Labecki v West Side Equities, LLC
2009 NY Slip Op 30305(U)
February 4, 2009
Supreme Court, New York County
Docket Number: 114347/06
Judge: Marilyn Shafer
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[* 1]
SCANNED ON 2/11/2009

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

PRESENT: Marilyn Shafer — PART 8

Index Number : 114347/2006

LABECKI, MARIUSZ

vs

WEST SIDE EQUITIES

Sequence Number : 001

SUMMARY JUDGMENT

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 decided in accord with the annexed memorandum.

FILED
FEB 11 2009
COUNTY CLERK'S OFFICE
NEW YORK

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 2/4/2009

MARILYN SHAFER, J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

[* 2]

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

---x

MARIUSZ LABECKI,

Index No.: 114347/06

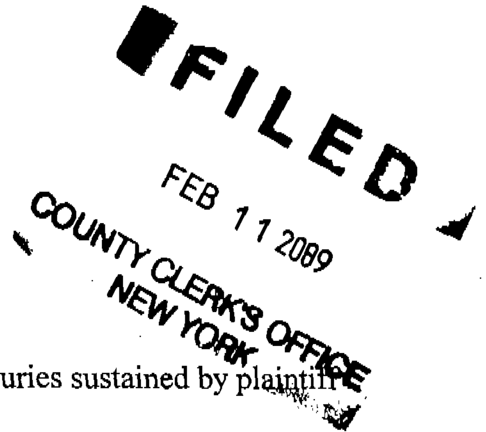
Plaintiff,

-against-

WEST SIDE EQUITIES, LLC, GARFIELD DEVELOPMENT CORP. and ALAN GARFIELD,

Defendants.

---x



Shafer, J.:

This is an action to recover monetary damages for personal injuries sustained by plaintiff Mariusz Labecki when he suffered burns while allegedly working at 309 West 72nd Street, New York, New York (the premises) on June 15, 2006.

Defendants West Side Equities, LLC (West Side), Garfield Development Corp. (Garfield) and Alan Garfield (Alan) move, pursuant to CPLR 3212, for summary judgment dismissing plaintiff's complaint as against them, on the grounds that (1) plaintiff did not suffer a work related injury while employed by defendants; and (2) as a matter of law, plaintiff's claims are barred by the terms of Workers Compensation Law § 11. In the alternative, defendants move, pursuant to CPLR 3212, for summary judgment dismissing plaintiff's complaint as against defendant Alan Garfield, on the ground that he was not negligent and bears no personal liability for the alleged accident.

BACKGROUND

Defendant West Side owned the premises where plaintiff's accident took place. Defendant Garfield served as managing agent for the premises. Defendant Alan Garfield (Alan)

is sole shareholder of West Side and president and sole shareholder of Garfield. Non-party Zbigniew Socha (Socha) was employed by Garfield as superintendent at the premises.

According to plaintiff, on the date of his accident, he was hired by Socha to help with the construction of the basement floor at the premises. Plaintiff testified that he suffered severe burns to his arms and legs from exposure to the concrete that he was working with while performing his work. Plaintiff stated that he only wore textile gloves, and no other protective gear, while working with the concrete. Plaintiff also maintained that he had once worked for Socha on a project at another building.

Non-party Socha testified that he was hired by Garfield to serve as superintendent at the premises, and that he was paid a salary bi-monthly for duties such as cleaning, taking out the garbage and doing minor repairs. Sometimes, he was asked to perform certain additional work as superintendent, such as laying down concrete, for which he was paid additional monies. Socha testified that, with the exception of his brother, Krzysztof (Chris), he did not have any authority to hire anyone to work at the site. He also stated that if a plumber or an electrician was needed to fix something at the premises, he would notify Garfield, and then Garfield would hire them. Socha also noted that, on occasion, he sometimes worked for his brother on various projects at other buildings.

Socha testified that, on the day of the alleged accident, he and Chris were putting in concrete in the basement of the premises. At approximately 8:30 A.M., plaintiff arrived at the premises looking for work. Socha explained that plaintiff stayed at the premises for about an hour and a half talking to Chris. However, when Socha and Chris found out that plaintiff did not possess a social security number, they told plaintiff that they could not hire him. Socha stated

that, if plaintiff had a social security number, he would have asked Garfield to hire him.

Socha also testified that, approximately five days after plaintiff had visited the premises seeking work, Socha received a phone call from him, wherein plaintiff advised him that he had been hurt on the job and wanted to talk about it. Plaintiff then told Socha that "[h]e is going to get me to court, if we are not going to talk about the money" (Defendants' Notice of Motion, Exhibit G, Socha Deposition, at 88). In addition, plaintiff allegedly told him that if he gave him the money that he asked for, "then we can forget it" (*id.*). Socha also maintained that the cement for the basement project was not delivered on the day of the alleged accident until after plaintiff had left the premises.

Non-party Chris testified that he was hired by Garfield to help Socha lay down the concrete in the basement of the premises. When Chris was hired to perform work at the premises, as he did for the job at issue in this case, Garfield paid him as an independent contractor. Chris also maintained that plaintiff arrived at the premises seeking work on the morning of the alleged accident, and, after hanging around and talking for about an hour, he was turned away because he did not have the necessary social security number that he needed to be hired for work at the premises.

Defendant Alan testified that Garfield employed Socha as superintendent at the premises, and that West Side paid Socha's salary. Alan explained that Chris was employed as a superintendent at another building, which was either owned by Garfield or by an affiliated entity. Alan testified that Socha did not have the authority to hire anyone to perform work at the premises, with the exception of Chris. In addition, Chris did not have the authority to hire anyone to perform work at the premises.

