

Corbetis v Bovis Lend Lease
2009 NY Slip Op 31725(U)
July 15, 2009
Supreme Court, New York County
Docket Number: 105892/08
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. EILEEN A. RAKOWER

PART Part 5

Index Number : 105892/2008

CORBETIS, WILLIAM G.

VS.

BOVIS LEND LEASE

SEQUENCE NUMBER : 002

SEVER ACTION

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

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

FILED

Upon the foregoing papers, it is ordered that this motion

AUG 04 2009

COUNTY CLERK'S OFFICE
NEW YORK

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

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

Dated: 7/15/09


HON. EILEEN A. RAKOWER

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

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

-----X
WILLIAM G. CORBETIS and JANICE CORBETIS,

Index No.
105892/08

Plaintiffs,

- against -

DECISION
and ORDER

BOVIS LEND LEASE, LMB, INC., JOHN GALT CORP.,
LOWER MANHATTAN DEVELOPMENT CORPORATION
and LOWER MANHATTAN CONSTRUCTION COMMAND
CENTER,

Mot. Seq.
002

Defendants.

-----X
BOVIS LEND LEASE LMB, INC.,

Third-Party
Index. No.
590087/09

Third-Party Plaintiff,

-against-

THE CITY OF NEW YORK,

Third-Party Defendant.

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

Plaintiffs bring this action to recover for injuries sustained by Plaintiff William G. Corbetis at the premises of 130 Liberty Street, in the City, County, and State of New York, commonly known as the Deutsche Bank Building. The Deutsche Bank building was damaged beyond repair during the attack on the World Trade Center on September 11, 2001. The building was purchased by the Lower Manhattan Development Corporation (“LMDC”) in August 2004 to facilitate the dismantling of the building. Bovis Lend Lease (“Bovis”) was selected by LMDC to serve as construction manager for the project. Bovis subcontracted the deconstruction and abatement of the building to the John Galt Corporation (“Galt”). The City of New York (“City”) was present at the site during the deconstruction process by way of

various City officials and inspectors.

On August 18, 2007, a fire at the premises killed two FDNY firefighters and injured an additional thirteen. Plaintiff William G. Corbetis was a firefighter with the New York City Fire Department ("FDNY") who was assigned to the building to control access to the premises while the FDNY conducted an investigation of the fire. On August 23, 2007, during the course of this assignment, Corbetis was injured when a pallet jack loaded with wood fell approximately twenty-three floors and stuck him. Plaintiffs subsequently commenced the instant action, naming Bovis, Galt, LMDC and Lower Manhattan Construction Command Center ("LMCCC") on April 25, 2008. On or around January 28, 2009, Bovis commenced a third-party action against the City.

Presently before the court is the City's motion to sever the third party action from the main action. The City claims that severance is warranted due to Bovis's alleged failure to comply with the City's discovery requests, and due to the fact that Bovis "inexcusably waited nine (9) months after the commencement of the main action" to implead the City. The City has submitted an affirmation in support of its motion. Annexed to the affirmation as exhibits are a copy of Plaintiffs' Summons and Complaint; the preliminary conference order for the main action; Bovis's Third-Party Summons and Complaint; the City's Verified Third-Party Answer; a 3/25/09 letter from the City to Bovis requesting all prior pleadings, correspondence, court orders, and discovery requests and responses; discovery demands made upon the City by Bovis and Galt; a 4/16/09 letter from Plaintiffs proposing a discovery schedule for all parties; and an order of this court in another matter pertaining to the fire at the Deutsche Bank building.

Bovis has submitted an affirmation in opposition to the City's motion, vehemently denying that it has been dilatory in either impleading the City, or in complying with its discovery obligations. Bovis states that, on April 9, 2009 it served its response to the City's March 25, 2009 letter requesting discovery upon all other parties, but inadvertently failed to serve the City at that time (the City was omitted from the service list). Bovis states that its attorney contacted counsel for the City on April 29, 2009 to confirm the City's receipt of Bovis's response, and was advised that the City had not received any discovery from Bovis. Counsel for Bovis advised the City's attorney that Bovis would hand deliver a copy of Bovis's response, and in fact did so on May 1, 2009. Annexed to Bovis's affirmation as exhibits are Bovis's 4/29/09 response to the City's discovery requests (which contains a compact disk of all the documents referenced therein); Bovis's 4/9/09 response (which omitted the

City from its service list); a 4/29/09 letter from Plaintiffs' attorney requesting that the instant matter be transferred to a City part; and a 5/12/09 e-mail from Bovis's counsel to counsel for the City seeking confirmation of receipt of Bovis's response to the City's discovery requests.

Defendants Galt and LMDC/LMCCC have also submitted affirmations in opposition, wherein they join in, and adopt the arguments advanced by Bovis in opposition to the City's motion.

Lastly, the City has submitted a reply affirmation, with copies of accident reports pertaining to the subject accident annexed as an exhibit.

CPLR 603 provides:

In furtherance of convenience or to avoid prejudice the court may order a severance of claims, or may order a separate trial of any claim, or of any separate issue. The court may order the trial of any claim or issue prior to the trial of the others.

The First Department has observed that

To avoid the waste of judicial resources and the risk of inconsistent verdicts, it is preferable for related actions to be tried together such as in a tort case where the issue is the respective liability of the defendant and the third-party defendant for the plaintiff's injury.

(*Sichel v. Community Synagogue*, 256 A.D.2d 276-77 [1st Dept. 1998]) (citing *Rothstein v. Milleridge Inn, Inc.*, 251 A.D.2d 154 [1st Dept 1998]) .

The court finds that severance of Bovis's third party action against the City is unwarranted. The record indicates Bovis's commencement of its third-party action against the City was in compliance with the preliminary conference order, which provided for impleader of any and all parties within thirty days after completion of depositions. In fact, as of the date of the parties' submissions, no depositions have taken place at all. Bovis has not been dilatory either with respect to its discovery obligations, or with regard to the timing of its impleading of the City. Nor has the City

shown that it has been prejudiced by Bovis's actions. (*see Reyes v. CSX Transp., Inc.*, 2008 N.Y. Slip Op 5566 [1st Dept. 2008]).

Wherefore it is hereby

ORDERED that the City's motion to sever the third-party action is denied.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: July 15, 2009



EILEEN A. RAKOWER, J.S.C.

FILED
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NEW YORK