

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

PRESENT: KAREN S. SMITH
Justice

PART 62

JOHN DELLA PORTA and DEBRA DELLA PORTA

INDEX NO. 104427/2008

- v -

MOTION DATE 07/02/2008

EAST 51ST STREET DEVELOPMENT COMPANY, LLC, RELIANCE CONSTRUCTION GROUP, RCG GROUP, INC., JOY CONTRACTORS, INC., NEW YORK CRANE & EQUIPMENT CORPORATION and STROH ENGINEERING SERVICES, P.C.

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

The following papers, numbered 1 to 11 were read on this motion to dismiss the complaint herein

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...Memorandum

PAPERS NUMBERED

1 - 2

Answering Affidavits — Exhibits — Memorandum

3 - 9

Replying Affidavits — Memorandum

10 - 11

Cross-Motion: Yes No

Upon the foregoing papers, it is ORDERED that this motion by defendant, New York Crane & Equipment Corporation ("NY Crane") to dismiss the complaint herein, as against it, pursuant to CPLR §3211, is denied.

This is a personal injury action stemming from a construction crane collapse which occurred on March 15, 2008. Plaintiffs are a construction worker ("Della Porta") who was allegedly injured during the collapse and his spouse who brings a loss of consortium claim. NY Crane allegedly owned the crane which involved in the accident. NY Crane now moves to dismiss the action pursuant to CPLR §3211(a)(1) and (7). NY Crane contends that documentary evidence, consisting of a rental agreement for the crane equipment involved between itself as owner and "JCI/E 51st & 2nd Avenue" as lessee, conclusively establishes that the lessee is responsible for all liability arising out of the use, operation and maintenance of the crane equipment. Additionally, NY Crane argues that the complaint fails to state a cause of action as against NY Crane. All other parties to the action, except defendant Joy Contractors, Inc., have opposed the motion.

A CPLR §3211 motion addresses the face of the complaint. All factual allegations are presumed true for the purposes of the motion unless documentary evidence conclusively refutes them. Any reasonable inferences which may be drawn from the allegations are construed in the light most favorable to the plaintiff. The role of the court is to determine whether the plaintiff has any viable cause of action, without giving consideration to the artfulness or ineptness of the pleading, and whether the defendant has been put on sufficient notice of the issues involved to defend the action. The omission of any non-essential details, which may be supplied through a bill of particulars or otherwise within in the context of the pleading, does not preclude the denial of the motion.

The complaint herein is adequate to put NY Crane on notice of negligence claims against it as an owner of the crane and the incidents out of which those claims arose. Thus, while NY Crane may have a claim, or as against the lessee of the equipment involved in this action, that does not restrict Della Porta's right to seek compensation for his injuries from NY Crane as the potentially negligent owner of the instrumentality which caused those injuries. Moreover, until a conclusion concerning the cause of the crane collapse is presented to the court in the form of admissible evidence, the court is not in a position to determine, as a matter of law, that Della Porta has no viable cause of action against NY Crane. Accordingly, this motion to dismiss the complaint herein is denied.

The foregoing constitutes the decision and order of this court.

Dated: 8/11/08

K.S.S.
Hon. Karen S. Smith, J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

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

FILED
CLERK'S OFFICE