

Dallal v City of New York

2009 NY Slip Op 32916(U)

December 10, 2009

Supreme Court, New York County

Docket Number: 110998/09

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
HON. EILEEN A. RAKOWER

PRESENT: _____

PART 5

Index Number : 110998/2009

DALLAL, JEFFREY

VS.

CITY OF NEW YORK

SEQUENCE NUMBER : 001

DISMISS ACTION

INDEX NO. 110998/09

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

1 this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1

2

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

FILED

DEC 16 2009

NEW YORK
COUNTY CLERK'S OFFICE

**MOTION IS DECIDED IN ACCORDANCE WITH
THE ACCOMPANYING MEMORANDUM DECISION.**

Dated: 12/10/09


HON. EILEEN A. RAKOWER

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
JEFFREY DALLAL, INDIVIDUALLY and as
EXECUTOR OF THE ESTATE OF FREDRIC
DALLAL, deceased,

Plaintiff,

Index No.
110998/09

- against -

Seq No.: 001

Decision and
Order

CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF TRANSPORTATION, NEW
YORK CITY DEPARTMENT OF DESIGN AND
CONSTRUCTION, NEW YORK CITY DEPARTMENT
OF CITY PLANNING, NEW YORK CITY DEPARTMENT
OF PARKS AND RECREATION, NEW YORK
METROPOLITAN TRANSPORTATION COUNCIL,
NEW YORK CITY ECONOMIC DEVELOPMENT
CORPORATION and LOWER MANHATTAN DEVELOPMENT
CORPORATION,

FILED
DEC 16 2009
NEW YORK
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Defendants.

-----X
HON. EILEEN A. RAKOWER

Plaintiff, Jeffrey Dallal, brings this action, on behalf of Frederic Dallal, deceased, for personal injuries and wrongful death. It is alleged that Frederic Dallal struck a "low hanging and defective" support pylon of the Delancey Street Pedestrian Bridge "going up and over the FDR Drive and leading into the East River Park" in the County and State of New York on April 5, 2009. Defendant the New York Metropolitan Transportation Council ("NYMTC") now moves to dismiss pursuant to CPLR 3211. Plaintiff opposes.

The NYMTC is a Metropolitan Planning Organization (“MPO”) which is mandated pursuant to 23 USC 134 and Section 8 of the Federal Transit Act. MPO’s have the responsibility for transportation planning in metropolitan areas with a population of over 50,000. The mission of an MPO is to study the demographics of an urban area, study traffic patterns and trends and “[provide] a safe and efficient transportation system that meets mobility while not creating adverse impacts to the environment.”¹

The NYMTC is a self described “association of governments, transportation providers and environmental agencies . . . for New York City, Long Island and the lower Hudson Valley.”² NYMTC, in support of its motion, argues that the complaint should be dismissed as to it because the Supreme Court lacks subject matter jurisdiction. Specifically, NYMTC asserts that the NYMTC is staffed by “employees of the State of New York Department of Transportation.” (“NYSDOT”). Thus, NYMTC claims, the action should be brought in the Court of Claims because plaintiff is actually bringing a lawsuit for money damages against NYSDOT, a department which is engaged in carrying out the State’s governmental functions. Additionally, NYMTC argues that, if not dismissed on the above grounds, the action should be dismissed because the complaint was served only upon the NYMTC. NYMTC claims that service was defective because plaintiff failed to serve the attorney general, as is required by CPLR §307.

Plaintiff, in opposititon, argues that the NYMTC is not doing the business of the state. Rather, it is an independent autonomous organization. Thus, plaintiff claims, he is not required to sue NYMTC in the Court of Claims. Plaintiff points out that the NYSDOT is only one of many contributing members of the NYMTC.

CPLR 3211(a) states:

Motion to dismiss cause of action. A party may move for judgment dismissing one or more causes of action asserted against him on the ground that:

(2) the court has not jurisdiction of the subject matter of the cause

¹<http://www.planning.dot.gov/metroplan/> U.S. Department of Transportation Federal Highway Administration/Federal Transit Administration; Updated December 9, 2009.

²<http://www.nymtc.org/>

of action . . .

“The Court of Claims has limited jurisdiction to hear actions against the State itself, or actions naming State agencies or officials as defendants, where the action is, in reality, one against the State-i.e., where the State is the real party in interest.” (*Morell v. Balasubramanian*, 70 NY2d 297,300[1987])(also see NY Const, art VI, §9& Court of Claims Act §9). The court in *Pandolph v. State*, 155 Misc.2d 612[NY Ct. Cl. 1992], pointed out the difficulty that courts have in deciding the the issue of whether the Court of Claims has jurisdiction over quasi-governmental entities, “particularly when the Legislature remains silent regarding the jurisdictional issue in the enabling legislation of such entities.” (*Id.* at 613). The court, there, found that it did not have jurisdiction over the public benefit corporation, ORDA.

Here, NYMTC is not exclusively doing the work of the State. Rather, it is an “association of governments, transportation providers and environmental agencies,” with the responsibility of developing and improving the transportation system of, and securing federal funding for, urban areas. The fact that NYSDOT is one of many agencies comprising the NYMTC, does not, by itself, require that the NYMTC be sued in the Court of Claims.

Nor is there merit to NYMTC’s claim that the complaint should be dismissed due to improper service. CPLR §307(1) states:

Personal service upon the state shall be made by delivering the summons to an assistant attorney-general at an office of the attorney-general or to the attorney-general within the state.

However, NYMTC, if anything, may be considered a state agency, not the “State” itself. Thus, CPLR §307(1) does not apply to it. Rather, the applicable section is CPLR §307(2), which states, in relevant part:

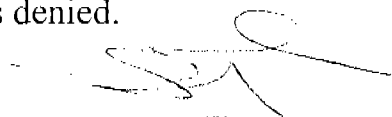
2. Personal service on a state officer sued solely in an official capacity or *state agency*, which shall be required to obtain personal jurisdiction over such an officer or agency, shall be made by (1) delivering the summons to such officer *or to the chief executive officer of such agency*

or to a person designated by such chief executive officer to receive service . . .(emphasis added).

Wherefore it is hereby

ORDERED that the motion to dismiss is denied.

DATED: December 10, 2009



EILEEN A. RAKOWER, J.S.C

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DEC 16 2009
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