conducted a search for the record owner for 655 West 34 Street, New York, New York, which is designated on the tax map as Block 0680, Lot 0001. Mr. Schloss's search revealed that the property in question was not owned by the City on October 29, 2018, but rather by The New York Convention Center Development Corporation, which acquired title pursuant to a deed recorded February 23, 1989, in Liber 1539, Page 197. In further support of the City's cross-motion, the City submits the affidavit of Saundra Malanowicz, a Community Coordinator for the New York City Department of Citywide Administrative Services ("DCAS"), who conducted a search for records pertaining to the ownership and management of 655 West 34 Street a/k/a Block 0680, Lot 0001 and any contract or lease agreements in the possession of DCAS pertaining to this property in effect as of October 29, 2018. In her affidavit, Ms. Malanowicz establishes: there are no records indicating that the Property was owned, occupied, maintained or controlled by the City of New York, either directly as owner or by means of a license or lease in effect on October 29, 2018.

When documentary evidence is submitted upon a motion to dismiss pursuant to CPLR § 3211, and disproves an essential element allegation of the complaint, dismissal is warranted even if the allegations, standing alone, could otherwise withstand a motion to dismiss pursuant to CPLR § 3211 (a)(7). See Mill Fin. LLC v. Gillett, 122 A.D.3d 98, 103 (1st Dept 2014). Here the title search affidavit, deed, tax map, DCAS Integrated Property Information System Search and Ms. Malanowicz's affidavit utterly refute the allegations in plaintiff's complaint. Since the City did not

own, operate, manage, maintain, control, or repair the premises on the date of the incident, the City did not owe a duty of care to Plaintiff, See, Balsam v. Delma Eng'g Co ., 139 A.D.2d 292, 296-297, Iv. dismissed, Iv. denied 73 N.Y.2d 783 (1998).

In opposition, plaintiff concedes that the City of New York has established that it does not own the premises, but argues that defendants “failed to demonstrate in their submitted affidavit that they did not contract for the work being performed on the premises on the date of Plaintiffs accident. Further, the City did not establish they are not an agent, or benefiting from the subject work.” As the City did not own, operate, manage, maintain, control, or repair the premises on the date of the incident, it cannot be established that the City contracted for the subject work or benefited from the subject work. As such, defendant, the City of New York’s motion must be granted.

ORDERED that the motion of defendant the City of New York to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made 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).

ORDERED that the plaintiff's motion is granted and the above-captioned action is consolidated in this Court with Ronal Sluder vs. CSI Worldwide, LLC, Index No 156907/2019, pending in this Court; and it is further

ORDERED that the consolidation shall take place under Index No. 153472/2019 and the consolidated action shall bear the following caption:

RONALD SLUDER

Plaintiff,

-against-

NEW YORK CONVENTION OPERATING AUTHORITY,
THE NEW YORK CONVENTION CENTER OPERATING
CORPORATION, NEW YORK CONVENTIONCENTER
DEVELOPMENT CORPORATION and CSI WORLDWIDE, LLC.

Defendants.

And it is further

ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the Court (60 Centre Street, Room 141 B), who shall consolidate the documents in the actions hereby consolidated and shall mark his records to reflect the consolidation; and it is further


ORDERED that counsel for the movant shall contact the staff of the Clerk of the Court to arrange for the effectuation of the consolidation hereby directed; and it is further

ORDERED that, as applicable and insofar as is practical, the Clerk of this Court shall file the documents being consolidated in the consolidated case file under the index number of the consolidated action in the New York State Courts Electronic Filing System or make appropriate notations of such documents in the e-filing records of the court so as to ensure access to the documents in the consolidated action; and it is further

ORDERED that, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who is hereby directed to reflect the consolidation by appropriately marking the court's records; and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the aforesaid Protocol; and it is further

ORDERED that the Clerk of the Court is directed to transfer this matter to a non-City part as the City of New York is no longer a party to this action.

<u>7/1/2020</u>					
DATE			LAURENCE L. LOVE, J.S.C.		
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input checked="" type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input checked="" type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

