

Rossi v New York City Hous. Auth.
2022 NY Slip Op 31743(U)
May 31, 2022
Supreme Court, New York County
Docket Number: Index No. 157341/2019
Judge: J. Machele Sweeting
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. J. MACHELLE SWEETING PART 62

Justice

-----X

DANIELLE ROSSI,

Plaintiff,

- v -

NEW YORK CITY HOUSING AUTHORITY, CITY OF NEW YORK,

Defendants.

-----X

INDEX NO. 157341/2019
MOTION DATE 03/11/2022
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58

were read on this motion to/for DISMISSAL.

In the underlying action, plaintiff alleges that on September 11, 2018, while at 154 Broome Street, County, City, and State of New York, she sustained personal injuries when, due to an alleged defective step, she was caused to trip and fall down an interior staircase (staircase B) while descending from the second floor to the first floor. The action was filed against the City of New York (the "City") and the New York City Housing Authority ("NYCHA").

Pending before the court is a motion wherein the City seeks an order, pursuant to CPLR § 3211 (a)(1), dismissing the complaint based on documentary evidence and dismissing the complaint, pursuant to CPLR § 3211 (a)(7), for failure to state a cause of action.

"On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction [...] We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (Leon v Martinez, 84 NY2d 83 [NY Ct. of Appeals 1994]).

Arguments Made in Motions

The City argues that it is not a proper party to this action because the City did not own, operate, maintain or control the premises on the date of the alleged incident, and that the property in question is solely owned by co-defendant NYCHA. The City argues that the incident occurred on a staircase located within a building in the confines of a NYCHA development.

In support of its motion, the City attached the sworn Affidavit of David Schloss, (NYSCEF Document #28), which states, in substantive part:

1. I am a Senior Title Examiner with the New York City Law Department. My duties as a Senior Title Examiner include the examination and certification of real estate titles in New York County.
2. I have conducted a title search for 154 BROOME STREET, NEW YORK, NEW YORK, being designated on the tax map as Block 347, Lot 71.
3. Record title for New York Block 347, Lot 71 on SEPTEMBER 11, 2018, was in THE NEW YORK CITY HOUSING AUTHORITY, pursuant to a deed recorded SEPTEMBER 8, 1971, in Reel 216, Page 717.

The City also attached a copy of the Answer filed by NYCHA (NYSCEF Document #27), which states, in part:

[NYCHA] admits that defendant NEW YORK CITY HOUSING AUTHORITY owns the premises known as 154 Broome Street in the County of New York, City and State of New York, and operates, maintains and manages those portions of the premises used in common by all persons lawfully thereat [...]

Counsel for defendant NYCHA filed an “Affirmation of No Opposition” (NYSCEF Document #43) stating, in part:

1. [...] I respectfully submit this affirmation to indicate to the Court that the NEW YORK CITY HOUSING AUTHORITY does not have any opposition to the application by the co-defendant, CITY OF NEW YORK, which seeks to dismiss plaintiff’s complaint as against the CITY OF NEW YORK [...].

2. It is unfortunate that counsels' and the Court's time had to be wasted with an extensive motion that could have and should have been resolved by stipulation. The NEW YORK CITY HOUSING AUTHORITY did not assert a cross claim against the CITY OF NEW YORK and, in its answer to plaintiff's complaint, admitted ownership, operation, and maintenance of the premises (see defendant NEW YORK CITY HOUSING AUTHORITY'S Answer, paragraph 2, which was annexed as Exhibit D to the CITY OF NEW YORK's moving papers).

WHEREFORE, your affirmant hereby advises the Court that the NEW YORK CITY HOUSING AUTHORITY has no opposition to the application by co-defendant, CITY OF NEW YORK, which seeks to dismiss this action pursuant to CPLR §3211(a)(7).

In opposition, plaintiff first argues that the City's claim of non-ownership is based on "a non-operative old Deed from 1971 that appears to have been superseded by a later Deed recorded in 1985." Second, plaintiff argues that Mr. Schloss's search was for the incorrect block and lot, as the 154 Broome Street Building is located on Block 347, Lot 80 whereas Mr. Schloss's search was for Block 347, Lot 71. The City does not address this discrepancy in its Reply papers.

With respect to the deed, the City argues in Reply that although there did exist an October 1, 1985 deed that conveyed New York Block 347, Lot 80 to The City of New York, this deed was subsequently vacated by a Court Order recorded on December 11, 1985.

In support of its Reply, the City submitted another sworn Affidavit from Mr. Schloss, (NYSCEF Document #56), which states, in substantive part:

2. I have conducted a title search for 154 BROOME STREET, NEW YORK, NEW YORK, being designated on the tax map as Block 347, Lot 80.

3 Record title for New York Block 347, Lot 80 on SEPTEMBER 11, 2018, was in THE NEW YORK CITY HOUSING AUTHORITY, pursuant to a deed recorded OCTOBER 6, 1972, in Reel 254, Page 1351, and pursuant to a deed recorded SEPTEMBER 8, 1971, in Reel 216, Page 717.

4. A deed recorded October 1, 1985, conveying New York Block 347, Lot 80 to The City of New York was subsequently vacated by a Court Order recorded December 11, 1985.

The City did not provide any further explanation as to why Mr. Schloss' first Affidavit referenced "154 BROOME STREET, NEW YORK, NEW YORK, being designated on the tax map as Block 347, Lot 71," and Mr. Scloss' second Affidavit referenced "154 BROOME STREET, NEW YORK, NEW YORK, being designated on the tax map as Block 347, Lot 80" [emphasis added].

