

Roman v Mott Haven Reformed Church
2022 NY Slip Op 35077(U)
July 18, 2022
Supreme Court, Bronx County
Docket Number: Index No. 22421/2019E
Judge: Wilma Guzman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX

Index No.: 22421/2019E
Motion Seq. No. 004, 005
Motion Date: 5/9/2022

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YOLANDA ROMAN,

Plaintiff,

-against-

MOTT HAVEN REFORMED CHURCH

Defendant.

-----x
MOTT HAVEN REFORMED CHURCH,

Third-Party Plaintiff,

-against-

THE MARTIN LUTHER KING, JR. HEALTH
CENTER, INC.,

Third-Party Defendant

-----x
Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers

Numbered

Defendant/Third-Party Plaintiff Notice of Motion, Affirmation in Support and Exhibits thereto.....	1
Third-Party Defendant Notice of Motion, Affirmation in Support and Exhibits Thereto	2
Defendant/Third Party Plaintiff Affirmation in Opposition	3
Third-Party Defendant Notice of Cross-Motion, Affirmation In Support and Exhibits Thereto	4
Third-Party Defendant Affirmation in Reply.....	5

Motion by Defendant/Third-Party Plaintiff MOTT HAVEN REFORMED CHURCH (hereinafter referred to as "Mott Haven") by **NOTICE OF MOTION** and all papers in connection therewith, for an Order pursuant to CPLR §3215 for entry of a default judgment as against Third-Party Defendant THE MARTIN LUTHER KING, JR. HEALTH CENTER, INC. (hereinafter referred to "MLK") and setting the matter down for an inquest as to damages, costs, disbursements and legal fees.

Cross-motion by MLK by **NOTICE OF CROSS-MOTION** and all papers in connection therewith, for an Order pursuant to CPLR §3012(d) extending the time for MLK to appear and denying Mott Haven's motion for a default judgment.

Motion by MLK by **NOTICE OF MOTION** and all papers in connection therewith for an Order to dismiss Mott Haven's third-party complaint with prejudice based upon CPLR §1010, §3211(a)(5) and §3211(a)(7) or in the alternative, severing the third-party action, and staying further proceedings in this matter. Oppositions having been submitted hereto, upon due deliberation having been had, the Motions are decided as follows:

Procedural History

Plaintiff commenced this action against Mott Haven by filing a Summons and Complaint on or about February 17, 2019 involving injuries allegedly sustained by Plaintiff as a result of a fall which occurred on August 5, 2017 at the driveway and sidewalk portion at or about 2737-41 Third Avenue, Bronx, NY 10451. Plaintiff argues that she suffered serious personal injuries when she tripped and fell on a sidewalk due to Mott Haven's negligence. Plaintiff claims that Mott Haven owns the property on which the sidewalk is located, had constructive notice that the hole existed and failed to make the necessary improvements.

Plaintiff previously moved for summary judgment on issue of liability as against Mott Haven which was granted by the Hon. Wilma Guzman in a decision dated August 31, 2020 (NYSCEF Doc. No. 30). Mott Haven subsequently filed a motion to renew and reargue the Decision and Order which granted Plaintiff summary judgment against Mott Haven, arguing that this Court improperly granted summary judgment even though there was deposition testimony that the entire sidewalk and driveway were repaired by MLK. The motion to renew and reargue was denied as well. (NYSCEF Doc. No. 47).

In the November 19, 2021, filing by Mott Haven of the Third-Party Summons and Complaint against MLK on or about September 28, 2021, they alleged that MLK failed to answer or appear, and MLK's time to do so has expired. They now move for default judgment pursuant to CPLR §3215.

Coincidentally on November 19, 2021, the same day of Mott Haven's filing of their motion for default judgment, MLK filed a motion to dismiss the third-party action pursuant to CPLR §1010, §3211(a)(5) and §3211(a)(7). In addition, on December 7, 2021, MLK filed a cross-motion to Mott Haven's motion for a default judgment requesting and extension of time to answer and opposing the motion for default judgment.

Collateral Estoppel and *Res Judicata*

Collateral estoppel "precludes a party from relitigating in a subsequent action or proceeding on an issue raised in a prior action or proceeding and decided against that party." *Owssom Bldrs., LLC v. J&F Refrig. A.C. & Heating*, 957 N.Y.S.2d 637 at (2010); citing *Buechel v. Bain*, 97 NY2d 295, 303, 766 N.E.2d 914, 740 N.Y.S.2d 252 (2001). The doctrine of *res judicata* prohibits the re-litigation of "not only those claims actually litigated previously, 'but also those which [might] have been raised in the former action...provided they arise from the same transaction or series of transactions.'" *Lake George Park Comm'n v. Salvador*, 245 A.D.2d 605, 664 N.Y.S.2d 847, 1997 N.Y. App. Div. LEXIS 12557 (3rd Dept., 1997), quoting *Culver v County of Rensselaer*, 139 AD2d 853, 854-855, *lv denied* 72 NY2d 807 (3rd Dept. 1988).

