SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAVID B. COHEN **PART** 58

Justice

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CARMEN CRUCETA,

Plaintiff,

- v -

RENUE SYSTEMS OF NY-NJ LLC and RENUE SYSTEMS, INC.,

Defendants.

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INDEX NO. 159194/2019

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45

were read on this motion to/for SUMMARY JUDGMENT.

In this personal injury action commenced by plaintiff Carmen Cruceta, defendant Renue Systems, Inc. moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint. Plaintiff and defendant Renue Systems of NY-NJ LLC oppose the motion. After consideration of the parties' contentions, as well as a review of the relevant statutes and case law, the motion is decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND

This case arises from an incident on October 4, 2016 in which plaintiff was allegedly injured when she slipped and fell on wet carpet while working at the Marriott Hotel located at 3 East 40th Street in Manhattan ("the hotel" or "the premises"). Doc. 1. Plaintiff claims that the incident occurred due to the negligence of defendants Renue Systems, Inc. ("RSI") and Renue Systems of NY-NJ LLC ("RSLLC") in cleaning and/or maintaining the premises. Plaintiff

commenced the captioned action by filing a summons and complaint on September 20, 2019. Doc. 1. RSLLC joined issue by its answer filed December 11, 2019. Doc. 6. RSI joined issue by its answer filed January 31, 2020. Doc. 8.

Plaintiff's counsel filed a request for a preliminary conference on February 7, 2020. Doc. 9. On or about June 18, 2020, RSI served combined discovery demands on RSLLC. Doc. 13. When RSLLC failed to respond to the demands, RSI moved to compel responses to the same. Doc. 16. After RSLLC responded to RSI's demands on July 27, 2021, RSI withdrew its motion. Docs. 26, 28-29.

In her bill of particulars dated October 6, 2020, plaintiff again alleged that she was injured due to the negligence of RSI and RSLLC. Doc. 35.

RSI now moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint against it. Docs. 30-38. In support of the motion, counsel for RSI argues that the said defendant is entitled to summary judgment since it did not own, lease, inspect, clean or maintain the premises. Doc. 32. Rather, urges RSI, it was merely the licensor of a cleaning system at the premises with no control over the day-to-day operations of its licensee, RSLLC. Doc. 32.

David Grossman, owner/president of RSI, submits an affidavit in support of the motion in which he attests that: RSI never owned, operated, managed, controlled, supervised, repaired, maintained, inspected or performed work at the premises; RSI was in the business of licensing rights for the use of a system of commercial cleaning services known as Hotel "Hygiene Plus" techniques, along with products, chemicals and promotional materials to certain licensees within certain geographical locations; pursuant to a July 13, 1999, license agreement, a license was granted to the principal of RSLLC for certain areas, including Manhattan; the license agreement, which was annexed to his affidavit, was still in effect as of October 4, 2016; RSLLC entered into

an agreement with the owner or operator of the Marriott Hotel located at the premises to perform certain carpet cleaning services; RSI was not a party to the agreement with the hotel; RSI did not exercise any supervision or control over the day-to-day operations of RSLLC or those operations and/or services performed by RSLLC at the premises; no employee of RSI was present at the premises in connection with any services or work performed by RSLLC at the hotel; and RSI did not perform or contract to perform any cleaning, maintenance or other services at the premises. Doc. 38.

In opposition, RSLLC argues that the motion must be denied as premature. Doc. 39. Specifically, RSLLC maintains that no preliminary conference has been held and RSI has not yet provided discovery responses. Docs. 39-40.

Plaintiff adopts RSLLC's argument and adds that the motion must be denied since the outstanding discovery is in RSI's possession. Doc. 44.

LEGAL CONCLUSIONS

A party moving for summary judgment pursuant to CPLR 3212 "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Once the moving party has met this prima facie burden, the burden shifts to the non-moving party to furnish evidence in admissible form sufficient to raise a material issue of fact (*Alvarez*, 68 NY2d at 324).

