

Nehdaran v Silverstein MB LLC

2025 NY Slip Op 32453(U)

July 10, 2025

Supreme Court, New York County

Docket Number: Index No. 155206/2023

Judge: Carol Sharpe

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. CAROL SHARPE PART 52M

Justice

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INDEX NO. 155206/2023

RAHMATOLLAH NEHDARAN,

MOTION DATE 10/30/2024

Plaintiff,

MOTION SEQ. NO. 002

- v -

SILVERSTEIN MB LLC, SILVERSTEIN PROPERTIES, INC., NYC BIKE SHARE, LLC D/B/A CITIBIKE, CITIGROUP INC., MOTIVATE LLC., THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF TRANSPORTATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., CONSOLIDATED EDISON INC., CONSOLIDATED TRANSMISSION, INC.

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 81, 82, 83, 84, 125

were read on this motion to/for DISMISS

Upon the foregoing documents, and following oral arguments, Silverstein MB LLC's and Silverstein Properties, Inc.'s, motion is granted.

Defendants Silverstein MB LLC and Silverstein Properties, Inc. ("Silverstein Entities") filed the instant motion seeking an order dismissing the action against them pursuant to CPLR 3211(a)(1) and CPLR 3211(a)(7), and dismissal of any cross-claims against them (Motion Sequence #2) on the grounds that they did not own, operate, maintain or control the Subject Premises as they own the property located on the south side of West 41st Street, whereas the incident occurred on the north side of West 41st Street. Plaintiff filed opposition to the motion.

Plaintiff, Rahmatollah Nehdaran, commenced an action to recover for personal injuries by filing a summons and complaint on June 9, 2023, alleging that on September 8, 2022, at approximately 11:00 pm, plaintiff was riding a bicycle ("CitiBike") on the sidewalk at 521 West 41st Street, New York County ("subject premises"), when he was caused to fall because of a defective sidewalk and a defective and

malfunctioning bicycle. Issue was joined when defendants the City of New York (“The City”) filed an answer on behalf of itself and the New York City Department of Transportation (“DOT”) (collectively “Municipal Defendants”) on July 3, 2023. Motivate LLC filed their answer on August 10, 2023. Silverstein MB LLC and Silverstein Properties, Inc., filed their joint answer on August 29, 2023. Lyft Bike and Scooters LLC i/s/h/a NYC Bike Share, LLC d/b/a CitiBike (“CitiBike”) filed their answer on December 8, 2023. Citigroup Inc. filed their answer on December 8, 2023.

On July 1, 2024, plaintiff moved by notice of motion pursuant to CPLR 3025(b), CPLR§1002, and CPLR 305(a) seeking leave to amend and serve the summons and complaint, and add defendants Consolidated Edison Company of New York, Inc., Consolidated Edison, Inc., and Consolidated Transmission, Inc., to this action (Motion Sequence #1). By Amended Decision and Order on Motion dated November 13, 2024, plaintiff’s motion was granted without opposition. Issue was joined when defendants Consolidated Edison Company of New York, Inc., Consolidated Edison, Inc., i/s/h/a Consolidate Edison Inc., and Con Edison Transmission, Inc., i/s/h/a Consolidated Transmission, Inc., (“Con Edison”) filed their joint answer on January 27, 2025.

In support of its motion, defendants Silverstein Entities submitted, among other documentation, records from the NYC Department of Finance Office of the City Register Condemnation Proceeding; a letter from the Manhattan Borough President’s Office; emails from Silverstein Entities’ counsel to plaintiff’s counsel on notice to all parties regarding a stipulation of discontinuance; a stipulation of discontinuance with prejudice against Silverstein Entities signed by plaintiff’s counsel dated November 13, 2023; and images of the Subject Premises location from google maps. Silverstein Entities contend that The City admitted to owning, operating, maintaining and controlling the Subject Premises by failing to respond to Plaintiff’s Notice to Admit, and that the Subject Premises was condemned by The City by eminent domain.

In opposition to defendants’ Silverstein Entities motion to dismiss, plaintiff contends that they have adequately stated a cause of action for negligence and that the documentary evidence Silverstein

Entities provided fails to conclusively establish that Silverstein Entities had no ownership, maintenance, or control over the Subject Premises, as condemnation documents do not necessarily extinguish all private property rights, and further discovery is necessary to clarify the relationship between Silverstein Entities and the Subject Premises.

In its reply papers, Silverstein Entities contend that plaintiff has failed to provide any viable argument in opposition; plaintiff's opposition papers should not be considered by the Court as the deadline for submissions was November 25, 2024, and plaintiff filed his opposition on November 27, 2024; plaintiff failed to submit any documentary evidence of his own to refute Silverstein Entities claims; plaintiff previously executed a stipulation of discontinuance with prejudice in favor of Silverstein Entities but refused to execute a stipulation of discontinuance without prejudice; and plaintiff is unable to establish Silverstein Entities owed a duty of care under its negligence claim. Silverstein Entities further contends that all cross-claims against them for contractual and common law indemnification and contribution should be dismissed as no opposition was filed, and that Silverstein Entities was not a party to any contract for the Subject Premises.

CPLR 3211(a) provides in pertinent parts that, “[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that: 1) a defense is founded upon documentary evidence;... or 7) the pleading fails to state a cause of action;...”

