

Dirden v City of New York

2023 NY Slip Op 32014(U)

June 16, 2023

Supreme Court, New York County

Docket Number: Index No. 162188/2018

Judge: Lyle E. Frank

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

-----X

CHELSEA DIRDEN,

Plaintiff,

- v -

CITY OF NEW YORK, DEPARTMENT OF HOMELESS SERVICES, WOMEN IN NEED, INC.

Defendant.

-----X

INDEX NO. 162188/2018

MOTION DATE 03/31/2023

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 77

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, defendants', City of New York and Department of Homeless Services, motion for summary judgment and plaintiff's cross-motion for summary judgment are both denied¹. Defendants also seeks to renew the motion decided by the Honorable Justice Kathryn Freed, dated October 26, 2020; that portion of the motion is denied.

This action arises out of allegations that plaintiff was assaulted in a shelter. Pursuant to this Court's prior decision and order, the only cause of action that remains is plaintiff's allegation of negligent hiring, training and retention premised on the factual allegations that plaintiff was assaulted².

Summary Judgment Standard

It is conventional practice that the "function of summary judgment is issue finding, not issue determination." Assaf v Ropog Cab Corp. 153 AD2d 520 [1st Dept 1989]. Further,

1 The Court would like to thank Ethan Lee for his assistance in this matter.

2 See NYSCEF Doc. 25.

summary judgment should not be granted where there is any doubt as to the existence of material issue of fact. *Zuckerman v City of New York*, 49 NY2d 557, 562, 427 [1980]. The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law. *Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]. Courts have also recognized that summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to the non-moving party. *Assaf v Ropog Cab Corp.* 153 AD2d 520 [1st Dept 1989].

Discussion

The sole remaining cause of action in this matter is the negligent hiring, training and retention claim. For the first time during oral argument, defendants sought dismissal of this claim; the Court however declines to address that argument as it was not briefed, and plaintiff was not afforded the opportunity to meaningfully oppose that position.

Additionally, defendants contend that plaintiff's iteration of the underlying incident is so incredible that dismissal of this matter is required as a matter of law. Defendants cite to a myriad of case law to support that contention; however the Court does not find those cases analogous to the instant matter. Defendants rely heavily on plaintiff's medical records, which all relate to the issue of damages, not the threshold issue of liability. As such, the Court does not find that plaintiff's testimony lacks credibility sufficient to deprive her a day in court. The Court finds this case to be one where the fact finder must make credibility determinations, not the Court.

Further, defendants move to renew the previous denial of its motion to dismiss. It is well settled that a motion to renew "shall be based upon new facts not offered on the prior motion that

would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination; and . . . shall contain reasonable justification for failure to present such facts on the prior motion.: (CPLR § 2221[e] [2], [3]). Leave to renew should be denied when the movant fails to proffer a reasonable excuse for a failure to include the additional facts in its underlying motion. *See Papaioannou v Tsopelas*, 260 AD2d 282 [1st Dept 1999]; *Goetschius v Bd. of Educ.*, 281 AD2d 418, 419 [2d Dept 2001].

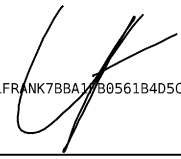
Here, the Court finds that defendants have not established reasonable justification for its failure to produce proof of its service of a demand for the complaint in the underlying motion, nor have they reasonably justified the over 3 year delay in seeking to renewal to produce those documents that could have and should have been included in support of its underlying motion. Accordingly, the Court finds that renewal is unwarranted.

With respect to plaintiff's cross-motion for summary judgment, the Court finds that plaintiff has failed to establish a prima facie entitlement to judgment as a matter of law. For the same reasons that defendants' motion for summary judgment is denied, material issues of fact, plaintiff's motion for summary judgment is similarly denied. The Court has reviewed the parties remaining contentions and finds them unavailing. Accordingly, it is hereby

ADJUDGED that defendants' motion for summary judgment and renewal is denied; and it is further

ADJUDGED that plaintiff's cross-motion for summary judgment is denied.

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6/16/2023

DATE

LYLE E. FRANK, 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