Alan also asserted that he had never observed plaintiff working at the premises, and that the first time that he had ever heard of plaintiff was either when he was contacted by one of plaintiff's lawyers, or when he received plaintiff's claim form from the Workers' Compensation Board. In addition, Alan stated that Socha and Chris told him that plaintiff had come by the premises looking for work, and that plaintiff was going around to other sites looking for work, as well.

It is undisputed that, as a result of the alleged accident, plaintiff filed a claim with the Workers' Compensation Board, which is still pending. Upon defendants' initial receipt of notice from the Workers' Compensation Board that a claim had been made on plaintiff's behalf, defendants responded to the Board with a letter, dated August 11, 2006, and a C-34 form. The C-34 form lists the applicable Workers' Compensation carrier as the State Insurance Fund. Plaintiff testified that he believed that said claim was filed on his behalf, though he did not know the result of the claim, and was under the impression that it was still pending.

DISCUSSION

"'The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case'" (*Santiago v Filstein*, 35 AD3d 184, 185-186 [1st Dept 2006], quoting *Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). The burden then shifts to the motion's opponent to "present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact" (*Mazurek v Metropolitan Museum of Art*, 27 AD3d 227, 228 [1st Dept 2006]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *DeRosa v City of New York*, 30 AD3d 323, 325 [1st Dept 2006]). If there is any doubt as to the

existence of a triable issue of fact, the motion for summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]; *Grossman v Amalgamated Housing Corporation*, 298 AD2d 224, 226 [1st Dept 2002]).

Here, as plaintiff and defendants each assert totally different accounts as to whether plaintiff was injured while working for defendants, there is a triable issue of fact on this issue. To that effect, plaintiff asserts that he was hired by Socha to assist in laying concrete in the basement of the premises, and that his exposure to the concrete caused him to become severely burned. Defendants put forth testimonial evidence from Socha, Chris and Alan to support their assertion that plaintiff was never hired by defendants and never performed work for defendants at the premises.

In any event, defendants are nevertheless entitled to summary judgment dismissing plaintiff's complaint against them, as, even if this court finds that plaintiff suffered a work related injury while employed by defendants, plaintiff's claims are barred by the terms of Workers' Compensation Law § 11. Section 11 of the Workers' Compensation Law prescribes, in pertinent part, as follows:

> An employer shall not be liable for contribution or indemnity to any third person based upon liability for injuries sustained by an employee acting within the scope of his or her employment for such employer unless such third person proves through competent medical evidence that such employee has sustained a "grave injury" which shall mean only one or more of the following: death, permanent and total loss of use or amputation of an arm, leg, hand or foot, loss of multiple fingers, loss of multiple toes, paraplegia or quadriplegia, total and permanent blindness, total and permanent deafness, loss of nose, loss of ear, permanent and severe facial disfigurement, loss of an index finger or an acquired injury to the brain caused by an external physical force resulting in permanent total disability.

"An employer's liability for an on-the-job injury is generally limited to workers'

compensation benefits, but when an employee suffers a 'grave injury' the employer also may be liable to third parties for indemnification or contribution" (*Rubeis v Aqua Club, Inc.*, 3 NY3d 408, 412-413 [2004]). "[T]he moving party bears the burden of establishing an absence of grave injury; it is not the burden of the party moved against to show the presence of a grave injury" (*Way v Grantling*, 289 AD2d 790, 793 [3d Dept 2001]).

In his bill of particulars, plaintiff states that his injuries included, in pertinent part:

> Multiple chemical burns with resultant scarring to the left and right forearms, left and right thighs and left and right knees; deep painful wounds on the upper and lower extremities secondary to contact with concrete requiring pain management and debridement of the wounds; extensive scarring of the left and right upper extremities and left and right lower extremities; conspicuous deeply discolored scars ... on the left forearm ... [and] on both thighs and knees;
>
> All the injuries sustained are permanent and were accompanied by severe pain, swelling and ecchymosis with damage to the surrounding soft tissues, nerves, tendons, muscles, ligaments and blood vessels, with permanent loss of use, function and motion

(Defendants' Notice of Motion, Exhibit D, Plaintiff's Bill of Particulars, at 4).

As such, none of the alleged injuries suffered by the plaintiff fall within the list of injuries listed in Workers' Compensation Law § 11. Since "[i]njuries qualifying as grave are narrowly defined in Workers' Compensation Law § 11 [, ...] the only determination to be made is whether the injury falls within the statute's objective requirements" (*Castro v United Container Machinery Group, Inc.*, 96 NY2d 398, 401 [2001]).

As defendants are entitled to summary judgment dismissing plaintiff's complaint against them pursuant to Workers' Compensation Law § 11, it is not necessary to address that part of defendants' motion seeking that, in the alternative, pursuant to CPLR 3212, plaintiff's complaint is dismissed as against Alan, on the grounds that he was not negligent and bears no personal

liability for the alleged accident.

CONCLUSION AND ORDER

For the foregoing reasons, it is hereby

ORDERED that defendants West Side Equities, LLC, Garfield Development Corp. and Alan Garfield's motion, pursuant to CPLR 3212, for summary judgment dismissing plaintiff's complaint as against them is granted, and the complaint is dismissed with costs and disbursements to these defendants as taxed by the Clerk of Court; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

DATED: 2/4/09

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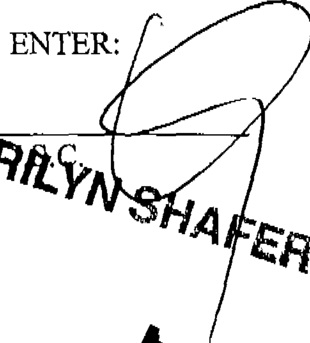

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