Pleadings which are the subject of a CPLR 3211 motion to dismiss are liberally construed, the court is to accept the facts as alleged in the complaint to be true, accord plaintiff “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, 614 N.Y.S.2d 972, 638 N.E.2d 511 (1994). “However, on a motion to dismiss pursuant to CPLR §3211 (a)(1), where allegations are contradicted by documentary evidence, they are not presumed to be true.” *Sterling Fifth Assocs. v. Carpentille Corp.*, 9 A.D.3d 261, 779 N.Y.S.2d 485 (1st Dept. 2004).

“Under CPLR 3211(a)(1), a dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law...” *Leon v. Martinez*, 84 N.Y.2d at 88, and “only where the documentary evidence utterly refutes plaintiff’s factual allegations, conclusively establishing a defense as a matter of law.” *Goshen v. Mut. Life Ins. Co.*, 98 N.Y.2d 314, 326, 746 N.Y.S.2d 858, 774 N.E.2d 1190 (2002). “Email correspondence can, in a proper case, suffice as documentary evidence for purposes of CPLR 3211(a)(1).” *Art & Fashion Grp. Corp. v. Cyclops Prod., Inc.*, 120 A.D.3d 436, 438, 992 N.Y.S.2d 7 (1st Dept. 2014). “In our electronic age, emails can qualify as documentary evidence if they meet the “essentially undeniable” test [citing *Art & Fashion Grp. Corp.*].” *Amsterdam Hosp. Grp., LLC v. Marshall-Alan Assocs., Inc.*, 120 A.D.3d 431, 433, 992 N.Y.S.2d 2 (1st Dept. 2014). “The motion should be granted where the essential facts have been negated beyond substantial question by the affidavits and evidentiary matter submitted.” (*Blackgold Realty Corp. v. Milne*, 119 AD2d 512, 513, *affd* 69 NY2d 719.)” *Biondi v. Beekman Hill House Apartment, Corp.*, 257 A.D.2d 76, 81, 692 N.Y.S.2d 304 (1st Dept. 1999).

In a motion to dismiss under CPLR 3211(a)(7), “[w]hen evidentiary material is considered, the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one, and, unless it has been shown that a material fact as claimed by the pleader to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it, again dismissal should not eventuate.” *Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 275, 401 N.Y.S.2d 182, 185, 372 N.E.2d 17, 20-21 (1977). *See also, Rovello v. Orofino Realty Co.*, 40 NY2d 633, 636, 389 N.Y.S.2d 314, 316, 357 N.E.2d 970, 972 (1976). “While on a motion to dismiss, the facts pleaded are presumed to be true and given every favorable inference, bare legal conclusions and factual claims that are either inherently incredible or flatly contradicted by documentary evidence are not entitled to such consideration.” *Yovich v. Montefiore Nyack Hosp.*, 212 A.D.3d 425, 426, 181 N.Y.S.3d 241, 242 (1st Dept. 2023).

Here, it is essentially undeniable that the letter from the Office of the President Borough of Manhattan acknowledged the properties which are owned by Silverstein Entities which does not include

the subject premises. Additionally, Silverstein Entities submitted NYC Department of Finance Office of The City Register Recordings and Endorsements of Condemnation Proceedings establishing that as of August 17, 2006, The City acquired a temporary easement for the subject premises located at 521 West 41st Street by the exercise of its powers of eminent domain easements as part of the No. 7 Subway Extension – Hudson Yards Rezoning and Development Program, Phase 1, Stage 1.

In any event, Silverstein Entities provided the stipulation of discontinuance with prejudice which was signed by plaintiff. The email exchanges between the parties show that CitiBike was willing to enter into a stipulation of discontinuance without prejudice in favor of Silverstein Entities. “A stipulation is a contract between the parties and is, therefore, governed by the principles of contract law for interpretation and effect.” *Caruso v. Ward*, 146 A.D.2d 22, 29, 539 N.Y.S.2d 313 (1st Dept. 1989). Plaintiff has not offered any evidence of fraud, mistake or collusion. *See, Living Arts, Inc. v. Kazuko Hillyer Int'l, Inc.*, 166 A.D.2d 284, 564 N.Y.S.2d 111 (1st Dept. 1990)

Silverstein Entities are therefore entitled to dismissal of any claims against them as they have established by documentary evidence that they did not own, maintained, or controlled the subject premises and therefore owed no duty to plaintiff. Accordingly, it is hereby:

ORDERED, that defendants Silverstein MB LLC and Silverstein Properties, Inc.’s motion to dismiss plaintiff’s action and any cross-claims against them is granted with prejudice; it is further

ORDERED, that Silverstein MB LLC and Silverstein Properties, Inc., be removed as parties to this action; it is further

ORDERED, that the action is severed and continued against the remaining defendants; it is further

ORDERED, that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; it is further

ORDERED, that the caption is amended to read as follows:

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RAHMATOLLAH NEHDARAN,
Plaintiff,

- v -

LYFT BIKE AND SCOOTERS LLC, CITIGROUP INC.,
MOTIVATE LLC, THE CITY OF NEW YORK, THE NEW YORK
CITY DEPARTMENT OF TRANSPORTATION,
CONSOLIDATED EDISON COMPANY OF NEW YORK,
INC., CONSOLIDATED EDISON, INC., CON EDISON
TRANSMISSION, INC.,

Defendants.

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; it is further

ORDERED, that counsel for the moving party shall serve a copy of this order with notice of entry upon all parties and the Clerk of the Court within twenty (20) days of the date of this Order, and shall file proof of said service, and the Clerk of the Court is directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED, that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website).

This constitutes the Decision and Order of the Court.

ENTER:

July 10, 2025
DATE


HON. CAROL SHARPE, J.S.C.
HON. CAROL SHARPE
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