

Crocco v Lower Manhattan Dev. Corp.

2008 NY Slip Op 33626(U)

September 16, 2008

Supreme Court, New York County

Docket Number: 102405/08

Judge: Eileen A. Rakower

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

PRESENT:

PART 5

~~EILEEN A. RAKOWER~~
J.S.C.

Index Number : 102405/2008
CROCCO, BARBARA BEDDIA
vs.
LOWER MANHATTAN DEVELOPMENT CORP.
SEQUENCE NUMBER : # 001
LEAVE TO INTERVENE

INDEX NO. 102405-08
MOTION DATE _____
MOTION SEQ. NO. #001
MOTION CAL. NO. _____

ere read on this motion to/for _____

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

PAPERS NUMBERED

1, 2, 3

4, 5, 6

FILED

SEP 18 2008

COUNTY CLERK'S OFFICE
NEW YORK

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

Dated: 9/16/08

~~EILEEN A. RAKOWER~~
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):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 5

-----X
BARBARA BEDDIA CROCCO AS THE TEMPORARY
ADMINISTRATRIX OF THE ESTATE OF ROBERT
BEDDIA, DECEASED,

Plaintiff,

Index No.
102405/08

- against -

DECISION/ORDER

LOWER MANHATTAN DEVELOPMENT
CORPORATION, LOWER MANHATTAN
CONSTRUCTION COMMAND CENTER, BOVIS
LEND LEASE LMB, INC., BOVIS LEND LEASE,
INC., THE JOHN GALT CORP., TRC
ENVIRONMENTAL CORPORATION, GILBANE
BUILDING COMPANY, SAFEWAY
ENVIRONMENTAL CORP., REGIONAL
SCAFFOLDING AND HOISTING CO., INC.
REGIONAL SCAFFOLDING/SAFEWAY
ENVIRONMENTAL, NY JOINT VENTURE, LLC
PARADISE ENERGY ELECTRICAL
CONTRACTORS, INC, and THE CITY
OF NEW YORK,

MOT. SEQ. 001

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Defendants.

-----X
HON. EILEEN A. RAKOWER, J.

Plaintiff, Barbara Beddia Crocco, as Temporary Administratrix of the Estate of Robert Beddia, brings this action alleging claims for multiple statutory violations, negligent hiring and wrongful death, among others, arising from a fire which occurred at the Deutsche Bank building located at 130 Liberty Street in the County and State of New York on August 18, 2007. The District Attorney Robert M. Morgenthau ("the DA") moves to (1) intervene in the proceeding pursuant to CPLR §1012(a)(2) or CPLR §1013, and (2) for an order granting a full stay of the civil proceeding in this court pursuant to CPLR §2201, until after the completion of a Grand Jury investigation into the Deutsche Bank fire. Plaintiff and defendants Safeway Environmental Corp., Regional Scaffolding & Hoisting Co., Inc. and

Regional Scaffolding/Safeway Environmental, NY Joint Venture, LLC. ("Safeway and Regional") oppose the motion. Plaintiff does not oppose that portion of the motion seeking intervention and Safeway and Regional, although not formally stated, do not oppose that portion of the motion either. Defendant the John Galt Corp. ("Galt") partially opposes to the extent of granting the stay. Defendant Bovis Lend Lease, Inc. ("Bovis") submits an affirmation in support of the DA's motion. Defendants Lower Manhattan Development Corporation ("LMDC"), Lower Manhattan Construction Command Center ("LMCC"), TRC Environmental Corporation ("TRC"), Gilbane Building Company ("Gilbane"), Paradise Energy Electrical Contractors ("Paradise") and the City of New York ("City") do not submit papers.

Mr. Beddia was one of two firefighters who died while attempting to extinguish the fire that broke out at the Deutsche Bank building. The Deutsche Bank building was one of the buildings severally damaged by the terrorist attacks of September 11, 2001. In 2004 LMDC purchased the Deutsche Bank building for the purpose of abating and demolishing it in its entirety. The contractor defendants were all, in one way or another, connected to the demolition and decontamination of that building. It is alleged that City was negligent in allowing said contractors to supervise, manage and conduct the project who were unqualified and in neglecting to conduct required inspections or to respond adequately to safety violations. Among plaintiff's many allegations against the contractor defendants, plaintiff alleges in her complaint that the contractor defendants were responsible for several serious safety lapses which caused the death of Mr. Beddia. Specifically plaintiff alleges that workers at the site dismantled the building's standpipe, preventing the firefighters responding to the call from getting access to water. Plaintiff also alleges that workers at the building barricaded the building's stairwells. Plaintiff alleges that the defendants knew of the hazards that existed in the building because numerous citations and Building Code violations had been issued throughout the course of the demolition.

