

Martinez v Greisman Mgt.

2011 NY Slip Op 33989(U)

January 14, 2011

Supreme Court, Bronx County

Docket Number: 300457/10

Judge: Howard H. Sherman

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OCT 19 2011

NEW YORK SUPREME COURT - COUNTY OF BRONX

PART 4

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

Case Disposed
Settle Order
Schedule Appearance

RUBEN MARTINEZ,

Plaintiff,

-against-

GREISMAN MANAGEMENT,

Defendants.

Index No.: 30045⁵/10

DECISION ORDER

Present:

Hon. Howard H. Sherman
J.S.C.

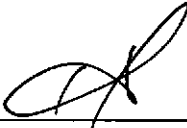
The following papers read on this motion for dismissal noticed on October 13, 2010 and duly submitted on the Motion Calendar of same date.

	<u>PAPERS NUMBERED</u>	
Notice of Motion - Exhibits and Affirmation Annexed	1	
Notice of Cross-Motion-Exhibits and Affirmation Annexed	2	
Affirmation in Opposition/Exhibits A - E	3	
Affirmation in Reply	4	
Pleadings - Exhibits	5	6

Upon the foregoing papers this motion by defendants BORUCH GREISMAN a/k/a BARUCH GREISMAN for an order dismissing the complaint as against him and the cross-motion by plaintiff for an order granting a default judgment as against defendant Greisman Management are consolidated for purposes of disposition and oral argument before this court to be held on January 31, 2011 for the reason set forth in the accompanying decision.

This constitutes the decision/order of this court.

Dated: January 18, 2011
Bronx, New York



Hon. Howard H. Sherman
J.S.C.

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

-----X
Ruben Martinez and Grecia Martinez

Index No. 300457/10

Plaintiff,

DECISION/ORDER

-against-

Greisman Management,
Greisman Management Corp.
Boruch Greisman a/k/a/ Baruch Greisman and
G. Bauer, Inc., a/k/a Bauer Oil Burner Service

Defendants
-----X

Facts and Procedural History

Plaintiff seeks recovery for injuries allegedly sustained on July 13, 2008 when he slipped and fell in the boiler room of a residential apartment building at which he was employed by non-party building owner 161 Holding Ltd. as a superintendent. The building is located at 657 West 161st Street, New York County.

This action was commenced in January 2010, and by stipulation dated April 1, 2010, the time for defendants Greisman Management and Boruch Greisman to appear and answer, or move or otherwise plead in the action was extended to April 30, 2010. It was further agreed therein that Greisman Management and Boruch Greisman a/k/a/ Baruch Greisman would not "assert jurisdictional defenses herein, nevertheless not conceding that the entity of Greisman Management is an entity transacting business in New York."

Defendant Boruch Greisman a/k/a Baruch Greisman interposed an answer dated May 20, 2010 asserting nine affirmative defenses and containing a specific denial that "any entity known as Greisman Management exists as any form of business entity in the State of New York which is connected with the premises known as 657 West 161st Street in any fashion and that the entity sued as Greisman Management Corp., although it appears to have existed

at one time is now "inactive" denies that it was ever connected with the property solely owned by 161 Holding, Ltd." [Verified Answer ¶ 3].

Motions and Contentions of the Parties

By notice dated June 29, 2010 , defendant Boruch Greisman a/k/a/ Baruch Greisman ("Greisman") now moves for an award of summary judgment dismissing as against him the complaint and the cross-claim asserted by co-defendant G. Bauer, Inc. In support he submits an affirmation and copies of New York State Department of State /Division of Corporations Entity Information with respect to Greisman Management Corp. and the non-party building owner, 161 Holding Ltd., of which domestic business corporation, Greisman is listed as Chairman /Chief Executive Officer .

Greisman affirms that the subject building has not been managed by "an entity which uses the Greisman name for at least 15 years, if not more." [Affirmation in Support ¶ 7]. While contending that he has no standing to raise the issue, Greisman also affirms that neither Greisman Management nor Greisman Management Corp. " had anything to do with the building at which [plaintiff] claims he fell [] ", and "[t]here is not now and never was an entity known as Greisman Management which was in any way managing the building." [Affirmation ¶ 5]. With respect to the entity information corresponding to Greisman Management Corp., he affirms that he does not know "Libby Greisman " listed as both the CEO and Principal Executive Officer of the inactive corporation ¹, nor is she related to him or to any member of his family.

