

Hargrove v Stop I King Gourmet Deli Inc.

2024 NY Slip Op 30633(U)

February 29, 2024

Supreme Court, New York County

Docket Number: Index No. 155915/2020

Judge: Arlene P. Bluth

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

SHAVEZ HARGROVE,

Plaintiff,

- v -

STOP I KING GOURMET DELI INC., JOSE ESPADA, S.H.K.
REALTY LLC

Defendant.

-----X

INDEX NO. 155915/2020

MOTION DATE 02/28/2024

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 97, 98

were read on this motion to/for JUDGMENT - SUMMARY.

Defendant S.H.K. Realty LLC (“SHK”)’s motion for summary judgment dismissing the claims and cross claims against it is granted.

Background

Plaintiff contends that while he was delivering beverages to a deli, he slipped and fell. At his deposition, plaintiff explained that when he made large deliveries, he would drop the items off at a nearby location (a 99-cent store called “Smile 99”) (NYSCEF Doc. No. 90 at 26). He added that on the day of his accident, he delivered the shipment at the Smile 99 location (*id.* at 33). Plaintiff explained that he placed a few cases of beverages on the floor and then slipped and fell (*id.* at 41). He testified that “I remember the place just being how it normally looks. It’s like a crappy like place like it’s not the best condition. . . . as I looked down, I’d seen the tiles are like loose and the floor is not really together. It is not really even properly. It is uneven (*id.*).

SHK moves for summary judgment on the ground that Smile 99 is located at 1781 Lexington, a building owned by co-defendant Espada. It admits that it owns the premises where the deli (defendant Stop I King Gourmet Deli Inc.) is located (1775 Lexington Avenue) but that it has no relationship to the accident or to Smile 99.

Only plaintiff offers opposition. He contends that SHK owns the building located at 1775 Lexington and the tenant located there was also using the property at 1781 Lexington. Plaintiff insists that no defendant depositions have yet occurred. He insists he needs to explore what connection SHK had to Smile 99—which the deli used as a storage area. Plaintiff argues it would be highly prejudicial if the Court were to dismiss SHK at the “early juncture” of this case.

In reply, SHK questions how it could be held liable for an accident that occurred at a property it does not own.

Discussion

To be entitled to the remedy of summary judgment, the moving party “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 from the case” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such a prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id.*). When deciding a summary judgment motion, the court views the alleged facts in the light most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492 [1st Dept 2012]).

Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court’s task in deciding a

summary judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d'Amiante Du Quebec, Ltee*, 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], *affd* 99 NY2d 647, 760 NYS2d 96 [2003]).

The Court grants the motion. SHK met its prima facie burden for summary judgment through the deposition testimony of plaintiff (who describes an accident in Smile 99) and the affidavit of the president of SHK, who insists that SHK had no connection to 1781 Lexington—i.e., where the accident actually happened (NYSCEF Doc. No. 93). SHK also attached the deed for 1781 Lexington, which shows that it is owned by defendant Espada (NYSCEF Doc. No. 91). This constitutes overwhelming evidence that SHK, the owner of a nearby property, is not liable as a matter of law for an accident that occurred in a completely separate property. Nothing in plaintiff's deposition suggests any connection to SHK.

And plaintiff presented nothing in his opposition to raise a material issue of fact. Instead, he offered mere speculation as to how SHK could possibly be liable. Plaintiff's contention that the instant motion is, essentially, premature is completely without merit. "The mere hope that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny such a motion" (*Flores v City of New York*, 66 AD3d 599, 600, 888 NYS2d 27 [1st Dept 2009]). Put another way, plaintiff did not articulate what he expects to learn at SHK's deposition nor did he submit a cogent theory of how SHK might be liable for plaintiff's accident.

Summary

It is understandable why, initially, plaintiff named SHK as a defendant in this case. SHK is the landlord for the deli that ordered the shipment that plaintiff was tasked with delivering. But the evidence submitted here shows that the accident actually occurred at a nearby property owned by someone else. Plaintiff cited no issue of fact upon which SHK could be held liable for plaintiff's purported accident.

Accordingly, it is hereby

ORDERED that S.H.K. Realty LLC's motion for summary judgment is granted and all claims and crossclaims against this defendant are hereby severed and dismissed, and the Clerk is directed to enter judgment accordingly along with costs and disbursements upon presentation of proper papers therefor.

See NYSCEF Doc. No. 96 concerning the next conference.

2/29/2024

DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: