

Lam v Tishman Constr. Corp.

2007 NY Slip Op 30515(U)

March 27, 2007

Supreme Court, New York County

Docket Number: 0109256/2006

Judge: Rolando T. Acosta

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK PART 61**

Richard Lam,

Plaintiff,

– against –

Tishman Construction Corporation, Tishman
Construction Corporation of New York and
Tishman Construction Corporation of
Manhattan and Manhattan Concrete, Inc.,

Defendants.

DECISION/ORDER

Index No. 109256/06

Motion Seq. 1

Present:
Hon. Rolando T. Acosta
Supreme Court Justice

The following documents were considered in reviewing defendants Tishman Construction Corporation, Tishman Construction Corporation of New York and Tishman Construction Corporation of Manhattan's motion to dismiss the complaint based on the grounds of *forum non conveniens*:

| Papers | Numbered |
|---|-----------------------|
| Amended Notice of Motion, Affirmation in Support of Motion | 1, 2 (Ex. A-E) |
| Affirmation in Opposition | 3 |
| Reply Affirmation | |

Defendants Tishman Construction Corporation, Tishman Construction Corporation of New York and Tishman Construction Corporation of Manhattan bring the instant motion seeking dismissal of plaintiff's complaint on the grounds of *forum non conveniens*. Defendants urge that New York is an inconvenient forum and that New Jersey is the more appropriate forum. Specifically, defendants argue that since the alleged accident occurred in New Jersey, and plaintiff did not

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assert any New York Labor Law claims¹, and New Jersey law applies, the action should be in New Jersey.

The doctrine of *forum non conveniens* permits a court to stay or dismiss an action where “the court finds that in the interest of substantial justice the action should be heard in another forum.” CPLR § 327(a). The doctrine is flexible and must be considered in light of the facts of the particular case. National Bank & Trust Co. of N. Am. v. Banco de Vizcaya, S.A., 72 N.Y.2d 1005 (1988). Among the factors to be considered by the Court are the burden on New York Courts, the potential hardship to the defendants, whether the parties are nonresidents, the availability of an alternate forum, and the locus of the transaction or occurrence. Islamic Republic of Iran v. Pahlavi, 62 N.Y.2d 474 (1984). Moreover, the decision lies within the sound discretion of the Court and will not be disturbed absent a showing of abuse. *Id.*


In the instant action, considering the fact that New Jersey law will be applied and the principal that “one factor which weighs in favor of dismissal on *forum non conveniens* grounds is the applicability of foreign law”, Phat Tan Nguyen v. Banque Indosuez, 19 A.D.3d 292, 294 (1st Dept. 2005), together with the fact that the entity that served as Construction Manager on the project where plaintiff was injured is a New Jersey Corporation, with its principal place of business in New Jersey, as well as the fact that plaintiff was treated for his injuries at Robert Wood Johnson Hospital in New Brunswick, New Jersey, and given the fact that the Tishman defendants agree to waive any objections to personal jurisdiction in New Jersey, the appropriate forum for plaintiff’s claim is New Jersey. Finally, plaintiff’s argument that he would be inconvenienced in having to travel to testify in a New Jersey action is specious inasmuch as plaintiff is a resident of Richmond County, and as such would still be required to travel to New York County to testify at trial. Accordingly, based upon the foregoing it is hereby

ORDERED that defendants’ motion to dismiss the complaint based upon the doctrine of *forum non conveniens* is GRANTED.

This constitutes the Decision and Order of the Court.

Dated: March 27, 2007

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ENTER
SO ORDERED

Rolando T. Acosta, J.S.C.
ROLANDO T. ACOSTA
J.S.C.

¹ Plaintiff alleges in his complaint that he was injured while working at construction site in New Brunswick, New Jersey.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

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