

Nexus Projects LLC v MCP SO Strategies 56

2008 NY Slip Op 30496(U)

February 21, 2008

Supreme Court, New York County

Docket Number: 0114039/2007

Judge: Walter Tolub

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PRESENT: WALTER B. TOLIN

PART _____

Index Number : 114039/2007

NEXUS PROJECTS LLC

vs

MCP SO STRATEGIC 56, L.P.

Sequence Number : 001

SUMMARY JUDGEMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

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

IS RECORDED

IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

FILED

FEB 26 2008

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 2/26/08

4
WALTER B. TOLIN, 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):

[* 2]
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15

-----x
NEXUS PROJECTS LLC,

Plaintiff,

Index No. 114039/07
Mtn Seq. 001

-against-

MCP SO STRATEGIES 56, LP ANTONIO DEVELOPMENT
LLC, STILLMAN DEVELOPMENT 23 Corp., and
STILLMAN & ANTONIO REALTY LLC

Defendant.

-----x

WALTER B. TOLUB, J.:

By this motion Defendants Antonio Development LLC, Stillman Development 23 Corp., and Stillman and Antonio Realty LLC (collectively "Defendants") seek an order pursuant to CPLR 3212 dismissing Plaintiff's complaint.

Facts

Plaintiff operates a boutique in the building located at 39 West 56th Street, New York, New York. Defendant MCP SO Strategic 56 ("MCP") is the fee owner of 31, 33, 35 and 37 West 56th Street, New York, New York (the "Site"). The Site is adjacent to the building located at 39 West 56th Street where the Plaintiff's boutique is located.

Plaintiff's complaint seeks damages from MCP and the Defendants for, inter alia, business disruption and damage to its property caused by MCP's construction on the Site.

Defendants claim that in the complaint, Plaintiff

[* 3]

incorrectly alleges that the Defendants are involved in the construction and development of the Site. Defendants argue that they have nothing to do with the construction or development of the site and that they have nothing to do with ownership or control of the Site and therefore they seek summary judgment as against them.

Discussion

As with any motion for summary judgment, success is wholly dependent on 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 Trans. Auth., 21 AD3d 956 [2d Dept 2005], quoting Winegrad v New York University Med. Ctr., 64 NY2d 851, 853 [1985] [internal quotes omitted]). A party is entitled to summary judgment if the sum total of the undisputed facts establish the elements of a claim or a defense as a matter of law. This means that none of the material elements of the claim or defense are in dispute (Barr, Atlman, Lipshie, Gerstman, *New York Civil Practice Before Trial*, [James Publishing 2006] §37:180).

Defendants base their motion for summary judgment on the claim that they have no relationship whatsoever with the development or construction of the Site. However, discovery has not been conducted and it is not yet clear what, if any,

involvement the Defendants had with the Site. The motion for summary judgment is therefore premature. Plaintiff should be given an opportunity to examine and explore the Defendants relationship and role in the Site.

Since there is a question of fact as to Defendants involvement and since the Plaintiff's have not yet had an opportunity to conduct discovery, Defendants' motion for summary judgment must be and is denied.

Accordingly it is

ORDERED that Defendants' motion for summary judgment is denied.

Counsel for the parties are to appear for a preliminary conference at 60 Centre Street in room 335 at 11:00 am on March 14, 2008.

FILED

FEB 26 2008

NEW YORK
COUNTY CLERK'S OFFICE

This memorandum opinion constitutes the decision and order of the Court.

Dated: 2/21/08



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