

Sow v Mastermind Mgt. Ltd
2023 NY Slip Op 35153(U)
January 5, 2023
Supreme Court, Bronx County
Docket Number: Index No. 33055/2020E
Judge: Wilma Guzman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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ASSIETOU SOW,

Plaintiff,

-against-

MASTERMIND MANAGEMENT LTD, SUPERCLASS
MANAGEMENT CORP., MASTERMIND REAL
ESTATE CORP. and RADAME JOSE PEREZ,

Defendants.

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RADAME JOSE PEREZ, MASTERMIND
MANAGEMENT LTD., and SUPERCLASS
MGMT CORP,

Third Party Plaintiff,

-against-

RITE AID OF NEW YORK, INC.,

Third-Party Defendants,

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GUZMAN, J.

Plaintiff commenced this action to recover damages for personal injuries she allegedly sustained as a result of an alleged trip and fall accident on October 23, 2017, on the sidewalk in front of 88 Featherbed Lane in Bronx, New York. Defendant Radame Jose Perez ("Perez") is the owner/landlord of the property and the CEO/Principal of Defendants Mastermind Management Ltd, Superclass Management Corp., and Mastermind Real Estate Corp. At the time of Plaintiff's accident, Third-Party Defendant Rite Aid of New York, Inc. leased the premises pursuant to a written lease agreement with Perez.

On this motion, submitted without opposition, Defendant Mastermind Real Estate Corp. moves for an Order pursuant to CPLR §3212 granting summary judgment and dismissing plaintiff's complaint and all cross-claims asserted against it.

In order to make a prima facie showing of entitlement to judgment as a matter of law, the moving party must tender sufficient evidence to demonstrate the absence of any material issues

of fact. *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923 (1986). The parties' competing contentions must be viewed in a light most favorable to the non-moving party. *De Lourdes Torres v. Jones*, 26 N.Y.3d 742, 763, 27 N.Y.S.3d 468 (2016). If the moving party meets its burden, the burden shifts to the nonmoving party to establish, through admissible evidence, the existence of disputed issues of material facts for trial. CPLR § 3212 (b); *Zuckerman v. New York*, 49 N.Y.2d 557, 560, 427 N.Y.S.2d 595 (1980). The non-moving party must produce evidence in the record and may not rely on conclusory statements or contentions that are not credible. Issue-finding, not issue-determination, is the role of the court on a motion for summary judgment. *Lebedev v. Blavatnik*, 193 A.D.3d 175, 142 N.Y.S.3d 511 (1st Dep't 2021). Nevertheless, if the moving party fails to sustain its burden, the court need not address the adequacy of the opposing party's proof. *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 487 N.Y.S.2d 316 (1985); *Licurgo-Cruz v. Ahmed*, 118 A.D.3d 420, 987 N.Y.S.2d 57 (1st Dep't 2014).

"A defendant stands liable in negligence only for breach of a duty of care owed to the plaintiff." *Sanchez v. State*, 99 N.Y.2d 247, 754 N.Y.S.2d 621 (2002). Thus, "[l]iability for a dangerous condition on property may only be predicated upon occupancy, ownership, control or special use of such premises." *Gibbs v. Port Auth. of N.Y.*, 17 A.D.3d 252, 254, 794 N.Y.S.2d 320, 322 (1st Dep't 2005). Where a defendant does not own, occupy, control, or make special use of property where the plaintiff claims to have been injured, the defendant owes no duty of care to the plaintiff and cannot be held liable for any injuries caused by an allegedly defective condition. *Garcia v. Town of Babylon Indus. Dev. Agency*, 120 A.D.3d 546, 990 N.Y.S.2d 849 (2^d Dep't 2014).

Here, in support of its motion, Defendant Mastermind Real Estate Corp. has submitted an affidavit from Perez, who states that Mastermind Real Estate Corp. is an unrelated company that had nothing to do with the premises located at 88 Featherbed Lane; at the time of Plaintiff's accident, Third-Party Defendant Rite Aid of New York Inc. was the tenant pursuant to a written lease agreement; Mastermind Real Estate Corp. is not an owner or a party to any lease for the subject premises and has no duties or responsibilities with respect to the property; and it has never done any work, including any maintenance, renovations, or repairs to the exterior or sidewalk of 88 Featherbed Lane.

Inasmuch as Plaintiff has not submitted opposition to the instant motion,¹ she has failed to raise an issue of fact with respect to any involvement by Mastermind Real Estate Corp. in this case. Accordingly, the motion for summary judgment dismissing the complaint and any cross-claims asserted against Defendant Mastermind Real Estate Corp. is granted.

Defendant Radame Jose Perez also cross-moves to consolidate this action with Bronx County Index No.: 807865/2021E, a subsequent action filed by Plaintiff against Rite Aid of New York, Inc. The complaint in that action asserts causes of action against Rite Aid of New York, Inc. as a result of the same alleged accident. “Where common questions of law or fact exist, a motion to consolidate or for a joint trial pursuant to CPLR 602(a) should be granted absent a showing of prejudice to a substantial right by the party opposing the motion.” *Kally v. Mount Sinai Hosp.*, 44 A.D.3d 1010, 844 N.Y.S.2d 415 (2d Dep’t 2007). No party opposes the motion to consolidate. Accordingly, it is hereby:

ORDERED AND ADJUDGED that the motion filed by Defendant Mastermind Real Estate Corp. for an Order pursuant to CPLR § 3212 granting summary judgment dismissing the complaint and any cross-claims asserted against it is GRANTED; and it is further

ORDERED AND ADJUDGED that the complaint is dismissed insofar as asserted against Defendant Mastermind Real Estate Corp.; and it is further

ORDERED AND ADJUDGED that the motion filed by Defendant Radame Jose Perez to consolidate the above-captioned action with the action entitled *Assietou Sow v. Rite Aid of New York, Inc.* pending in Supreme Court, Bronx County under Index No.: 33055/2020E is GRANTED; and it is further

ORDERED AND ADJUDGED that the Clerk is directed to consolidate these actions for all purposes, including discovery, motion practice, and trial, under Index No.: 33055/2020E; and it is further

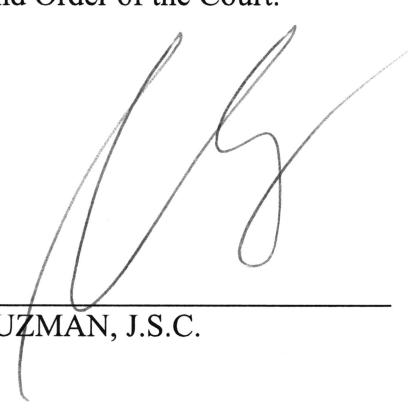
ORDERED AND ADJUDGED that counsel for Defendant Mastermind Real Estate Corp. shall serve a copy of this Order with Notice of Entry upon Plaintiff by Certified Mail, Return Receipt Request, and by First Class Mail, with Certificate of Mailing, and upon all other parties by regular mail; and it is further

¹By Decision and Order dated July 1, 2022, the Court permitted Plaintiff’s attorney to be relieved as counsel and stayed the action for a period of 90 days, upon filing of the affidavit of service, to allow Plaintiff to retain new counsel or appear *pro se*.

ORDERED AND ADJUDGED that counsel for Defendant Radame Jose Perez shall serve a copy of this Decision and Order with Notice of Entry upon the Clerk of this Court, who is directed to reflect the consolidation as set forth herein.

The foregoing constitutes the Decision and Order of the Court.

Dated: Bronx, New York
January 5, 2023



HON. WILMA GUZMAN, J.S.C.