

**Martinez v Greisman Mgt.**

2011 NY Slip Op 33990(U)

October 11, 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

-----X  
RUBEN MARTINEZ,

Index No.: 300457/10

Plaintiff,

**DECISION ORDER**

-against-

Present:

GREISMAN MANAGEMENT,

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

Defendants.  
-----X

The following papers numbered 1 to 6 read on this motion for summary judgment defendant noticed on January 31, 2011 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 and after oral argument defendant Boruch Greisman a/k/a Baruch Greisman's motion for an award of summary judgment dismissing the complaint as asserted against him is denied as premature (CPLR 3212(f)) and plaintiff's cross-motion is in all respects denied for the reasons set forth in the accompanying decision/order filed herewith.

This constitutes the decision/order of this court.

Dated: October 11, 2011  
Bronx, New York

  
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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.  
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**Facts and Procedural History**

Plaintiff seeks recovery for injuries, including third-degree burns, 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 as a superintendent by non-party building owner 161 Holding Ltd. The building is located at 657 West 161<sup>st</sup> 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 161<sup>st</sup> 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<sup>1</sup>, nor is she related to him or to any member of his family.

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.<sup>2</sup>

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 insureds: "Greisman Management" and Borgrey Realty was issued by QBE Insurance Company effective 06/20/08 that provided 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

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

<sup>2</sup> 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 of the corporation at the time of Ruben's injury, I would not be liable because neither officers nor shareholders of corporate entities are personally responsible for corporate wrongs." [Affirmation of Boruch Greisman ¶ 17].

that of 161 Holding Ltd. as indicated on The State Insurance Fund Employer's Liability Policy form submitted in support of the motion.

Cross-Motion

Plaintiffs seek an order awarding a default 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 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

The court required oral argument for clarification of the record herein. After oral argument, and upon consideration of the record and the applicable law, it is the finding of this court that defendant's motion for summary judgment is premature.

It is established that to avail oneself of CPLR 3212(f) to defeat or to delay dispositive motion, a party must demonstrate that the needed proof is within the exclusive claims in opposition are supported by something other than mere hope or conjecture and that the party has at least made some attempt to discover facts at variance with the movant's proof (see, Voluto Ventures v Jenkins & Gilchrist Parker Chapin LLP, 44 AD 3d 557 [1<sup>st</sup> Dept. 2007] citing authority of Berkeley Fed. Bank & Trust v 229 E. 53<sup>rd</sup> St. Assocs., 242 AD 2d 489 {1997}; Neryaev v Solon, 6 AD 3d 510 [2004], and Cruz v Otis El. Co., 238 AD 2d 540 [1997]). Here, plaintiff makes the requisite showing by coming forward with evidence that the moving party in his individual capacity was invoiced by the co-defendant for boiler services performed at the subject building during 2007 and 2008, including those services performed on the burner immediately prior and subsequent to the accident.

As such, plaintiff has demonstrated that facts essential to defeat Mr. Greisman's summary judgment motion may exist but cannot yet be stated (CPLR 3212(f)).

Plaintiff's cross-motion for a default judgment as against Greisman Management is denied as that entity has appeared by counsel as evidenced by the stipulation dated April 1, 2010.

Accordingly, it is

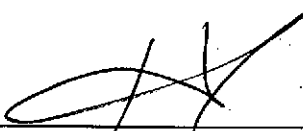
ORDERED that the motion for summary judgment be and hereby is denied without

prejudice to renew after the completion of discovery and it is

ORDERED that the cross-motion for a default judgment as against Greisman Management be and hereby is denied.

This constitutes the decision/order of this court.

Dated: October 11, 2011  
Bronx, New York



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Howard H. Sherman  
J.S.C.