SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1489-20

ADEL ABDELWAHAB,

Plaintiff-Appellant,

v.

MARRIOTT INTERNATIONAL, INC., a corporation d/b/a STARWOOD HOTELS & RESORTS WORLDWIDE, LLC, d/b/a LE MERIDIEN TOWERS MAKKAH,

Defendant-Respondent.

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Submitted March 2, 2022 – Decided April 7, 2022

Before Judges Hoffman, Whipple, and Geiger.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket No. L-6634-17.

Timothy J. McIlwain, attorney for appellant.

Cozen O'Connor, attorneys for respondent (Paul K. Leary and Dylan M. Alper, on the brief).

PER CURIAM

In this slip-and-fall personal injury case, plaintiff appeals from the Law Division order granting the summary judgment dismissal of his complaint against defendant Marriott International, Inc. We affirm.

We ascertain the following facts from the record, viewed in the light most favorable to plaintiff, the non-moving party. Polzo v. Cnty. of Essex, 209 N.J. 51, 56-57 n.1 (2012). On September 15, 2015, plaintiff slipped and fell in the lobby of Le Meridien Towers Makkah (the Le Meridien or the Hotel), a hotel in Saudi Arabia. In his complaint, plaintiff alleges that defendant owned, operated, and controlled the hotel, on the date of his injury. Plaintiff seeks to hold defendant liable for "negligently, carelessly and recklessly fail[ing] to maintain, manage, operate, inspect, and clean the floors in and about the public lobby" – failures that allegedly caused plaintiff's injuries. In opposition to defendant's summary judgment motion, plaintiff alleges that defendant acquired the entity that allegedly owned the Le Meridien, Starwood Hotels, LLC, and that, by virtue of the acquisition, defendant therefore owned and operated the Le Meridien.

As part of discovery, defendant submitted SEC[1]-filed documents pertaining to defendant's September 23, 2016 acquisition of Starwood Hotels & Resorts Worldwide, Inc. (Starwood, Inc.). Those documents revealed that

[1] Securities and Exchange Commission.

Starwood, Inc. was converted into Starwood Hotels & Resorts Worldwide, LLC (Starwood, LLC), and that Starwood, LLC then "became an indirect, wholly owned subsidiary of Marriott. . . ." The documents showed that, in connection with the transaction, neither Starwood, Inc. nor Starwood, LLC was merged into defendant, but rather remained separate legal entities.

In addition, defendant submitted an affidavit from Ahmed Hozaien, an area vice president for Marriott. In the affidavit, Hozaien averred from personal knowledge that defendant never owned, controlled, or managed the Le Meridien; in addition, Hozaien explained that, even after defendant's acquisition of Starwood, Inc. in September 2016, Marriott did not own, control, or manage the Le Meridien.

Discovery closed in February 2019. Over six months later, defendant filed a motion for summary judgment. That same day, plaintiff filed a motion to re-open discovery and to adjourn defendant's summary judgment motion. The trial court granted plaintiff's motion, allowing plaintiff until February 5, 2020, to take limited additional discovery; however, plaintiff took no discovery during that period, but did file a motion to extend discovery further, for an additional sixty days.

The trial court heard argument on February 28, 2020. During the hearing, the motion court expressed concern over the fact that plaintiff's counsel had spent the last two and a half years doing nothing to ascertain the relationship between defendant and the Le Meridien. The court described counsel's lack of diligence in pursuing discovery as "a pattern." Nevertheless, the court granted plaintiff a limited time to depose a corporate representative of defendant on the issue of defendant's relationship to the Le Meridien.

This deposition occurred on March 9, 2020, with plaintiff deposing Donna Hayhurst-Brown, a corporate representative of defendant with knowledge of defendant's relationship to the Le Meridien. A senior manager of entity administration for Marriott, Hayhurst-Brown testified that, on the date of plaintiff's accident, September 15, 2015, defendant did not own, lease, control, operate, possess, or manage the Hotel and did not have any other connection or affiliation to the Hotel.

Hayhurst-Brown testified that, under a January 31, 2008 operating agreement, the Le Meridien was owned by an entity known as United Company for Investments and Real Estate (trading as Al Muttahed), and was operated by an entity known as Starwood (M) Hotels, Inc. She further confirmed that defendant acquired Starwood, Inc. on September 23, 2016, more than a year

after plaintiff's accident, and that, before the acquisition, defendant had no connection to the Hotel whatsoever.

Shortly thereafter, defendant again filed a motion for summary judgment. In support of the motion, defendant provided evidence – including testimony from the deposition – showing that, as of September 15, 2015, defendant did not own, lease, control, possess, manage, or maintain the Hotel.

