

Cassen v Greenwich House, Inc.

2020 NY Slip Op 32590(U)

August 11, 2020

Supreme Court, New York County

Docket Number: 150935/2020

Judge: Barbara Jaffe

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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. BARBARA JAFFE PART IAS MOTION 12EFM

Justice

-----X

MARGARET CASSEN,

Plaintiff,

- v -

INDEX NO. 150935/2020

MOTION DATE _____

MOTION SEQ. NO. 001

GREENWICH HOUSE, INC., GREENWICH HOUSE
SENIOR CENTER D/B/A THE JUDITH C. WHITE
SENIOR CENTER,

**DECISION + ORDER ON
MOTION**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6-25
were read on this motion to _____ dismiss _____.

By notice of motion, defendant Greenwich House, Inc. (House) moves pursuant to CPLR 3211(a) and (c) for an order dismissing all claims against defendant Greenwich House Senior Center d/b/a The Judith C. White Senior Center (Center). Plaintiff opposes and cross-moves pursuant to CPLR 3025 for an order granting her leave to file an amended complaint. House opposes.

I. COMPLAINT

By summons and complaint dated January 24, 2020, plaintiff alleges that on November 8, 2019, she was walking in the lobby of the premises located at 27 Barrow Street in Manhattan and allegedly owned and operated by defendants, when she slipped and fell, sustaining injury. She alleges that defendants negligently maintained the premises, causing her fall. (NYSCEF 9).

II. CONTENTIONS

A. House (NYSCEF 6-13)

House contends that all claims against Center should be dismissed because it is not a legal entity. In support, House submits the affidavit of its chief executive officer (CEO) and executive director dated May 7, 2020, in which he states that House is a non-profit organization that provides, among other things, programming for senior citizens and House members. The Judith C. White Senior Center is a House program which provides “weekly programming and lunch for [House] members,” and it is not a separate entity, is not insured, and does not have an office. Rather, it is only the name of the program or a “trade name per se.” According to the CEO, “Greenwich House Senior Center” is not a House program. (NYSCEF 11).

House offers its pertinent entity information from the Department of State’s website, which reflects “Greenwich House, Inc.” as the only name for House, and evidence of its fruitless searches for entities by the names of “Greenwich House Senior Center” and “Judith C. White Senior Center.” (NYSCEF 12).

B. Plaintiff (NYSCEF 16-21)

Plaintiff seeks to amend her complaint to reflect that the only defendant is “Greenwich House, Inc. d/b/a The Judith C. White Senior Center.” She observes that House’s CEO describes the Judith C. White Senior Center as a “trade name,” which she contends is synonymous with “doing business as” and denies that House would be prejudiced by the amendment. She does not oppose the removal of Center from this action.

C. House’s reply (NYSCEF 23)

In reply, House reiterates that only House is a legal entity, and that even if Judith C. White Senior Center is a trade name, it lacks a jural existence, and thus, may not be sued.

D. Plaintiff's reply (NYSCEF 25)

In reply, plaintiff reiterates her earlier contentions.

III. ANALYSIS

Pursuant to CPLR 3025(b), leave to amend pleadings shall be freely given where “the amendment is not patently lacking in merit” and the nonmoving party suffers no prejudice. (*Davis v S. Nassau Communities Hosp.*, 26 NY3d 563, 580 [2015], quoting *Pink v Ricci*, 100 AD3d 1446 [4th Dept 2012]). The movant bears the burden of establishing that the proposed amendments are “not palpably insufficient or clearly devoid of merit.” (*MBIA Ins. Corp. v Grey stone & Co.*, 74 AD3d 499, 500 [1st Dept 2010]).

As plaintiff does not oppose House’s motion to dismiss, her claims against Center are severed and dismissed.

A trade name is not an entity which may be sued. (*Honeyman v Curiosity Works, Inc.*, 120 AD3d 1302, 1303 [2d Dept 2014]). Thus, absent any explanation as to how amending the caption to reflect a trade name is necessary, plaintiff fails to meet her burden of establishing the merit of her proposed amendment.

IV. CONCLUSION

Accordingly, it is hereby

ORDERED, that defendant Greenwich House, Inc.’s motion is granted, and the claims against defendant Greenwich House Senior Center d/b/a The Judith C. White Senior Center are severed and dismissed; it is further

ORDERED, that plaintiff’s cross motion to amend is denied; and it is further

ORDERED, that the parties either enter into a stipulation encompassing their preliminary conference on or before October 21, 2020, or appear for a preliminary conference in room 341,

60 Centre Street, New York, New York, on October 21, 2020 at 2:15 pm or virtually if necessary.

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8/11/2020
DATE

BARBARA JAFFE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE