

Luna v George Units LLC
2022 NY Slip Op 33611(U)
October 20, 2022
Supreme Court, New York County
Docket Number: Index No. 155994/2019
Judge: J. Machelle Sweeting
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. J. MACHELLE SWEETING PART 62

Justice

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JULIO CESAR LUNA,

Plaintiff,

- v -

THE GEORGE UNITS LLC, THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, THE CITY OF NEW YORK, DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES

Defendants.

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INDEX NO. 155994/2019

MOTION DATE 09/06/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 21, 22, 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, 59, 60, 61, 62, 63

were read on this motion to/for DISCOVERY.

In the underlying action, plaintiff seeks compensation for personal injuries allegedly sustained on November 2, 2018 when plaintiff, during the course of his employment for Greenwood Renovations, slipped and fell at 260 Audubon Street (the "subject premises") in the County of New York, State of New York.

Pending now before the court is a motion, (Motion Sequence #001), in which plaintiff seeks an order: (i) scheduling a preliminary conference; (ii) compelling depositions; and (iii) setting forth a discovery schedule with firm dates for completion of discovery. Also pending under this motion sequence is a cross-motion in which defendants The City Of New York and the Department Of Citywide Administrative Services (collectively, the "City") seek an order, pursuant to Section 3211 (a)(1) of the Civil Practice Law and Rules ("CPLR"), 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, and striking the names of the City defendants from the caption of this matter.

City's Cross-Motion to Dismiss

In their cross-motion, the City argues that the City defendants are not the proper parties in this action, as they did not own, control, operate, or maintain the subject premises, on the date of the alleged incident. In support of this argument, the City submits, *inter alia*, sworn Affidavits from Richard T. Gill (NYSCEF Document #44) and Sandra Malanowicz (NYSCEF Document #50). The Affidavit of Mr. Gill states, in part:

1. I am the Principal Property Specialist in the Property Records/Legal Graphics Section of the Law Department of the Port Authority of New York and New Jersey (the "Port Authority") and as such I am familiar with the various real estate interests of the Port Authority.

2. I am also the Custodian of the Record Property Maps maintained by the Port Authority. My responsibilities include maintaining records of all of the property owned or leased by the Port Authority.

3. My responsibilities include providing technical advice to the Port Authority Law Department in connection with the formulation of legal opinions on title to real property and other matters.

[...]

7. I have searched for the address 260 Audubon Avenue, New York, New York, which is a building address in New York City. The address corresponds to New York City Department of Finance Tax Map for Manhattan Block 2153, attached as Exhibit A.

8. I have also reviewed the Deed recorded in the New York City Department of Finance, Office of the City Register, dated February 28, 2005, Document ID: 2005030900994002 ("Deed").

9. I have attached a true and accurate copy of the Deed as Exhibit B.

[...]

16. Volume IV of the Deed corresponds to the location known as 260 Audubon Avenue, New York, New York. The fee owner, as of February 28, 2005, is The George Units, LLC.

[...]

24. Volume IV of the First and Second Indentures corresponds to the location of 260 Audubon Avenue, New York, New York, which is a building constructed on and within the volume. The description of Volume IV, as it exists today, is contained in the Second Indenture and corresponds to the description of Volume IV contained in the Deed, both of which include the elevations that constitute the lower limit of the space conveyed to the City of New York and currently owned by The George Units, LLC.

[...]

28. Based on my review of the Deed and Indentures, ownership of 260 Audubon Avenue, New York, New York (contained in Volume IV) was transferred from Rachel Bridge Corp. to The George Units, LLC on February 28, 2005.

29. The Deed is the last deed recorded in regard to 260 Audubon Avenue, New York, New York.

[emphasis added]

The Affidavit of Ms. Malanowicz states, in part:

1. I am currently employed as a Community Coordinator for the New York City Department of Citywide Administrative Services (“DCAS”). I have been employed in this position since February 2019. In this capacity, I am responsible for research pertaining to city owned properties held in the property records database of DCAS.

2. DCAS is charged with the duty of overseeing commercial real estate owned by the City of New York, the leasing and purchasing leases and licenses for private use of City owned non-residential property.

