

Greenberg v Bovis Lend Lease LMB, Inc.

2009 NY Slip Op 30082(U)

January 12, 2009

Supreme Court, New York County

Docket Number: 113266/08

Judge: Eileen A. Rakower

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: **EILEEN A. RAKOWER**

PART 5

J.S.C.
Justice

Index Number : 113266/2008
GREENBERG, MARSHALL
VS.
BOVIS LEND LEASE LMB, INC.,
SEQUENCE NUMBER : # 001
LEAVE TO INTERVENE

INDEX NO. 113266-08
MOTION DATE _____
MOTION SEQ. NO. # 001
MOTION CAL. NO. _____

_____ were read on this motion to/for _____

PAPERS NUMBERED

1, 2
3, 4
5

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

FILED
JAN 16 2009
COUNTY CLERK'S OFFICE
NEW YORK

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

Dated: 1/12/09


EILEEN A. RAKOWER J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

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
MARSHALL GREENBERG,

Plaintiff,

- against -

Index No.
113266/08

DECISION/ORDER

BOVIS LEND LEASE LMB, INC.,
THE JOHN GALT CORP., REGIONAL
SCAFFOLDING AND HOISTING CO., GREG
BLINN, individually and as a beneficial owner
and officer of The John Galt Corp and Regional
Scaffolding & Hoisting Co., PAUL MAZZUCCA,
Individually and as a beneficial owner and officer
of the The John Galt Company and Regional Scaffolding
& Hoisting Co., ROBERT HALLICK, JAMES FOLEY,
JOSEPH LUCCHESI, and JOHN and JANE DOES
"1" through "10",

Mot. Seq. 001

Defendants.

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

Plaintiff, Marshall Greenberg, brings this action alleging claims for discrimination and whistleblower retaliation. Greenberg claims that, while working as an operating engineer, operating exterior hoists or elevators at the former Deutsche Bank building adjacent to the World Trade Center site, located at 130 Liberty Street, (the "Site"), he was subjected to discriminatory harassment because of his Jewish faith and perceived health status and to retaliation for complaints he made to his employers and others about alleged illegal and unsafe conduct and conditions he witnessed at the Site. 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 August 18, 2007 Deutsche Bank fire. Plaintiff opposes the motion. Defendant Regional Scaffolding and Hoisting Co., Inc. ("RSCH") submits an affirmation in response to the DA's motion, stating that RSCH does not oppose the motion. No other party submits papers.

Beginning in March 2006, Greenberg was employed by defendants Bovis Lend Lease LMB, Inc. ("Bovis") and the John Galt Corp ("Galt") to run one of four exterior hoists erected at the Deutsche Bank Building to deliver men, tools, machinery, and materials to and from the various floors of the 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.

A fire broke out at the Deutsche Bank building on August 18, 2007. A Grand Jury investigation was commenced in connection with that fire. There are allegations that the City of New York ("City") was negligent in allowing 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 defendants here, he claims that, throughout the time he worked at the Site, workers employed by Bovis, Galt and Regional, and supervisors of those entities participated in or were aware of conduct including discriminatory and harassing jokes, comments, and behavior directed towards his Jewish heritage and perceived health status. Plaintiff further asserts that he suffered these injuries, at least in part, because he observed and reported numerous safety hazards and violations in the course of the work at the Site and cooperated with visiting inspectors. Plaintiff also claims that his firing in August 2007 was retaliatory, that he was again subjected to harassment and threats upon his re-hire in April 2008, and that he also suffered a diminishment of income and received less favorable treatment and working conditions.

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 intervention because the safety issues raised and the discovery sought in the civil action will overlap considerably 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 his discrimination and whistleblower claims and the discovery sought center primarily on matters unrelated to the Deutsche Bank fire. However, plaintiff clearly alleges that his claims are based in part because he observed and reported safety hazards and violations, both of which are likely to be relevant to the criminal investigation.

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]).

Wherefore it is hereby

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 of the pending Grand Jury investigation.

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

DATED: January 12, 2009



EILEEN A. RAKOWER, J.S.C.

FILED
JAN 16 2009
COUNTY CLERK'S OFFICE
NEW YORK