Plaintiff filed opposition to the motion and, on the same day, a supplemental opposition. Plaintiff focused on the fact that in 2016, a year after the alleged accident, defendant acquired non-party Starwood, Inc., an entity that plaintiff argued was involved in the Hotel's operation or ownership. Plaintiff's supplemental summary-judgment opposition included a cross-motion for sanctions and contempt based on what plaintiff claimed were misrepresentations by defendant and its counsel regarding defendant's lack of ownership of and control of the Hotel.

In addition, plaintiff submitted printouts from defendant's website showing that the Le Meridien was advertised on defendant's website, and that the page on which it was advertised contained defendant's logo and a copyright notice. The printouts were from the year 2020.

In July 2020, the motion court granted defendant's motion for summary judgment. The court explained that nothing in the record would allow a reasonable jury to conclude, without resorting to speculation, that defendant had ever owned, controlled, or managed the Le Meridien. The judge found that defendant submitted unrebutted evidence that the Hotel had been owned and operated – and was still owned and operated – by legal entities distinct from defendant. The court also denied plaintiff's motion for sanctions, recognizing that defendant's position had always been that it did not own, control, or manage the Le Meridien.

In August 2020, plaintiff filed a motion for reconsideration of the trial court's order granting summary judgment, as well as its March 31, 2020 order granting plaintiff leave to depose defendant's corporate representative. In January 2021, the judge denied the motion. This appeal followed.

I.

In reviewing these arguments on appeal, we abide by fundamental principles applicable to summary judgment motions. The court must "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact-finder to resolve the alleged disputed issue in favor of the non-moving party."

Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995); see also R. 4:46-2(c). If there are materially disputed facts that could support the legal requirements for liability, the motion for summary judgment should be denied. Parks v. Rogers, 176 N.J. 491, 502 (2003); Brill, 142 N.J. at 540. To grant the motion, the court must find that the evidence in the record "is so one-sided that one party must prevail as a matter of law." Brill, 142 N.J. at 540 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986)).

Our review of an order granting summary judgment, such as the one here, must observe the same standards, including the obligation to view the record in the light most favorable to the non-moving party. See IE Test, LLC v. Carroll, 226 N.J. 166, 184 (2016) (citing Brill, 142 N.J. at 540). We accord no special deference to a trial judge's assessment of the documentary record, as the decision to grant or withhold summary judgment does not hinge upon a judge's determinations of the credibility of testimony rendered in court, but instead amounts to a ruling on a question of law. See Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995) (noting that no "special deference" applies to a trial court's legal determinations).

Applying these standards, we conclude the motion court correctly granted defendant summary judgment. Based on the facts adduced in the record, plaintiff's legal theories are not sustainable.

To prove a claim of negligence, a plaintiff must demonstrate: (1) a duty of care, (2) that the duty has been breached, (3) proximate causation, and (4) injury. Townsend v. Pierre, 221 N.J. 36, 51 (2015) (citing Polzo v. Cnty. of Essex, 196 N.J. 569, 584 (2008)); see also Weinberg v. Dinger, 106 N.J. 469, 484 (1987) (citing W. Keeton et al., Prosser & Keeton on the Law of Torts § 30 at 164-65 (5th ed. 1984)). A plaintiff bears the burden of proving negligence, see Reichert v. Vegholm, 366 N.J. Super. 209, 213 (App. Div. 2004), and must prove that unreasonable acts or omissions by the defendant proximately caused his or her injuries, Underhill v. Borough of Caldwell, 463 N.J. Super. 548, 554 (App Div. 2020) (citing Camp v. Jiffy Lube No. 114, 309 N.J. Super. 305, 309-11 (App. Div. 1998)).

Therefore, in the present matter, plaintiff must show that defendant owned, operated, or controlled the Le Meridien at the time of the accident. Absent such a showing, defendant cannot be charged with owing a legal duty to plaintiff, and thus a negligence claim cannot prevail.

Plaintiff cites to no authority in support of his proposition that defendant's listing or advertisement of the Le Meridien demonstrates its ownership, operation, or control of the Hotel. Moreover, nothing on the website printouts provided by plaintiff reveal that the materials predate plaintiff's accident. A jury would have no basis to find that defendant owned, operated, or controlled the Le Meridien on the date of plaintiff's accident, merely because the hotel was listed on defendant's website, long after the date of plaintiff's accident.

Moreover, defendant's acquisition of Starwood, Inc., on September 23, 2016, does not establish a genuine issue of material fact as to defendant's ownership of the Le Meridien. Contrary to plaintiff's contention that the acquisition occurred in November 2015, the transaction was not finalized until September 23, 2016.[2] Therefore, at the time of plaintiff's accident, September 15, 2015, the transaction was not yet complete, and as such, defendant clearly did not own, operate, or control the Le Meridien. These facts are supported in the deposition testimony of Hayhurst-Brown.

