

**CA Constr. Inc. v 25 Broadway Off. Props., LLC**

2010 NY Slip Op 30665(U)

March 15, 2010

Supreme Court, New York County

Docket Number: 100728/09

Judge: Alice Schlesinger

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

**Alice Schlesinger**

PRESENT: \_\_\_\_\_  
*Justice*

PART \_\_\_\_\_

Index Number : 100728/2009  
**CA CONSTRUCTION INC**  
VS.  
**25 BROADWAY OFFICE PROPERTIES**  
SEQUENCE NUMBER : 002  
DISMISS

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

this motion to/for \_\_\_\_\_

**FILED**  
MAR 18 2010  
NEW YORK  
COUNTY CLERK'S OFFICE

PAPERS NUMBERED

Notice of Motion, Order to Show Cause — Affidavits — Exhibits

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE WITH  
ACCOMPANYING MEMORANDUM DECISION.**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

Dated: MAR 15 2010

*Alice Schlesinger*  
**Alice Schlesinger** J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 16

-----X  
CA CONSTRUCTION, INC.,

Plaintiff,

Index No.100728/09

-against -

25 BROADWAY OFFICE PROPERTIES, LLC,  
SUPERIOR MAINTENANCE GROUP, "JOHN #1"  
through "JOHN DOE No. #10", said names being  
fictitious and intended to designate those persons  
or entities who have claims under the real property  
being foreclosed herein,

Defendants.

-----X  
**SCHLESINGER, J:**

**FILED**  
**MAR 18 2010**  
**NEW YORK**  
**COUNTY CLERK'S OFFICE**

Before the Court are motions made by both defendants, 25 Broadway Office Properties, LLC ("25 Broadway") and Superior Maintenance Group ("Superior").

The plaintiff CA was a subcontractor on a project involving this property and is suing for money allegedly still owed to it. 25 Broadway is the owner of the property and Superior, the general contractor.

The motions, brought pursuant to §470 of the Judiciary Law, asked the Court to dismiss the action claiming counsel for CA, a non-resident lawyer and law firm failed to have a sufficient legal presence in New York State. This statute has been interpreted in the First Judicial Department as requiring such attorney to at least maintain an office in this State for the practice of law. Further, in two cases, *Keenan v. Mitsubishi Estate*, 228 A.D.2d 330, First Dept, 1996 and *Lichtenstein v. Emerson*, 251 AD2d 64, First Dept, 1998, this Department while granting the defense motion in *Lichtenstein* and denying it in *Keenan*, emphasized that this is an inherently factual determination that must be resolved

by the Court.

Upon review of the motion and opposition papers, I directed a hearing to flesh out what the full facts were. The moving papers showed that the attorney of record, Alfred A. DiVincentis of the firm of Halloran & Sage, both residents of Connecticut, while admittedly a member of the New York Bar, seemed to have no other New York presence. Mr. DiVincentis responded by including a letter lease his firm had for space at 81 Main Street, Suite 450 in White Plains, New York with the law firm Briccetti, Calhoun & Lawrence. He stated that there was a specific person designated there to accept service and mail for the firm, that the firm's name was on the building directory, and that tax returns were filed with New York State and taxes were paid. Finally, there was also a (917) phone number wherein calls received in that office were routed to their Connecticut office.

But defense counsel pointed out all the court papers showed only the Connecticut address, i.e., the White Plains office was never given for service or any other purpose. Further, the letter lease was for a one year term ending in 2004. Nor did the White Plains address appear on the firm's letterhead, on its website or on DiVincentis' registration with the Office of Court Administration.

Also significantly, there was no affidavit from DiVincentis indicating that he did have a presence in White Plains, regular or otherwise, or that he received calls there or met with clients and/or conducted legal business.

Thus I directed a hearing, which was held the day after oral argument, on March 11, 2010. Two witnesses appeared and gave testimony for counsel for the plaintiff, the aforementioned Alfred DiVincentis as well as another Halloran & Sage partner and Manager of its Westport office, also a member of the New York Bar, Stephen Fogerty.

The additional items that Mr. DiVincentis testified to were the following, the rental of the office space in White Plains was still ongoing, on a month to month basis, he acknowledged never personally being at that office, he acknowledged that all work on this case had been done in Connecticut; and he named one Janet Ryder, Office Manager for Briccetti and not a Halloran & Sage employee as the person in White Plains authorized to accept service for the firm. While he stated his firm was not looking for business in New York, he did mention the names of two New York companies they did represent here and estimated an amount in excess of \$50,000 as revenue produced from New York work.

Fogerty elaborated on this point and explained that the Halloran firm never wanted to solicit business in New York but maintained the White Plains office to better serve their clients. That is why the firm neither advertises nor has the office listed on its website. He also stated that neither he nor his associates had any problem communicating with New York attorneys, particularly because the calls were rerouted to the Connecticut office(s) and the mail was forwarded. However, he acknowledged that for New York cases, it would be better practice to list the White Plains Office on the papers.

Regarding that space, he had been there, though not very often. He recalls part of a day in 2009 and part of a day 2 years prior. He described the space as being in an A-1 office building and attested to the firm name appearing on the downstairs directory, the fourth floor directory, and the suite door.

Finally, he stated his belief that 6 lawyers with the firm were admitted to practice in New York and that he knew that others actually used the White Plains space for legal matters such as the conduct of depositions.

On balance, I find that plaintiff's counsel has withstood this challenge. Similar to *Keenan*, (supra) they do have an ongoing agreement with a New York law firm that includes use of space, a desk, conference room when reserved, and other office accouterments. Also not only DiVincentis, but other members of Halloran and Sage are New York admitted attorneys, including Fogerty. And at least those two are registered with OCA.

The White Plains office, while having no Halloran and Sage employees does have a designated individual authorized to accept service for it. And the firm name is displayed at all the designed places where it is expected to be. This arrangement contrasts sharply with the facts as recited in *Lichtenstein* (supra).

In conclusion, while I believe there should be an appropriate registration of this space with OCA and that it should regularly be shown on the firm's letterhead and court papers, I do find that the firm has shown sufficient compliance with §470, in maintaining an "office for the transaction of law business... within the state" to enable it to commence and maintain an action here.

Accordingly, the motions are denied. Counsel are directed to appear for a status conference in Room 222 on April 21, 2009 at 9:30 a.m.

This constitutes the decision and order of this Court.

Dated: March 15, 2010

MAR 15 2010

**FILED**

MAR 18 2010

NEW YORK  
COUNTY CLERK'S OFFICE

*Alice Schlesinger*  
J.S.C.  
**ALICE SCHLESINGER**