¹ Dissolution by Proclamation /Annulment of Authority (June 25, 2003) as listed in the DOS printout .

With respect to 161 Holding Ltd., Greisman affirms that he was and remains one of four shareholders of the owner entity, but that he has had no part in the maintenance, operation or management of the building since [his] retirement prior to 1995.²

Alternatively, Greisman argues that if he were the building manager, he "was an employee of the building []", and as such, he is immune from suit pursuant to Workers Compensation Law § 29 (6), as a co-employee.

In **opposition**, plaintiffs argue that there are material issues of fact precluding summary relief including the fact that an insurance policy for named insured: "Greisman Management" and Borgrey Realty was issued by QBE Insurance Company effective 06/20/08 through 06/20/09 providing third-party personal injury and property damage coverage for the premises. 161 Holding Ltd was listed as an additional named insured on the policy. In addition, plaintiff Ruben Martinez attests that he observed "a representative of Greisman Management [to be] present at the building on a regular basis to manage the building." [Affidavit of Ruben Martinez ¶ 4]. Plaintiffs also submit copies of co-defendant Bauer's invoices for services rendered at the subject premises during the period 03/29/07 through 10/29/08 as billed to "Baruch Greisman" at a Brooklyn post office box corresponding with that indicated for 161 Holding Ltd. on The State Insurance Fund Employer's Liability Policy form submitted in support of the motion.

Cross-Motion

Plaintiffs seek an order awarding a judgment against Greisman Management upon its failure to appear or interpose an answer in this action. As noted above, plaintiffs contend that Greisman Management is the named insured in the liability policy covering the premises.

² Mr. Greisman makes no declarative statement with respect to his DOS listed designation as Chairman or Chief Executive Officer for 161 Holding Ltd., affirming his shareholder status only and stating in, "[e]ven if I was the CEO and shareholder." [Affirmation of Boruch Greisman ¶ 17].

and plaintiff attests that a representative of Greisman Management was present at the building on a regular basis in a management capacity. As Greisman Management has failed to interpose an answer, plaintiffs seek the entry of a default judgment with an assessment of damages to be deferred until the trial of the action.

In **opposition**, it is argued that the cross-motion should be denied as it seeks affirmative relief against a non-moving party. With respect to the merits of the cross-motion, it is stated that co-defendant Greisman has affirmed that Greisman Management does not exist, and contends that "[i]t is at best an assumed name or a trade style." In addition, it is maintained that as there is an issue as to "whether or not there even exists an entity owned by BORUCH using the name as Greisman Management which is responsible for the injuries claimed by plaintiffs herein []" and as such, there can be no default judgment entered against a non-existent entity, as well as an issue as to whether service on Greisman would have been effective to acquire jurisdiction over the entity. In an affirmation, Greisman denies receipt of the 01/28/10 purported personal service upon him.

Discussion and Conclusions

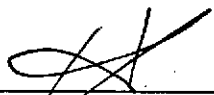
Although for purposes of opposing the cross-motion it is argued that Greisman Management is not a moving party, and Mr. Greisman affirms that he lacks the standing to raise the issue on behalf of the entity [Affirmation of Boruch Greisman ¶ 5], the moving papers clearly articulate arguments in support of dismissal as against Greisman Management. Moreover, in response to the cross-motion it is contended that a default may not be entered as there are "issues of fact with respect to the very existence of any entity known as Greisman Management."

In addition, while both defendants have waived jurisdictional defenses by stipulation of counsel it appears that defendants appear to challenge service upon Greisman Management.

It is submitted that upon consideration of the fact that counsel executed the stipulation for an extension of time to answer on behalf of both Boruch Greisman and Greisman Management and that the answer interposed by the individual defendant pursuant to that stipulation articulated a defense relative to Greisman Management, as well as upon consideration of the fact that the moving papers have raised substantive and procedural defenses on behalf of Greisman Management, the court will require oral argument for purposes of clarification of the relief sought and whether counsel continues to represent the "non-moving" party, Greisman Management.

This constitutes the order of this court.

Dated: January 14, 2011


Howard H. Sherman