

Holley v New York City Health & Hosps. Corp.

2020 NY Slip Op 35763(U)

July 10, 2020

Supreme Court, Bronx County

Docket Number: Index No. 32563/19E

Judge: Elizabeth A. Taylor

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, I.A.S. PART 2
CLARENCE HOLLEY,

Plaintiff,

Index No. 32563/19E

-against-

DECISION/ORDER

Present:
HON. ELIZABETH A. TAYLOR



NEW YORK CITY HEALTH AND HOSPITALS
CORPORATION and THE CITY OF NEW YORK,
Defendants.

The following papers numbered 1 to ___ read on this motion, _____

No	On Calendar of	PAPERS NUMBERED
	Notice of Motion-Order to Show Cause - Exhibits and Affidavits Annexed-----	1-2
	Answering Affidavit and Exhibits-----	3-4
	Replying Affidavit and Exhibits-----	_____
	Affidavit-----	_____
	Pleadings -- Exhibit-----	_____
	Stipulation -- Referee's Report --Minutes-----	_____
	Filed papers-----	_____

Upon the foregoing papers and due deliberation thereof, the Decision/Order on this motion is as follows:

Motion pursuant to CPLR 3211(a)(1) for an order dismissing the instant action against the City of New York, on the ground that it is not a proper party to the action, is granted.

Plaintiff commenced this personal injury action seeking damages for injuries allegedly sustained on December 8, 2018, as a result of a slip and fall on the premises at the Lincoln Medical Center hospital facility. Defendant, the City of New York (City), argues that it is not a proper party to this action.

The submission of evidentiary material by the defendant or other movant on a motion to dismiss also changes the criterion from whether the proponent of the pleading has stated a cause of action, to whether the proponent has one (*see Kaplan v Conway*

& Conway, 173 AD3d 452, 453 [1st Dept 2019], citing *Basis Yield Alpha Fund (Master) v Goldman Sachs Group, Inc.*, 115 AD3d 128, 135 [1st Dept 2014]). “Judicial records, such as judgments and orders, would qualify as documentary, as should the entire range of documents reflecting out-of-court transactions, such as contracts, deeds, wills, mortgages, and even correspondence” (*Amsterdam Hospitality Group, LLC v Marshall-Alan Assoc., Inc.*, 120 AD3d 431, 432 [1st Dept 2014], quoting David D. Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C3211:10 at 22).

Given the documentary evidence submitted on this motion, the court must determine whether plaintiff has a potentially viable cause of action against the City, not whether he has merely stated one. Movant submitted a copy of the lease, wherein NYCHHC took possession, jurisdiction, and control of the hospital facilities then being operated by the City, including Lincoln Hospital Center, where plaintiff's accident allegedly occurred. The agreement, dated June 16, 1970 and executed on July 1, 1970, is for an indefinite length, and there is nothing in this record indicating that the lease is not still operative. Movant also cites to the New York City Health and Hospitals Corporation Act and judicial decisions construing section 4, subdivision 1 of that statute, as establishing that the City and NYCHHC are separate and distinct entities (see *Brennan v New York*, 59 NY2d 791, 792 [1983] [holding that NYCHHC “is a public benefit corporation, independent of the City of New York” and “for purposes other than representation and indemnification NYCHHC is not an agency of the city”]; *Bender v NY*

City Health & Hosps. Corp., 38 NY2d 662, 665 [1976] [Court recognized that the statute resulted in “the creation of a separate entity, (NYCHHC), to operate the municipal medical facilities in New York City” and the “transferring (of) the operating responsibility from the city to (NYCHHC)”]. The First Department has thus repeatedly held, applying the rationale of *Brennan* and *Bender*, that in personal injury actions arising from allegedly negligent acts occurring in the medical facilities operated by NYCHHC, the City should be dismissed as an improper party because it is a separate and distinct entity (see e.g. *De Sainz v New York*, 101 AD2d 746, 747 [1st Dept 1984] [re: personal injury action arising from incident at Lincoln Hospital Center]; see also *Skelton v New York*, 176 AD2d 664, 664 [1st Dept 1991] [same, re: incident at North Central Bronx Hospital]; *Williams v New York*, 97 AD2d 372, 373 [1st Dept 1983] [same, re: conduct occurring at Harlem Hospital]).

The above-cited record evidence and authority establishes that the City should be dismissed from this action. In opposition, plaintiff argues that the motion is premature because discovery has yet to be exchanged between the parties. On a motion to dismiss made pursuant to CPLR 3211(a) or (b), should it appear from the opposing party’s submission “that facts essential to justify opposition may exist but cannot then be stated, the court may [*inter alia*] deny the motion” (CPLR 3211[d]). However, plaintiff has failed to explain which additional facts may exist that could bear on the issue of whether the City is a proper party, or to submit any proof to overcome movant’s documentary evidence establishing that these ownership and operational

interests have long been statutorily and contractually vested in NYCHHC, and not the City. Nor does it appear from the face of the record that any such legitimate factual questions exist.

The Clerk is directed to dismiss the action against defendant The City of New York and amend the caption, accordingly.

The foregoing shall constitute the decision and order of this court.

Dated: JUL 10 2020



J.S.C.