

Ishola v BJ Org. of N.Y. Inc.

2022 NY Slip Op 30860(U)

January 20, 2022

Supreme Court, Kings County

Docket Number: Index No. 504809/2018

Judge: Francois A. Rivera

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This opinion is uncorrected and not selected for official publication.

At a Civil Term Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, City and State of New York, at the Courthouse, located at 360 Adams Street, Brooklyn, New York on the 20th day of January 2022

HONORABLE FRANCOIS A. RIVERA
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EMMANUEL ISHOLA,
Plaintiff,

-against-

DECISION AND ORDER
Index No. 504809/2018

BJ ORGANIZATION OF NEW YORK INC., AHMED MOHAMED, SHERIFF OF THE CITY OF NEW YORK, and THE NEW YORK CITY DEPARTMENT OF FINANCE,
Defendants.
-----X

Plaintiff Emmanuel Ishola, having commenced an action alleging, *inter alia*, negligence, gross negligence, and unjust enrichment, and having moved for summary judgment against Defendant, BJ Organization of New York and for Default Judgment against Defendants, the Sheriff of the City of New York and the New York City Department of Finance [hereinafter, “City Defendants”], pursuant to, *inter alia*, CPLR § 3212 (Motion Sequence #4); and

Defendant, BJ Organization of New York, having cross-moved for Summary Judgment against Plaintiff pursuant to, *inter alia*, CPLR § 3212 (Motion Sequence #6); and

City Defendants, having cross-moved for dismissal pursuant to, *inter alia*, CPLR § 3211(a)(7) (Motion Sequence #5) of the Verified Complaint, on the grounds that, *inter alia*, Plaintiff has failed to state a claim upon which relief may be granted; and

UPON the reading and filing of Plaintiff's Verified Complaint, dated March 2, 2021 (NYSEF # 64), verified by Emmanuel Ishola; Verified Answer With Counter-Claims of Defendant, BJ Organization of New York, dated March 19, 2021, verified by Ahmed Mohamed (NYSEF # 67); and

UPON the reading and filing of Plaintiff's Notice of Motion For Summary Judgment, dated June 28, 2021 (NYSEF # 80); Affirmation of Steven Rabitz in Support of Plaintiff's Motion for Summary Judgment, with exhibits, dated June 28, 2021 (NYSEF # 81); Plaintiff's Statement of Material facts pursuant to Uniform Rule 202.8-g, dated November 8, 2021 (NYSEF # 144) (Motion Sequence #4); and

UPON the reading and filing of City Defendants' Notice of Cross-Motion For Dismissal and Counterstatement of Material facts, dated October 21, 2021 (NYSEF # 103); Affirmation of Paul J. DeSena in Opposition to Plaintiff's Motion for Summary Judgment and in Support of City Defendants' Cross-Motion to Dismiss, with exhibits, dated October 21, 2021 (NYSEF # 104); City Defendants' Memorandum of Law in Opposition to Plaintiff's Motion for Summary Judgment Support of City Defendants' Cross-Motion to Dismiss, dated October 21, 2021 (NYSEF # 133) (Motion Sequence #5); and

UPON the reading and filing of Defendant's, BJ Organization of New York, Notice of Cross-Motion For Summary Judgment, dated November 8, 2021 (NYSEF # 146); Statement of Material Facts dated November 8, 2021 (NYSEF # 147); Affidavit of Ahmed N. Mohamed in Opposition to Plaintiff's Motion for Summary Judgment and in Support of BJ Organization of New York's Cross-Motion for Summary Judgment, with exhibits, dated November 8, 2021 (NYSEF # 148); Memorandum of Law in Opposition to Plaintiff's Motion for Summary Judgment

and in Support of BJ Organization of New York's Cross-Motion for Summary Judgment, dated November 8, 2021 (NYSEF # 172) (Motion Sequence #6); and

WHEREAS, this Court found on January 20, 2022 that there is no dispute that Defendant, BJ Organization of New York, interposed a Verified Answer With Counter-Claims on March 19, 2021, which included therein counterclaims to which Plaintiff has yet to respond, and that, as a result, issue has not been joined between these parties; and

WHEREAS, this Court found on January 20, 2022 there is also no dispute that Plaintiff's action against the City Defendants is a tort claim, that there is, further, no dispute that a tort claim against a municipality requires, as a condition precedent to suit, the filing of a Notice of Claim, and that there is, further, no dispute that Plaintiff has never filed a Notice of Claim with the City of New York related to this action, despite the fact that it was required as a condition precedent to suit. *See Harrison v. City of N.Y.*, 197 A.D.3d 630, 630-31 [2d Dept. 2021]; *see also Fuentes v. LOMTO Fed. Credit Union*, 2021 NY Slip Op 07540, ¶ 4 [2d Dept. 2021]; and

UPON Plaintiff having appeared by Steven Rabitz, Esq.; Defendant, BJ Organization of New York having appeared by O. Benjamin Okeke, Esq.; and City Defendants having appeared by Georgia M. Pestana, Corporation Counsel of the City of New York, by Assistant Corporation Counsel Paul J. DeSena; and upon the decision of this Court rendered from the bench on January 20, 2022, it is hereby

ORDERED that City Defendants' Cross-Motion to dismiss the Verified Complaint (Motion Sequence # 5) is granted pursuant to CPLR §§ 3211(a)(7), and that the Verified Complaint is dismissed as to the City Defendants; and it is further

ORDERED that Plaintiff's Motion for Summary Judgment (Motion Sequence #4) and Defendant's, BJ Organization of New York, Cross-Motion for Summary Judgment (Motion Sequence #6) are denied as premature, as issue has not been joined between these parties.

ENTER:



JSC