

Feeney v Howard Hughes Corp.
2020 NY Slip Op 33256(U)
October 5, 2020
Supreme Court, New York County
Docket Number: 150617/2020
Judge: Kathryn E. Freed
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

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

Justice

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INDEX NO. 150617/2020

DARLENE FEENEY,

Plaintiff,

MOTION SEQ. NO. 001

- v -

THE HOWARD HUGHES CORPORATION, NEW YORK
CITY ECONOMIC DEVELOPMENT CORPORATION,
SOUTH STREET SEAPORT LIMITED PARTNERSHIP,
SEAPORT MANAGEMENT DEVELOPMENT COMPANY,
LLC, NEW YORK CITY DEPARTMENT OF SMALL
BUSINESS SERVICES, and THE CITY OF NEW YORK,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22

were read on this motion to/for DISMISS.

In this personal injury action commenced by plaintiff Darlene Feeney, defendant The Howard Hughes Corporation moves, pursuant to CPLR 3211(a)(1) and 3211(c), to dismiss the complaint. Plaintiff opposes the motion. After a review of the motion papers, as well the relevant statutes and case law, the motion is decided as follows.

This case arises from an incident on July 9, 2019 in which plaintiff was allegedly injured when she tripped and fell on a boardwalk at 89 South Street at the South Street Seaport, Pier 17, New York, New York (“the premises”) as a result of the negligence of defendants The Howard Hughes Corporation (“HHC”), The New York City Economic Development Corporation, South Street Seaport Limited Partnership, Seaport Management Development Company, LLC, New York City Department of Small Business Services, and The City of New York (“the City”) in

operating, managing, and maintaining the premises. Doc. 1. Plaintiff commenced the captioned action by filing a summons and complaint against defendants in January 2020. Doc. 1.

In lieu of answering, HHC now moves, pursuant to CPLR 3211(a)(1) and 3211(c), to dismiss the complaint. HHC argues that the claims against it must be dismissed since it had no ownership interest, possession, or control of the premises. Doc. 11. In support of its position, HHC submits the Affidavit of Aaron Grodin, its Assistant General Counsel, who states, inter alia, that HHC did not own the premises; was not the lessee of any part of the premises; “did not maintain any presence on or around the premises in question on the date of the alleged accident”; and had no other involvement at the premises. Doc. 15. Therefore, argues HHC, it neither owed nor breached any duty to plaintiff.

In opposition to the motion, plaintiff’s counsel argues that: 1) according to Wikipedia, Pier 17 is currently owned and managed by HHC; 2) after plaintiff served a Notice of Claim on the City alleging that it was responsible for plaintiff’s accident, the City wrote to him to advise that HHC may have been responsible for the incident; and 3) a sign at the premises lists HHC as a contact, specifically stating that the premises are "Maintained by Seaport@Howard Hughes (212) 732- 8257", which number is that of HHC. Given these indications of HHC’s involvement at the premises, plaintiff insists that the motion cannot be granted, especially since no discovery has been conducted.

LEGAL CONCLUSIONS:

CPLR 3211(a)(1) allows a defendant to “move for judgment dismissing one or more causes of action asserted against him on the ground that . . . a defense is founded upon documentary evidence.” Although Grodin maintains in his affidavit that HHC had no

ownership, leasehold, or other interest or involvement in the premises, such an affidavit is not "documentary evidence" for the purposes of CPLR 3211(a)(1). See *Celentano v Boo Realty, LLC*, 160 AD3d 576, 577 (1st Dept 2018) citing *Flowers v 73rd Townhouse LLC*, 99 AD3d 431 (1st Dept 2012); *Tsimerman v Janoff*, 40 AD3d 242 (1st Dept 2007); see also *Bou v Llamaza*, 173 AD3d 575 (1st Dept 2019) citing *Art & Fashion Group Corp. v Cyclops Prod., Inc.*, 120 AD3d 436 (1st Dept 2014).

Further, Grodin's affidavit is conclusory, insofar as he sets forth absolutely no basis for the information he sets forth therein. Even if this Court were to consider the affidavit, it is insufficient to warrant dismissal of the complaint since it does not address any of the indications, set forth in the affirmation of plaintiff's counsel, suggesting that HHC owned, managed, and/or controlled the premises. See *Celentano v Boo Realty, LLC*, 160 AD3d 576 at 577. Nor does Grodin submit an affidavit in reply explaining why the indications of HHC's involvement at the premises raised by plaintiff's counsel do not warrant the denial of the motion.

Additionally, HHC is not entitled to dismissal pursuant to CPLR 3211(c). Pursuant to that section, a motion to dismiss may be treated as one for summary judgment by the court "...after adequate notice to the parties has been given." Here, no such notice has been given, and there is no indication that the parties have charted a "summary judgment course." *Brathwaite v. Frankel*, 98 A.D.3d 444 (1st Dept. 2012). Even assuming, arguendo, that HHC's motion were treated as one for summary judgment, it would be denied given the factual issues raised by plaintiff's counsel regarding HHC's possible involvement at the premises.

Therefore, in light of the foregoing, it is hereby:

ORDERED that the motion by defendant The Howard Hughes Corporation is denied in all respects; and it is further

ORDERED that the parties are to participate in a telephonic preliminary conference on January 13, 2020 at 10 a.m.; and it is further

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

10/5/2020

DATE

KATHRYN E. FREED, 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