The DA has commenced a Grand Jury investigation in connection with the fire, and the DA's office now moves to intervene and stay the civil action until that investigation ends, without prejudice to the DA's right to seek to extend the stay should any criminal prosecutions result from the investigation. The DA first argues that, because of the divergent interests of the parties to the civil litigation, the DA may intervene by absolute right. Also, the DA argues, the court should permit

* 4]

intervention because the civil action has substantial questions of fact in common with the Grand Jury Investigation.

The DA next argues that the civil action must be stayed because further proceedings in the civil case, especially discovery, will compromise the integrity of the Grand Jury Investigation and create a conflict between the more restrictive criminal discovery process and the broad civil discovery process. Specifically, the DA claims that discovery in the civil action could result in the disclosure of sensitive information that could interfere with the criminal investigation. Such a result could occur if competing efforts to obtain the same evidence cause the evidence to dissipate or become corrupted. Additionally, the DA argues that disclosure of information in the civil case may lead to claims that witness testimony has been tailored to fit such information. The DA also asserts that attempts to secure multiple depositions of the same witness' would create an unfair burden on such witnesses and may interfere with their cooperation and testimony in the criminal proceedings. Finally, the DA claims, a risk exists of inconsistent adjudications and results.

Plaintiff, in opposition, argues that the DA has only presented conclusory and speculative allegations that the continuation of the civil case will hinder the Grand Jury Investigation. Thus, plaintiff argues, the office of the DA has failed to meet its burden of asserting particular and specific reasons why the stay is necessary. Further, plaintiff argues that she has brought her action against corporate and governmental defendants that are unlikely to be named as defendants in any criminal prosecution. Indeed, plaintiff points out, that there have been no indictments handed down by the Grand Jury to date. Ultimately, plaintiff argues, a delay of her civil case would amount to substantial prejudice as an indefinite stay could result in the unavailability of witnesses and/or the diminishing memories of witnesses regarding the events of the accident. Safeway and Regional similarly argue that the DA's arguments are conclusory and adds that the stay would be prejudicial because it is requested for an indefinite amount of time.¹ Galt does not oppose a stay in depositions but only

¹ "At the outset, it should be understood that the grand jury is an arm of the superior court and subject to its supervision as prescribed by statute and case law. When a grand jury is initially impaneled, the court instructs the grand jurors regarding their duties; and while subsequent grand jury proceedings are normally conducted outside the presence of the court, the court's supervisory function continues

requests that document discovery be permitted to continue.

Initially, the DA may intervene as of right as the office of the DA has a unique and compelling public interest in protecting the integrity of the Grand Jury investigation. (see CPLR §1012(a)(2) and *Matter of Kopf*, 169 AD2d 428[1st Dept.1991]).

CPLR §2201 grants courts the discretion to grant a stay of proceedings in a “proper case.” “It is well settled that a motion pursuant to CPLR 2201 seeking to stay a civil action pending resolution of a related criminal action is directed to the sound discretion of the trial court.” Factors to consider in making this determination are the risk of inconsistent adjudications, application of proof and avoiding the waste of judicial resources. (*Britt v. International Bus Servs.*, 255 AD2d 143[1st Dept. 1998]).

This Court is mindful that any extension of the Special Grand Jury impaneled to investigate this matter can only be obtained after application to the court which impaneled that Special Grand Jury with good cause shown for such extension. The investigation has been ongoing since August 2007 and is being supervised by the Court to ensure that such investigation does not continue indefinitely based solely on the whim of the DA.

Wherefore it is hereby

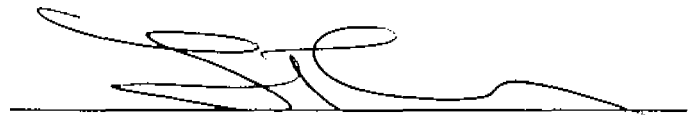
during the grand jury’s term, which is coextensive with the term of the court that impaneled it. Under ordinary circumstances, a regular term of the grand jury is four weeks. Although a grand jury may be extended beyond four weeks due to incomplete business, no new matters can be presented during the grand jury’s extended term. The extension of a grand jury’s term requires an affirmative vote of the grand jury, an application by the district attorney and approval by the court. An extraordinary term significantly greater than four weeks may be designated to deal with a particular matter when the public interest requires it. [citations omitted]”(New York Bar Association, Gray, Editor in Chief, *New York Criminal Practice*, §5, at 93-94[2d ed]).

* 6]
ORDERED that the motion to intervene is granted; and it is further

ORDERED that the motion for a stay of the civil proceedings is granted until the termination and disbanding of the Special Grand Jury impaneled for this investigation.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

DATED: September 16, 2008



EILEEN A. RAKOWER, J.S.C.

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