As RSI argues, the existence of the license agreement, in and of itself, is insufficient to impose vicarious liability on it for the acts of RSLLC. In order for RSI to be liable, there must be a showing that it exercised control over the day-to-day operations of RSLLC. (*See Stern v*

Starwood Hotels & Resorts Worldwide, Inc., 149 AD3d 496, 497 [1st Dept 2017 [*citations omitted*]). Here, RSI has established its prima facie entitlement to summary judgment dismissing the complaint by submitting Grossman's affidavit, in which he establishes that his company had no involvement at the premises and that it merely entered into a license agreement with RSLLC.

In opposition, neither plaintiff nor RSLLC raises an issue of fact warranting the denial of the motion. As noted above, the principal argument proffered by the opponents of the motion is that the application is premature. However, this contention fails for the following reasons.

Initially, plaintiff and RSLLC fail to offer "any evidentiary basis to suggest that further discovery may lead to relevant evidence" (*Mayorga v 75 Plaza LLC*, 191 AD3d 606, 608 [1st Dept 2021] *citing DaSilva v Haks Engrs., Architects & Land Surveyors, P.C.*, 125 AD3d 480, 482 [1st Dept 2015]). Where, as here, only "a mere hope or speculation that discovery might turn up some evidence giving rise to a triable issue of fact", a motion for summary judgment cannot be defeated on the ground that it is premature. (*DaSilva*, 125 AD3d at 482).

Additionally, plaintiff and RSLLC appear to overlook the fact that CPLR 3212(f), on which they rely, permits denial of a summary judgment motion as premature if the nonmovant can establish that "facts essential to justify opposition may exist but cannot then be stated." However, RSLLC, which entered into the license agreement with RSI, has failed to offer any reason why it could not have submitted an affidavit from someone with knowledge of the nature and scope of the work at the premises in opposition to the motion. (*See Sapp v S.J.C. 308 Lenox Ave. Family LP*, 150 AD3d 525, 527 [1st Dept 2017]).

Moreover, the absence of discovery in this matter stems from the lack of any effort by plaintiff and RSLLC to obtain the same. Plaintiff requested a preliminary conference in February 2020 but one has not been conducted. Even assuming that the preliminary conference was delayed

by the COVID-19 pandemic, which began in March 2020, this did not prevent plaintiff or RSLLC from serving discovery demands, as did RSI, and no such demands by plaintiff are annexed to the motion papers. Nor is there any indication that plaintiff made any follow-up request for a preliminary conference subsequent to February 2020. "Summary judgment may not be defeated on the ground that more discovery is needed, where, as here, the side advancing such an argument has failed to ascertain the facts due to its own inaction" (*Ward v NY City Hous. Auth.*, 18 AD3d 391, 392 [1st Dept 2005] *quoting Meath v Mishrick,* 68 NY2d 992, 994 [1986]).

Accordingly, it is hereby:

ORDERED that the motion by defendant Renue Systems, Inc. for summary judgment dismissing the complaint pursuant to CPLR 3212 is granted; and it is further

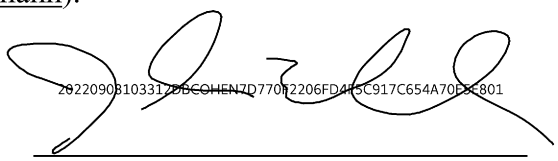
ORDERED that the claims against defendant Renue Systems, Inc. are severed and the balance of the action shall continue as against defendant Renue Systems of NY-NJ LLC; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of defendant Renue Systems, Inc. dismissing the claims made against it in this action, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk shall amend the caption accordingly; and it is further

ORDERED that, within 20 days of the entry of this order, counsel for defendant Renue Systems, Inc. shall serve a copy of this order, with notice of entry, upon all parties and upon the Clerk of the Court (60 Centre St., Room 141B) and the Trial Support Office (60 Centre St., Rm. 158M) in accordance with the procedures set forth in the Protocol on Courthouse and

County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on this court's website at the address www.nycourts.gov/supctmanh).



9/8/2022
DATE

DAVID B. COHEN, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
	X	GRANTED		DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE