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| <b>Vargas v New York City Indus. Dev. Agency</b>                                                                                                                                                                               |
| 2022 NY Slip Op 35130(U)                                                                                                                                                                                                       |
| July 15, 2022                                                                                                                                                                                                                  |
| Supreme Court, Richmond County                                                                                                                                                                                                 |
| Docket Number: Index No. 750026/2021                                                                                                                                                                                           |
| Judge: Thomas P. Aliotta                                                                                                                                                                                                       |
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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND**

-----X City Part 2M

Jesus Vargas,

*Plaintiff,*

Present:

**Hon. Thomas P. Aliotta**

*-against-*

New York City Industrial Development Agency and Staten  
Island University Hospital,

**DECISION AND ORDER**

Index No. 750026/2021

Motion No. 001

*Defendants.*

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The following papers numbered 1 to 3 were marked submitted on June 1, 2022:

**Notice of Motion**

By Defendant New York City Industrial Agency, with Supporting Papers and Exhibits  
(dated February 28, 2022) ..... 1

**Attorney Affirmation in Opposition**

By Plaintiff, with Supporting Papers and Exhibit  
(dated May 26, 2022) ..... 2

**Attorney Reply Affirmation**

By Defendant New York City Industrial Development Agency  
(dated May 31, 2022) ..... 3

Upon the foregoing papers, the motion by Defendant New York City Industrial Development Agency (hereinafter "NYCIDA") for summary judgment dismissing the Complaint insofar as asserted against it is denied.

This is an action to recover damages for personal injuries arising from an incident in which Plaintiff allegedly tripped and fell on a raised portion of a loading dock at Staten Island University Hospital (hereinafter "SIUH"), located at 475 Seaview Avenue, Staten Island (hereinafter "the premises") while making a delivery on October 9, 2019. Plaintiff filed a Notice of Claim against NYCIDA on or about December 8, 2019 (see NYCIDA's Exhibit "A"). Plaintiff commenced this

action against NYCIDA and SIUH via the filing of a Summons and Complaint on June 17, 2020 (see NYCIDA's Exhibit "B"). Plaintiff alleged that, inter alia, NYCIDA was negligent in the ownership, control, supervision, and maintenance of the loading dock, and alternatively that NYCIDA was negligent in the repair, alteration, construction, and renovation of the loading dock (see id.). NYCIDA interposed an Answer on October 16, 2020 (see NYCIDA's Exhibit "C").

NYCIDA moved for summary judgment on the Complaint insofar as asserted against it on February 28, 2022 (see NYCIDA's notice of motion). NYCIDA contends that, inter alia, it did not own, operate, manage, maintain, or control the premises on the accident date (see Affirmation of Gianna M. Famulari, Esq., in support of motion). NYCIDA also contends that any ownership or control it ever exercised over the premises was solely for the purpose of issuing tax-exempt civic facility revenue bonds for the benefit of SIUH, which was an insufficient basis for the imposition of liability (see id.). Accordingly, NYCIDA argues that it was not liable for Plaintiff's alleged accident (see id.). NYCIDA further contends that, as it was not liable for the alleged accident, no further discovery is needed (see id.).

In support, NYCIDA submits the affidavit of Emily Marcus, its Deputy Executive Director (see NYCIDA's Exhibit "E"). Marcus averred that, inter alia, she had worked at NYCIDA since January 2021 (see id.). Marcus also averred that NYCIDA's inhouse counsel had informed her that, upon receipt of Plaintiff's Notice of Claim, Richard Tom, as NYCIDA's Assistant Vice President for Legal Affairs, advised Plaintiff's counsel via letter dated January 3, 2020 (hereinafter "Tom's letter") that NYCIDA had no involvement with SIUH on the accident date (see id.). Marcus further averred that NYCIDA's records indicated that NYCIDA issued tax-exempt facility revenue bonds for the benefit of SIUH in November 2001, that the bond transaction documents included a company lease agreement and a separate lease agreement between SIUH and NYCIDA,

and that the bonds had been redeemed in full and the lease agreements terminated on October 3, 2011, more than 8 years prior to the alleged accident (see id.). Additionally, Marcus averred that NYCIDA only executed the leases as a financing mechanism to facilitate the issuance of the bond financing transaction (see id.).<sup>1</sup>

NYCIDA also submits a copy of Tom's letter (see NYCIDA's Exhibit "F"). In it, Tom asserted that, inter alia, "after an intensive search in our internal database and public databases, our search failed to show NYCIDA's involvement with [SIUH] . . . on October 9, 2019" (Id.). Tom also asserted that the Automated City Register Information System (hereinafter "ACRIS") and NYC Department of Finance records indicated that, inter alia, NYCIDA "terminated any nexus" to SIUH on or about October 3, 2011 (see id.). Tom further asserted that, based on the foregoing, NYCIDA was denying Plaintiff's claim (see id.). NYCIDA did not submit any documents from ACRIS or NYC Department of Finance in support of Tom's letter.