Analysis and Legal Conclusions

There is no dispute that the building in which the accident occurred, known as 154 Broome Street, is located on Block 347 (the "Block") in New York, New York. The Block is bounded by Broome Street to the south; Delancey Street to the north; Clinton Street to the west; and Ridge Street to the east. This is reflected on the map submitted by plaintiff, (NYSCEF Document #46), about which the City asserted no objection.

With respect to whether 154 Broome Street is located on Lot 71 or Lot 80, plaintiff submits a number of exhibits that support plaintiff's contention that the correct lot is Lot 80. Such exhibits include:

Exhibit B (NYSCEF Document #47), about which plaintiff argued:

According to the most current CITY tax map, a copy of which is annexed hereto as EXHIBIT B, the Building at 154 Broome Street is designated as Block 0347, Lot 80.

Exhibit C (NYSCEF Document #48), about which plaintiff argued:

Even under a historical tax map effective back in 1971, the area of land where 154 Broome Street now sits is clearly labeled as Block 0347, Lot 80. (See, 1971-1972 Map together with Index, annexed hereto as EXHIBIT C).

Exhibit D (NYSCEF Document #49), about which plaintiff argued:

Despite what the CITY's title examiner says, CITY's own publicly-available records demonstrate that the 154 Broome Street Building occupies Lot 0347, Lot 80. Annexed hereto as EXHIBIT D we refer the Court to the relevant NYC ZOLA ("Zoning and Land Use") Map from CITY's website, with the shaded area being 154 Broome Street. In this ZOLA Map CITY identifies the parcel as Block 0347 Lot 80. The Building footprint - i.e., that of the Building in which Plaintiff tripped and fell - is seen within this shaded area. It

is entirely unknown why the CITY title examiner performed a search for Block 0347 Lot 71, which is the parcel next door and to the west of 154 Broome Street.

Exhibit E (NYSCEF Document #50), about which plaintiff argued:

According to the New York City Department of Buildings' Property Profile page, a true and correct copy of which is annexed hereto as EXHIBIT E, 154 Broome Street falls under Block 0347, Lot 80 (not Lot 71 as CITY inexplicably suggests in their motion). This profile page also characterizes the Building as: "City Owned: YES."

With respect to the deed, plaintiff also submitted evidence that a deed dated October 1, 1985, conveyed Block 347, Lot 80 to The City of New York. Such evidence includes:

Exhibit F (NYSCEF Document #51), about which plaintiff argued:

An ACRIS search for the Deed to Block 0347, Lot 80, annexed hereto as EXHIBIT F, clearly shows that the only Deed for this parcel appearing post-ACRIS is from the year 1985.

Exhibit G (NYSCEF Document #52), about which plaintiff argued:

A copy of the 1985 Deed derived from this ACRIS search is annexed hereto as EXHIBIT G and, consistent with the ACRIS search summary, indicates that CITY is the Grantee. (Ex G at p. 1). This Deed represents a mass conveyance and among the parcels conveyed are "Block 347, Lot 80". (See, Ex. G, Rider p. 3, third entry from the top [967PC 216]). This is page 5 of 15 of the NYSCEF Document.

Although the City argued that this deed was subsequently vacated by a Court Order recorded on December 11, 1985, the City failed to attach a copy of the court order or to provide any further documentary evidence to verify the same (*see Goshen v Mut. Life Ins. Co. of New York*, 98 NY2d 314 [2002] [Turning to defendants' CPLR 3211 (a) (1) motion to dismiss on the ground that the action is barred by documentary evidence, such motion may be appropriately granted only where the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law]).

A paper will qualify as "documentary evidence" only if it satisfies the following criteria: (1) it is "unambiguous"; (2) it is of "undisputed authenticity"; and (3) its contents are "essentially undeniable" (*VXI Lux Holdco S.A.R.L. v SIC Holdings, LLC*, 171 AD3d 189 (Sup. Ct. App. Div. 1st Dept 2019)).

Further, *Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C3211:10 at 21-22 [2005 ed]* provides:

For dismissal, the proffered documents must “utterly refute” the allegations in the plaintiff's complaint, “conclusively establishing a defense as a matter of law” [...]. Note the extremism of the burden of proof - that the documentary evidence not only refute the allegations of the plaintiff's complaint, but “utterly” do so, and that defense not only be established as a matter of law, but that it “conclusively” do so. There is no room for daylight. Wiggle room is not countenanced. Close calls are not enough. Gray areas have no place within the ambit of CPLR 3211(a)(1). The document that is proffered must clearly say what it says and mean what it means. Courts will not grant motions brought under CPLR 3211(a)(1) on account of documentary evidence, and dismiss a plaintiff's complaint in lieu of an answer, unless the basis for doing so is clear, unambiguous, and absolute [internal citations omitted].

Here, the accident location of 154 Broome Street is located on Lot 80, the deed shows that Lot 80 was conveyed to the City, and the City did not submit any documentary evidence to support its argument that the deed was later vacated.

As noted above, for a dismissal to be based on documentary evidence, the evidence must be “unambiguous”, of “undisputed authenticity”, and “essentially undeniable.” The document that is proffered must be “clear, unambiguous, and absolute.” Further, on a motion to dismiss, pursuant to CPLR 3211, “the pleading is to be afforded a liberal construction,” and the court must “accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory.” Here, given the discrepancies noted above, the court finds that the City has failed to meet its burden, as there are questions of fact as to whether the City is responsible for the building in question.

Accordingly, it is hereby

ORDERED that the City’s motion is DENIED without prejudice and with leave to refile upon proof of documentary evidence, namely vacatur of the October 1, 1985 deed.

5/31/2022

DATE



J. MACHELLE SWEETING, 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