

Cancelliere v I.G.A. Membership Corp.

2007 NY Slip Op 34537(U)

February 1, 2007

Supreme Court, New York County

Docket Number: 104221/05

Judge: Walter B. Tolub

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15

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THOMAS CANCELLIERE,

Plaintiff,

Index No. 104221/05
Mtn Seq. 003

-against-

I.G.A. MEMBERSHIP CORPORATION d/b/a
THE LINKS AT UNION VALE, YORK BRIDGE
CONCEPTS and BURTON F. CLARK, INC.,
d/b/a CLARK COMPANIES

Defendants.

-----x

I.G.A. MEMBERSHIP CORPORATION d/b/a
THE LINKS AT UNION VALE,

Third-Party Plaintiff,

-against-

YORK BRIDGE CONCEPTS,

Third-Party Defendant.

-----x

I.G.A. MEMBERSHIP CORPORATION d/b/a
THE LINKS AT UNION VALE,

Second-Third-Party Plaintiff,

-against-

BURTON F. CLARK, INC., d/b/a CLARK COMPANIES,

Second-Third-Party Defendant.

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WALTER B. TOLUB, J.:

On August 11, 2002, plaintiff claims that he injured himself while on a wooden footbridge ("the bridge") located on a golf course owned by defendant I.G.A Membership Corporation d/b/a The

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Links at Union Vale (defendant "I.G.A."). The bridge was built and/or installed during the time period of 1998-1999 by defendant/second-third party defendant Burton F. Clark, Inc., d/b/a Clark Companies (defendant "Clark") and defendant/third-party defendant York Bridge Concepts (defendant "York").

Defendant Clark was the general contractor for the project, and defendant York was hired by defendant Clark as a subcontractor.

On March 22, 2005 plaintiff commenced the instant action against defendant I.G.A. alleging negligence in the "ownership, operation, maintenance and control of the premises" (Notice Complaint, Paragraph 17). In April, 2006, over one year after the initial complaint had been filed, defendant I.G.A. commenced a third party action against defendant York alleging negligence and defective design/manufacture defect. Plaintiff then amended his complaint on May 5, 2006 naming defendant York as a direct defendant. On July 14, 2006, defendant I.G.A. commenced a second third-party action against defendant Clark, and on August 8, 2006, plaintiff again amended his complaint naming defendant Clark as a direct defendant in this action.

By these motions, defendant York moves and defendant Clark cross moves for summary judgment and dismissal of plaintiff's complaint. Both parties assert that the actions against them warrant dismissal because they are barred by the applicable statute of limitations.

Discussion

As with any motion for summary judgment, the primary concern of this court is whether the proponent of either of the respective motions has made a "prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact" (Wolff v. New York City Transit Authority, 21 AD3d 956 [2nd Dept 2005] quoting Winegrad v. New York University Med. Center, 64 NY2d 851, 853 [1985] (internal quotations omitted). See generally, Barr, Altman, Lipshie and Gerstman; New York Civil Practice Before Trial, [James Publishing 2006] §37:91-92).

Personal injury actions are subject to a three-year statute of limitations (CPLR 214). While plaintiff concedes that this statute expired by the time the actions were commenced against defendants York and Clark, he asserts that both actions benefit from the relation-back doctrine set forth in CPLR 203 and are therefore timely.

This court disagrees. Invocation of the relation-back doctrine requires plaintiff to demonstrate (1) that the claims advanced arose out of the same conduct, transaction or occurrence; (2) that the new defendant(s) are both united in interest with the original defendant, and by reason of that relationship can be charged with such notice of the action that it will not be prejudiced on maintaining a defense on the merits;

and (3) the new defendant(s) knew or should have known that but for a mistake by plaintiff as to the identity of the proper parties, the action would have been brought against the new party as well (see, Mondello v. New York Blood Center, 80 NY2d 219 [1992]; Brock v. Bua, 83 AD2d 61 [2nd Dept 1981]; Buran v. Coupal, 87 NY2d 173 [1995]). Moreover, to satisfy the united in interest prong, plaintiff must demonstrate that the interest of the parties are such that not only do the parties stand or fall together, any judgment effectuated against one will also affect the other (Zehnick v. Meadowbrook II Associates, 20 AD3d 793 [3rd Dept 2005]; Quine v. Burkard Brothers, Inc., 167 AD2d 683 [3rd Dept 1990]).

Here, review of the papers submitted indicates that although defendant I.G.A. hired defendants York and Clark in 1998 to build and/or install the footbridge in question, the parties had no relationship with defendant I.G.A. after the work was completed 1999. Moreover, the cause of action advanced against defendant I.G.A. sounds in negligence arising from maintenance, or lack thereof, of their property. The cause of action advanced against defendants York and Clark sounds in negligence arising out of the construction and installation of a bridge that took place at least two, if not three years preceding plaintiff's accident. Contrary to plaintiff's assertions, these claims do not stand or fall together. The relation-back doctrine therefore does not

apply, and plaintiff's actions as against both defendant York and Clark are barred as untimely. Accordingly, it is

ORDERED that the motion made by defendant/third-party defendant York Bridge Concepts for summary judgment and dismissal of the plaintiff's complaint is granted; and it is further

ORDERED that the motion made by defendant/second-third party defendant Burton F. Clark, Inc., d/b/a Clark Companies, for summary judgment and dismissal of plaintiff's complaint is granted; and it is further

ORDERED that the clerk of court enter judgment in favor of the respective parties; and it is further


ORDERED that the balance of this action continue.

Counsel for the remaining parties are directed to appear for the previously scheduled February 9, 2007 compliance conference in this matter.

This constitutes the decision and order of the court.

Dated: 2/1/07

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HON. WALTER B. TOLUB, J.S.C.