Velazquez v Camp Pontiac Assoc. LLC
2024 NY Slip Op 35095(U)
August 9, 2024
Supreme Court, Richmond County
Docket Number: Index No. 151609/2023
Judge: Ralph J. Porzio
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

JENNIFER VELAZQUEZ

Plaintiff

-against-

CAMP PONTIAC ASSOCIATES
LIMITED LIABILITY COMPANY

Defendant

Index #: 151609/2023

DECISION & ORDER
(Motion #1)

Upon the papers filed in support of the application and the papers filed in opposition thereto, and after hearing oral arguments it is hereby:

ORDERED that Defendant's Motion to dismiss the Plaintiff's complaint pursuant to CPLR § §3211(a)(7) is hereby granted.

BACKGROUND AND PROCEDURAL HISTORY

This incident arises out of an alleged trip and fall suffered by the Plaintiff on June 10, 2023, at 45 Pioneer Drive, in the County of Columbia, New York (hereinafter "the Premises") as a result of a defective condition of a deck located at the Premises. The Plaintiff alleges that while she was part of a bridal party at the Premises, a portion of the deck broke, causing her leg to fall through and sustain injuries. Plaintiff filed Summons and Complaint on August 30, 2023. The Complaint alleges that at the time of the incident, the Defendant controlled, owned, and operated the Premises, and that the Plaintiff's injuries were a result of the "careless, reckless and negligent manner in which the Defendants owned the Premises and that the Defendant controlled, operated, managed, and maintained the deck located at the Premises." The Complaint further alleges that the Defendant "performed, supervised and repaired the aforesaid premises and/or the deck inside the aforesaid premises." The Complaint further alleges:

> the Defendants herein were careless, reckless and negligent in that they violated their duties to persons lawfully on he aforesaid premises and to this Plaintiff in particular, in knowingly, permitting suffering and allowing the aforesaid premises to be, become and remain in a defective, unsafe and dangerous condition: and were

further negligent in failing to take suitable precautions for the safety of lawful persons on said premises.

The Defendant filed the instant motion in lieu of an Answer on May 1, 2024. Plaintiff filed opposition to the motion on May 24, 2024, and the Defendant filed a reply on June 4, 2024. The Court heard oral arguments on June 5, 2024, and reserved decision.

ARGUMENTS

The Defendant argues that the Plaintiff's complaint must be dismissed because the Defendant is not the record owner of the premises where the incident took place. The Defendant asserts that the recorded deed for the property where the premises is located shows that it is owned by a Richard Glenn Etra and Kenneth Scott Etra (hereinafter "Owners") and that the property was deeded to the Owners on July 21, 2018, as tenants in common. The Defendant further asserts that this information is well known to the Plaintiff, as the Plaintiff filed an additional Summons and Complaint against the Owners on September 11, 2023, alleging that they individually owned the subject property. For these reasons, the Defendant argues that the Complaint must be dismissed.

In opposition, the Plaintiff argues that the Defendant has failed to meet its burden in establishing that the Complaint fails to state a cause of action under the theories of Respondeat Superior and of Negligent Hiring. The Plaintiff asserts that the Defendant has not shown any evidence demonstrating that employees and/or principals of the Defendant did not, in acting in their capacity as employees, direct, control, manage, permit, guide, and/or allow the Plaintiff onto the subject deck, ultimately leading to the incident. The Plaintiff further submits a sworn affidavit, where she affirms that she and others were transported between locations on the campgrounds and served food at the subject location by employees of the Defendant. For these reasons, the Plaintiff argues that the Defendant's motion should be denied.

In reply, the Defendants argue that the Plaintiff's Complaint fails to adequately plead any causes of action regarding Negligent Hiring or Respondeat Superior. The Defendant asserts that the Complaint does not allege any facts or causes of action relating to any employees and/or principals of Defendant. Furthermore, the Defendant argues that the Complaint fails to demonstrate a connection between the employer's negligence in hiring and retaining the employee and plaintiff's injuries. Finally, the Defendant argues that causes of action for negligent hiring,

negligent retention, and/or negligent supervision cannot lie if the employee was acting within the scope of his or her employment.

LEGAL STANDARD

"Dismissal under CPLR 3211(a)(7) is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery" (*Himmelstein, McConnell, Gribben, Donoghue & Joseph, LLP v. Matthew Bender & Co.*, 37 N.Y.3d 169, 175 [2021]). On a motion to dismiss for failure to state a cause of action under CPLR 3211(a)(7), a court must "accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v. Martinez*, 84 N.Y.2d 83, 87-88 [1994]). In determining such a motion, the court is concerned only with whether the facts as alleged fit within any cognizable legal theory (*see Rigwan v. Neus*, 205 A.D.3d 1062, 1063 [2nd Dept 2022]).

"A defendant will not be subject to liability in a personal injury action if he or she demonstrates that he or she was not the owner of the property where the injury took place, regardless of whether the transfer of property was recorded" (*Hernandez v. Chen*, 273 A.D.2d 274, 274-275 [2nd Dept 2000]; *see Woroniecki v. Tzitzikalakis*, 255 A.D.2d 509 [2nd Dept 1998]).

"To establish a cause of action based on negligent hiring, negligent retention, or negligent supervision, it must be shown that the employer knew or should have known of the employee's propensity for the conduct which caused the injury" (*Shor v. Touch-N-Go Farms, Inc.*, 89 A.D.3d 830, 831 [2nd Dept 2011]; *see Fuller v. Family Services of Westchester, Inc.*, 209 A.D.3d 983, 984 [2nd Dept 2022]).

DISCUSSION

The Court finds that the Complaint fails to adequately make out any cause of action against the Defendant. It is clear from the documentary evidence submitted by the Defendant showing that the property was transferred to the Owners well before the Plaintiff's alleged incident that the Defendant here is not the record owner of the Premises. This is further demonstrated by the failure of the Plaintiff to oppose this argument in her opposition papers, as well as the second action

brought forth by the Plaintiff against the Owners alleging their individual ownership of the Property. For that reason, the Plaintiff cannot assert any cause of action arising from Premises Liability against the Defendant (*Hernandez v. Chen*, 273 A.D.2d at 274-275).

Furthermore, the Court finds that the Complaint fails to establish any causes of action against the Defendant for Negligent Hiring or under the theory of Respondeat superior. Even taking the facts alleged by the Plaintiff in opposition as true, those being that employees of the Defendant transported the Plaintiff and others around the campgrounds and served them food at the premises, these facts do nothing to support any theory of liability against the Defendant regarding the alleged defective condition of the deck. Nowhere in the Complaint are there any allegations that the Defendants knew or had reason to know that any of its employees or principals had the propensity for the conduct that caused the Plaintiff's injury (*Shor v. Touch-N-Go Farms, Inc.*, 89 A.D.3d at 831. The alleged defect was in the deck located on the personal property of the Owners, which the Owners admit to owning in their Answer to the Plaintiff's subsequently filed Complaint. Plaintiff has not plead any facts connecting the Defendant in this case to that defect. For these reasons, the Plaintiff has not adequately plead a cause of action under the theories of Negligent Hiring or Respondeat Superior.

Based on the above-mentioned reasoning, the Court is granting Defendant's motion to dismiss Plaintiff's complaint pursuant to CPLR 3211(a)(7). This constitutes the Decision and Order of the Court.

Date: August 9, 2024

ENTER

Ralph J. Porzio

HON. RALPH J. PORZIO
J.S.C.