Additionally, NYCIDA submits an affidavit from Eva Munankarmi, Principal Title Examiner with the New York City Law Department (see NYCIDA's Exhibit "G"). Munankarmi averred that, inter alia, she conducted a last owner search of the premises, and that the documents generated as a result of her search demonstrated that, inter alia, SIUH owned the premises on the accident date (see id.).

Plaintiff opposes the motion on the ground that, in light of NYCIDA's failure to submit a copy of any contract allegedly terminating in 2011 or the affidavit of anyone with personal knowledge of any such contract's terms, NYCIDA fails to show its entitlement to summary

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<sup>1</sup> Notably, Marcus did not aver that she personally had reviewed NYCIDA's records or that she had personal knowledge of the bond financing transaction or the leases.

judgment dismissing the Complaint insofar as asserted against it (see Affirmation of Elliott Pasik, Esq.). Plaintiff also opposes the motion on the ground that discovery is outstanding (see id.).

“The proponent of a summary judgment motion 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. The failure to make such a prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers” Blanco Gomez v Pincipe, 186 AD3d 466, 467 [2d Dept 2020] [citations omitted]; see Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986]; Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 [1985]). “To obtain summary judgment it is necessary that the movant establish his cause of action or defense ‘sufficiently to warrant the court as a matter of law in directing judgment’ in his favor, and he must do so by tender of evidentiary proof in admissible form” (Zuckerman v City of New York, 49 NY2d 557, 597 [1980]). However, “evidence of the contents of business records is admissible only where the records themselves are introduced” (Wells Fargo Bank, NA v Oziel, 196 AD3d 618, 621 [2d Dept 2021] [citation and internal quotation marks omitted]). Otherwise, an affiant’s statements in an affidavit as to the contents of those records constitute inadmissible hearsay and lack probative value (see id.; Onewest Bank, FSB v Michel, 143 AD3d 869, 871 [2d Dept 2016]).

Where an industrial development agency’s ownership interest in a property is no more than a financing mechanism, it cannot be held liable for a party’s personal injuries by reason of its record ownership of the premises (see Dorval v Terrace 100, L.P., 116 AD3d 912, 914 [2d Dept 2014]; Smith v New York City Indus. Dev. Agency, 265 AD2d 477, 478 [2d Dept 1999]).

Here, Marcus averred that, inter alia, NYCIDA’s inhouse counsel informed her that Tom had notified Plaintiff that NYCIDA was denying his claim on the ground that NYCIDA had no ownership interest in the premises on the accident date. She also averred that NYCIDA’s records

indicated that NYCIDA's ownership interest in the premises had been limited to a financing mechanism. However, Marcus failed to aver that she was basing her claims as to NYCIDA's ownership on personal knowledge of the facts or that she had personal knowledge of NYCIDA's business records, including any contract, regarding the premises. Additionally, NYCIDA failed to submit a copy of the contract or any documentary evidence in support of its claim that its obligation under any contract related to the premises had terminated. Accordingly, Marcus's statements in her affidavit regarding the contents or effect of the contract or NYCIDA's ownership interest in the premises constitute inadmissible hearsay (see Oziel, 196 AD3d at 621; Michel, 143 AD3d at 871).

Additionally, Tom's letter, which is not in the form of an affidavit, is evidence only of the fact that NYCIDA denied Plaintiff's claim on January 3, 2020, on the grounds set forth therein. It does not demonstrate the existence of a contract, any termination of obligations arising therein, or the validity of any of NYCIDA's claims, either in Tom's letter or in support of this motion.

Moreover, while Munankarmi averred in her affidavit that her research demonstrated that, inter alia, SIUH owned the premises on the accident date, her affidavit was limited to her factual representations regarding her research, as she did not refer to any contract. Accordingly, she failed to demonstrate the absence of any material issues of fact regarding NYCIDA's obligations with respect to the premises pursuant to any such contract.

In light of the foregoing, NYCIDA fails to demonstrate, prima facie, its entitlement to summary judgment dismissing the Complaint insofar as asserted against it (see Oziel, 196 AD3d at 621; Blanco Gomez, 186 AD3d at 467; Michel, 143 AD3d at 871). Therefore, the Court need not consider the sufficiency of Plaintiff's papers in opposition (see Blanco Gomez, 186 AD3d at 467).

Accordingly, it is hereby:

ORDERED that the motion is denied; and it is further,

ORDERED that the Clerk enter judgment and mark his records accordingly.

ENTER,

A handwritten signature in black ink, appearing to read 'T. Aliotta', is written above a horizontal line.

Hon. Thomas P. Aliotta J.S.C.

DATED: 7/15/22