Additionally, Ahmed Hozaien, an area vice president for defendant, confirmed, based on personal knowledge that, even after defendant's September

[2] U.S. Sec. & Exch. Comm'n, Form 8-K filed by Marriott International (Sept. 23, 2016).

23, 2016, acquisition of Starwood, Inc., defendant did not own, control, or manage the hotel. Moreover, we find no evidence to suggest that defendant took ownership or control over the Hotel after the September 2016 acquisition. Importantly, defendant, as the parent company, and Starwood, Inc. as an indirect, wholly owned subsidiary, remained separate and distinct corporate entities following the acquisition.

New Jersey law is clear that "even in the case of a parent corporation and its wholly-owned subsidiary," liability will not be imposed on the parent company for torts committed by the subsidiary. N.J. Dep't of Env't Prot. v. Ventron Corp., 94 N.J. 473, 500 (1983) (citing Mueller v. Seaboard Com. Corp., 5 N.J. 28, 34 (1950)). Only where the parent company uses the subsidiary as a "mere agency or instrumentality" of the parent, will it be held liable for injuries arising out of the subsidiary's negligence. OTR Assoc. v. IBC Serv., Inc., 353 N.J. Super. 48, 49 (App. Div. 2002). Under such circumstances, the court will pierce the corporate veil, which rests on the principle that "the parent so dominated the subsidiary that it had no separate existence but was merely a conduit for the parent." Ventron Corp., 94 N.J. at 501.

Here, however, the record contains no evidence that would warrant piercing the corporate veil, nor does plaintiff attempt to establish a prima facie

case of such. Regardless, the record shows that plaintiff's accident occurred prior to Starwood, Inc. becoming defendant's subsidiary.

Plaintiff also contends that the motion court abused its discretion in denying plaintiff's motion for sanctions based on discovery violations. Plaintiff maintains that sanctions are warranted because throughout discovery, defendant denied any affiliation or knowledge of the Le Meridien, until finally admitting to an affiliation in its brief in support of its motion for summary judgment. This argument lacks merit.

We "normally defer to a trial court's disposition of discovery matters . . . unless the court has abused its discretion . . . ." Connolly v. Burger King Corp., 306 N.J. Super. 344, 349 (App. Div. 1997) (quoting Payton v. N.J. Tpk. Auth., 148 N.J. 524, 559 (1997)). Abuse of discretion occurs when a decision is "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Flagg v. Essex Cnty Prosecutor, 171 N.J. 561, 571 (2002). "Under this standard, 'an appellate court should not substitute its own judgment for that of the trial court, unless the trial court's ruling was so wide of the mark that a manifest denial of justice resulted.'" Hanisko v. Billy Casper Golf Mgmt., Inc., 437 N.J. Super. 349, 362 (App. Div. 2014) (quoting State v. Brown, 170 N.J. 138, 147 (2001)).

As a threshold matter, the record does not support plaintiff's contention that defendant denied any affiliation or knowledge of the Le Meridien for over two years. Rather, and as noted by the motion court, "[f]rom the inception of the defense, Marriott has claimed that they have never been in control." There is a clear difference between defendant denying an affiliation with the hotel and denying that it had ever owned, leased, operated, maintained, or controlled it. Thus, the court did not abuse its discretion in denying sanctions, as plaintiff's motion was unfounded and without basis.

Lastly, plaintiff argues that the motion court committed reversible error in denying plaintiff's motion to reconsider the March 31, 2020 discovery order that limited the deposition of defendant's deponent to the issue of defendant's relationship with the Le Meridien.[3] This argument lacks merit. At that point, establishing a relationship between defendant and the Hotel was the only issue of material fact that needed resolution.

Reconsideration should be utilized only for cases where "1) [the] court has expressed its decision based upon palpably incorrect or irrational bases, or 2) it is obvious that the court either did not consider or failed to appreciate the

[3] We note the judge allowed plaintiff to take this deposition long after discovery had ended so that plaintiff could attempt to establish facts that plaintiff failed to determine during discovery.

significance of probative, competent evidence." See Cummings v. Bahr, 263 N.J. Super. 575, 598 (App. Div. 1993) (quoting D'Atria v. D'Atria, 242 N.J. Super.392, 401 (Ch. Div. 1990)).

Here, the motion court did not abuse its discretion when it denied plaintiff's motion for reconsideration. The court addressed the merits of the motion and explained that it did not find that its "prior decision was based on a palpably incorrect or irrational basis or that [the court] failed to consider certain evidence." The record clearly supports the court's ruling.

Any arguments not addressed lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.