

Meehan v Mogen

2007 NY Slip Op 34606(U)

October 22, 2007

Supreme Court, New York County

Docket Number: 113342/04

Judge: Barbara R. Kapnick

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 12

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PAUL MEEHAN,

Plaintiff,

-against-

DECISION/ORDER
Index No. 113342/04
Motion Seq. No. 002

CAMPS MOGEN, AVRAHAM, HELLER,
STERNBERG, INC. d/b/a CAMP STERNBERG,
ASSOCIATION OF JEWISH SPONSORED
CAMPS, INC. and UJA, INC.,

Defendants.

-----X

CAMPS MOGEN, AVRAHAM, HELLER,
STERNBERG, INC., d/b/a CAMP STERNBERG,

Third-Party Plaintiff,

-against-

Third-Party
Index No. 590341/05

SEVEN SONS CONSTRUCTION COMPANY
and JAMES L. ZACCARI,

Third-Party Defendants.

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BARBARA R. KAPNICK, J.:

FILED
OCT 25 2007
NEW YORK
COUNTY CLERK'S OFFICE

This action pursuant to Labor Law §§ 240(1), 241(6) and 200 and for common law negligence arises out of an accident that occurred on August 3, 2004, while plaintiff Paul Meehan was erecting a metal hangar at "Camp Sternberg" in Narrowsburg, New York.

Defendant Camps Mogen, Avraham, Heller, Sternberg, Inc. d/b/a Camp Sternberg commenced a third-party action against Seven Sons Construction Company and James L. Zaccari alleging that said entity and individual were plaintiff's "employer" and seeking indemnification and contribution.

However, the Workers' Compensation Board thereafter issued a "Reserved Decision No Insurance Case", filed on May 2, 2006, which (after an extensive hearing) found, inter alia, that third-party defendant James L. Zaccari and plaintiff "(having been hired for the project by Mr. Zaccari acting as foreman for the camp) were employees of Camps Mogen Avraham Heller Sternberg, Inc. on the date of accident."

Defendant Camps Mogen, Avraham, Heller, Sternberg, Inc. d/b/a Camp Sternberg now move for an order: (i) granting it leave to amend its Answer pursuant to CPLR § 3025(b) to include the affirmative defense that plaintiff's claims against it are barred by the Workers' Compensation Law; and (ii) granting summary judgment dismissing plaintiff's Complaint and all cross-claims against it on the grounds that plaintiff's claims are barred by the exclusive remedy of Workers' Compensation. See, Samba v. Delligard, 116 A.D.2d 563 (2nd Dep't 1986).

That portion of the motion seeking leave to amend the Answer is granted without opposition.

Plaintiff opposes that portion of the motion seeking summary judgment, based on his contention that the Workers' Compensation Board's decision was premised on fraudulent testimony regarding plaintiff's status as an employee of the defendant. Thus, plaintiff

argues that the Board's decision should not be given collateral estoppel/res judicata effect in this case.

Plaintiff has also cross-moved for further discovery as to the Internal Revenue filings for the moving defendant "pertaining to W-2's, 1099's and other required employee filings for the individuals claimed to be employees, inclusive of the Plaintiff, on the date of the occurrence."

By Interim Order dated April 20, 2007, this Court granted the cross-motion to the extent of "directing defendants and third-party defendants to produce within 30 days any Internal Revenue Service filings, including W-2's and 1099's, and any other employment records relating to plaintiff for the time period from February 1, 2004 through August 31, 2004."

Moshe Wein, the Executive Director of Camps Mogen, Avraham, Heller, Sternberg, Inc., thereafter submitted an Affidavit affirmed to on July 27, 2007, stating as follows:

I have conducted a search for employment records for Paul Meehan for the period of February 1, 2004 through August 31, 2004. I have no IRS W-2's, 1099 wage reports or other records related to Paul Meehan.

However, notwithstanding the absence of any documentation in support of defendant's claim that it employed plaintiff on the date of the accident, this Court finds, based on the papers submitted and the oral argument held on the record on April 18, 2007 and

September 5, 2007, that the decision of the Board, which was never appealed, must be given res judicata effect, since Workers' Compensation Law § 23 provides, in relevant part, that

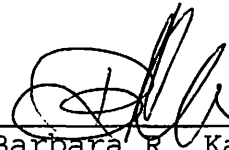
An award or decision of the board shall be final and conclusive upon all questions within its jurisdiction, as against the state fund or between the parties, unless reversed or modified on appeal therefrom as hereinafter provided.

See, Werner v. State of New York, 53 N.Y.2d 346 (1981).

Accordingly, this Court is constrained to grant the motion and to dismiss this action against defendant Camps Mogen, Avraham, Heller, Sternberg, Inc. d/b/a Camp Sternberg with prejudice and without costs or disbursements. The third-party action is thus dismissed as moot. The Clerk may enter judgment accordingly.

This constitutes the decision and order of this Court.

Date: October 22, 2007


Barbara R. Kapnick
J.S.C.

BARBARA R. KAPNICK
J.S.C.

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COUNTY CLERK'S OFFICE