The third-party Summons and Complaint alleges in its first cause of action that MLK will be liable to Mott Haven “in the event and in the full amount of a recovery herein by plaintiff, or for that proportion thereof caused by the relative responsibility of [MLK]” (NYSCEF Doc. No. 69, ¶ 12), and as a second cause of action that any liability imposed upon Mott Haven “will have been caused and brought about by the reason of the primary and active negligence of [MLK].” (NYSCEF Doc. No. 69, ¶ 14).

While the issue of liability has already been determined between Mott Haven and Plaintiff in the summary judgment order issued by this Court dated August 31, 2020 (NYSCEF Doc No. 30), the issue of the proportion of responsibility of MLK and Mott Haven has not been judicially determined. Nor has the issue of causation been determined between MLK and Mott Haven with respect to any repairs done to the sidewalk at issue by either party. While the doctrine of *res judicata* prohibits the re-litigation of “not only those claims actually litigated previously, ‘but also those which [might] have been raised in the former action...provided they arise from the same transaction or series of transactions,’” *Lake George Park Comm’n, supra*, the Third-Party action raises the issue of comparative liability and contribution between MLK and Mott Haven for the first time in this action.

As such, the third-party Summons and Complaint are not barred by the doctrines of *res judicata* and collateral estoppel, and MLK’s motion to dismiss pursuant to CPLR §3211(a)(5) is hereby denied.

Defendant’s Motion Pursuant to CPLR §3211(a)(7)

A motion to dismiss pursuant to CPLR §3211(a)(7) requires that the Court favorably view the pleadings to determine whether a valid cause of action exists. *Leon v. Martinez*, 84 N.Y.2d 83, 87-88 (1984). On a motion to dismiss pursuant to CPLR §3211(a)(7) for failure to state a cause of action, the pleading is to be afforded a liberal construction. *See* CPLR §3026. The Court must accept the facts as alleged in the complaint as true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. *See Leon*, 84 N.Y.2d at 87-88, *Sokoloff v. Harriman Estates Dev. Corp.*, 96 N.Y.2d 409, 414 (2001), *Nonnon v. City of New York*, 9 N.Y. 3d 825 (2007). A CPLR § 3211 motion should be granted only where “the essential facts have been negated beyond substantial question by the affidavits and evidentiary matter submitted.” *Biondi v. Beekman Hill House Apartment Corp.*, 257 A.D.2d 76, 81 (1st Dept. 1999).

It is well settled that a motion pursuant to CPLR §3211(a)(7) “must be denied if from the pleadings’ four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law.” *Siegmund Strauss, Inc. v. East 149th Realty Corp.*, 104 A.D.3d 401 (1st Dept. 2013). Mott Haven’s Third-Party Complaint taken as a whole and reading from the pleadings’ four corners, Mott Haven has pled sufficient factual allegations which taken together manifest causes of action cognizable at law related to the proportion of responsibility and causation between MLK and Mott Haven. As such, MLK’s motion pursuant to CPLR §3211(a)(7) is denied.

MLK’s Cross-Motion

In the interests of justice, MLK’s Cross-motion for an Order pursuant to CPLR §3012(d) extending the time for MLK to appear and denying Mott Haven’s motion for a default judgment is hereby granted in its entirety.

Accordingly, it is,

ORDERED and ADJUDGED that Third-Party Defendant THE MARTIN LUTHER KING, JR. HEALTH CENTER, INC.'S motion to dismiss the Third-Party Complaint against them is hereby denied pursuant to CPLR §3211(a)(5). It is further,

ORDERED and ADJUDGED that Third-Party Defendant THE MARTIN LUTHER KING, JR. HEALTH CENTER, INC.'S motion to dismiss pursuant to CPLR §3211(a)(7) is denied. It is further,

ORDERED and ADJUDGED that Third-Party Defendant THE MARTIN LUTHER KING JR. HEALTH CENTER, INC.'s motion to sever the third-party action is denied.

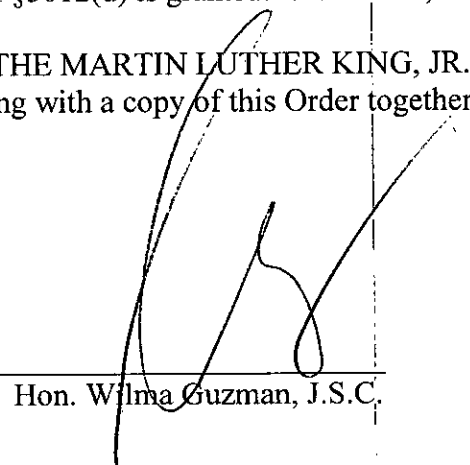
ORDERED and ADJUDGED that Defendant/Third Party Plaintiff MOTT HAVEN REFORMED CHURCH's motion pursuant to CPLR § 3215 seeking a default judgment is hereby denied. It is further,

ORDERED and ADJUDGED that Third-Party Defendant THE MARTIN LUTHER KING, JR. HEALTH CENTER, INC.'S cross-motion pursuant to CPLR §3012(d) is granted. It is further,

ORDERED AND ADJUDGED that Third-Party Defendant THE MARTIN LUTHER KING, JR. HEALTH CENTER, INC. shall serve a Verified Answer along with a copy of this Order together with the Notice of Entry within thirty (30) days of entry.

This constitutes the Decision and Order of the Court.

Dated: 7/18/22



Hon. Wilma Guzman, J.S.C.