

Boahene v 6th Ave. Clinic
2023 NY Slip Op 35220(U)
April 17, 2023
Supreme Court, Bronx County
Docket Number: Index No. 300667/2015E
Judge: Wilma Guzman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
NANA BOAHENE, as Administrator of the Estate of
JOANN BOAHENE,

Plaintiff,

DECISION AND ORDER

-against-

Index No.: 300667/2015E

6TH AVENUE CLINIC, MONTEFIORE MOUNT
VERNON HOSPITAL METHADONE MAINTENANCE
TREATMENT PROGRAM, MONTEFIORE MOUNT
VERNON HOSPITAL, MONTEFIORE MV
HOLDINGS, LLC, MOUNT VERNON HOSPITAL,
THE M.V.H. CORPORATION, MOUNT VERNON
HOSPITAL MMTP,

Motion Sequence No. 5

Defendants.

-----X
GUZMAN, J.

Decedent Joann Boahene filed this action on February 13, 2015, to recover damages for personal injuries she allegedly sustained on March 6, 2012, at approximately 10:00 a.m. inside of a methadone clinic located at 3 South 6th Avenue in Mount Vernon, New York. Plaintiff testified at her deposition that she tripped over a floor mat in the lobby of the building as she was leaving the premises, causing her to sustain a fractured wrist.¹

Plaintiff previously moved for leave to enter a default judgment against Defendants Mount Vernon Hospital, The M.V.H. Corporation, and Mount Vernon Hospital MMTP,² which failed to answer the complaint. In support of that motion, Plaintiff contended that the building where decedent was injured was owned by The M.V. H. Corporation. However, The M.V.H. Corporation, Mount Vernon Hospital, and several other entities filed for Chapter 11 (reorganization) bankruptcy prior to the date that Plaintiff had commenced this action. The bankruptcy case was closed by final decree and order dated June 15, 2021. *See* NYSCEF Doc. No. 31. In any event, Plaintiff's motion was denied due to the non-appearance of the movant

¹Decedent passed away during the pendency of this action, on November 28, 2019. The caption was amended to substitute Nana Boahene, as the administrator of her estate, as plaintiff.

²"MMTP" is an acronym for Methadone Maintenance Treatment Program.

(and other parties) for oral argument on the motion on August 29, 2022. *See* NYSCEF Doc. No. 71.

On this motion, the other four Defendants, 6TH Avenue Clinic, Montefiore Mount Vernon Hospital Methadone Maintenance Treatment Program, Montefiore Mount Vernon Hospital, and Montefiore MV Holdings, LLC (collectively, “Defendants”) move for summary judgment dismissing this action against them on the grounds that the Defendants did not own, operate, maintain, control, or otherwise have any involvement with the premises where Plaintiff’s accident allegedly occurred.

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).

“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).

In support of their motion, Defendants have submitted, *inter alia*, a copy of the relevant pleadings, an attorney affirmation, decent’s deposition transcript, Nicholas D’Addesio’s

deposition transcript, certain bankruptcy documents, and sworn affidavits from Nicholas D'Addesio and Tom Dorilio. *See* NYSCEF Doc. Nos. 42-53.

Nicholas D'Addesio is the director of operations at Montefiore Mount Vernon Hospital. He previously served as senior vice-president of operations at Mount Vernon Hospital and Sound Shore Hospital in New Rochelle, New York. D'Addesio states that the Methadone Clinic at 3 South 6th Avenue in Mount Vernon was acquired by Montefiore MV Holdings, LLC more than one year after decedent's alleged accident. He further states that Montefiore MV Holdings, LLC did not lease the premises or otherwise control the premises, was not involved in the operation of the premises, and had no involvement in the inspection, care or maintenance of the premises. D'Addesio further states that the other Defendants in this action, Sixth Avenue Clinic, Montefiore Mount Vernon Hospital Methadone Maintenance Treatment Program, and Montefiore Mount Vernon Hospital did not lease, maintain, control or inspect the premises, and did not have "any involvement whatsoever with the premises at 3 South 6th Avenue in Mount Vernon on the date of [decedent's] incident."

At his deposition, D'Addesio also testified that on November 6, 2013, Mount Vernon Hospital and related entities were purchased by Montefiore MV Holdings, LLC as part of the bankruptcy proceedings. According to D'Addesio, at the time of the purchase, Montefiore MV Holdings only acquired the assets of Mount Vernon Hospital and related entities, including the Methadone Facility at Mount Vernon Hospital where decedent allegedly fell, but not the liabilities. After the time had passed for filing claims in the bankruptcy proceedings, they were effectively extinguished. *See* NYSCEF Doc. Nos. 33, 47.

Defendants have also submitted an affidavit from Thomas Dorilio, a licensed private investigator who conducts title searches and examines records to determine property ownership and liens. Dorilio concludes that on November 6, 2013, Mount Vernon Hospital sold to Montefiore MV Holdings, LLC the premises where decedent was allegedly injured, and has attached a copy of the deed between those parties. *See* NYSCEF Doc. No. 51.

Defendants have therefore established, *prima facie*, the absence of a triable issue of fact as to their ownership, use or occupancy of the subject property on the date of decedent's alleged accident.

Plaintiff has failed to raise a triable issue of fact in opposition to Defendants' proof that they held no possessory interest and exercised no control over the premises on the date of

Plaintiff's alleged accident. Plaintiff's contentions as to Defendants' alleged failure to comply with certain discovery demands, and the admissibility of the copy of the deed in question, are not persuasive, and in any event do not raise an issue of material fact. Accordingly, it is hereby:

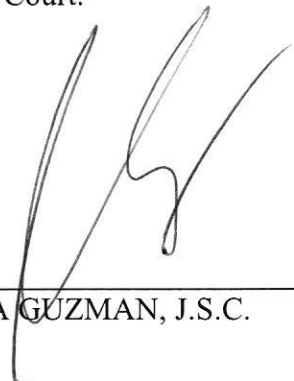
ORDERED AND ADJUDGED that the motion filed by Defendants 6TH Avenue Clinic, Montefiore Mount Vernon Hospital Methadone Maintenance Treatment Program, Montefiore Mount Vernon Hospital, and Montefiore MV Holdings, LLC for summary judgment pursuant to CPLR § 3212 is GRANTED; and it is further

ORDERED AND ADJUDGED that the complaint is dismissed as to Defendants 6TH Avenue Clinic, Montefiore Mount Vernon Hospital Methadone Maintenance Treatment Program, Montefiore Mount Vernon Hospital, and Montefiore MV Holdings, LLC; and it is further

ORDERED AND ADJUDGED that Defendants shall serve a copy of this Decision and Order with Notice of Entry upon Plaintiff within thirty (30) days of entry of this Decision and Order.

This constitutes the Decision & Order of the Court.

Dated: Bronx, New York
April 17, 2023



HON. WILMA GUZMAN, J.S.C.