3. In connection with its duties and responsibilities as set forth above, DCAS maintains a property records database known as the Integrated Property Information System (“IPIS”) which is a comprehensive compilation of data pertaining to City-owned and utilized real property. At the request of the Corporation Counsel, I was asked to provide any records pertaining to ownership or occupancy by the City of New York of the premises located at 260 Audubon Avenue in Borough of Manhattan a/k/a Block 2153, Lot 0001 (the “Property”) either as owner or through means of a license, lease or other similar instrument that would have been in effect on November 2, 2018.

4. I have reviewed the IPIS records and have found no records indicating that the Property was owned, occupied, maintained or controlled by the City of New York, either directly as owner or by means of a license or lease in effect on November 2, 2018.

[emphasis added]

In opposition, plaintiff argued that the documentary evidence is unpersuasive in that: (1) “the property is not traced in the moving papers at all to show how ownership went from the City to Rachel Bridge Corp.”; and (2) “the City claims to have turned the property over to the Port Authority in 1930, but there is a deed, Exhibit 1, that shows the City as owner of the property in February 3, 1993.”

“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]).

Here, the issue is not whether there exists a clear chain of title as to who owned the subject premises in the years leading up to the accident, but whether the City owned the subject premises on the day of the accident on November 2, 2018. Plaintiff does not dispute the City’s key contention that the City neither owned, controlled, operated, or maintained the subject premises on the date of the accident, and there is nothing in the record to suggest otherwise. Importantly, defendant The George Units, LLC, which the City claims acquired title to the subject premises in 2005, did not oppose the City’s motion.

Accordingly, the City’s motion is GRANTED.

Plaintiff's Motion Regarding Discovery

Pursuant to Part 62 Rules, no discovery motions shall be filed without first conferencing the matter with the Court. Here, there is no indication that the movant made any attempt to seek a conference on these issues. Accordingly, this motion is DENIED as improperly filed.

In the future, counsel shall exercise good faith in seeking to resolve any outstanding discovery issues prior to filing any discovery motions. In the absence of a resolution, counsel may request a conference with the court by following instructions at: <https://www.nycourts.gov/legacypdfs/courts/1jd/supctmanh/PDF/Remote-Conference-Protocol.pdf>.

Further, pursuant to Administrative Order 270/2020 from Chief Administrative Judge Marks, the Uniform Civil Rules for the Supreme Court and the County Court are amended as of February 1, 2021 by, *inter alia*, adding a new section as follows:

202.23 Consultation prior to Preliminary and Compliance Conference

Counsel for all parties shall consult prior to a preliminary or compliance conference about (i) resolution of the case, in whole or in part; (ii) discovery, including discovery of electronically stored information, and any other issues to be discussed at the conference; (iii) the use of alternate dispute resolution to resolve all or some issues in the litigation; and (iv) any voluntary and informal exchange of information that the parties agree would help aid early settlement of the case. Counsel shall make a good faith effort to reach agreement on these matters in advance of the conference.

Accordingly, the party requesting the conference must explain, with particularity, its good faith efforts and why court intervention is needed.

Conclusion

Given the above, it is hereby:

ORDERED that the motion filed by plaintiff is **DENIED**; and it is further

ORDERED that the cross-motion filed by defendants The City Of New York and the Department Of Citywide Administrative Services (collectively, the “City”) is **GRANTED**; and it is further

ORDERED that the Complaint and any cross-claims are dismissed with prejudice as against The City Of New York and the Department Of Citywide Administrative Services; and it is further


ORDERED that the caption be amended to remove defendants The City Of New York and the Department Of Citywide Administrative Services; and it is further

ORDERED that the remaining parties shall forthwith contact SFC-CITY-DCM@nycourts.gov to schedule a preliminary conference in this matter; and it is further

ORDERED that this action is randomly reassigned to a General IAS part; and it is further

ORDERED that counsel for the plaintiff shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made 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 the court’s website at the address www.nycourts.gov/supctmanh).

<u>10/20/2022</u> DATE		 J. MACHELLE SWEETING, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input checked="" type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE