

Matter of 91st St. Crane Collapse Litig.

2013 NY Slip Op 31237(U)

June 12, 2013

Sup Ct, NY County

Docket Number: 117294/08

Judge: Manuel J. Mendez

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

PRESENT: HON. MANUEL J. MENDEZ
Justice

PART 13

IN RE 91ST STREET CRANE COLLAPSE LITIGATION:

DONALD R. LEO, ADMINISTRATOR OF THE ESTATE OF HIS SON, DONALD CHRISTOPHER LEO, deceased May 30, 2008,

INDEX NO. 117294/08
MOTION DATE 6-07-2013
MOTION SEQ. NO. 072
MOTION CAL. NO.

Plaintiff(s),

- v -

THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF BUILDINGS, MICHAEL CARBONE, PATRICIA J. LANCASTER, ROBERT LIMANDRI, NEW YORK CRANE & EQUIPMENT CORP., JAMES F. LOMMA, LOMMA TRUCKING & RIGGING, JF LOMMA RIGGING AND SPECIALIZED SERVICES, BRADY MARINE REPAIR CO., TESTWELL, INC., BRANCH RADIOGRAPHIC LABORATORIES INC., CRANE INSPECTION SERVICES, LTD., SORBARA CONSTRUCTION CORP., 1765 FIRST ASSOCIATES, LLC, LEON D. DEMATTEIS CONSTRUCTION, MATTONE GROUP CONSTRUCTION CO., LTD., MATTONE GROUP LTD., MATTONE GROUP LLC, CITY OF NEW YORK SCHOOL CONSTRUCTION AUTHORITY, CITY OF NEW YORK SCHOOL CONSTRUCTION FUND, HOWARD I. SHAPIRO & ASSOCIATES CONSULTING ENGINEERS, P.C., NEW YORK RIGGING CORP., TOWER RIGGING CONSULTANTS, INC., TOWER RIGGING, INC., UNIQUE RIGGING CORP., LUCIUS PITKIN, INC., MCLAREN ENGINEERING GROUP, M.G. MCLAREN, P.C. and JOHN/JANE DOES 1 THROUGH 10,

Defendant(s).

AND ALL RELATED ACTIONS

The following papers, numbered 1 to 13 were read on this motion and cross-motion to/ for Summary Judgment:

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

Answering Affidavits — Exhibits cross motion

Replying Affidavits

PAPERS NUMBERED

1-5

6-7, 8-9

10-13

Cross-Motion: Yes X No

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

Upon a reading of the foregoing cited papers, it is Ordered that Defendant's, Howard I. Shapiro & Associates Consulting Engineers, P.C. ("HISAPC"), Motion pursuant to CPLR Section 3212 seeking Summary Judgment and dismissing the Complaint as against HISAPC and any and all Third Party Complaints against HISAPC is denied.

This case relates to the collapse of a Kodiak Tower Crane (#84-052) (the "Crane") on May 30, 2008, at East 91st Street, New York County. All actions related to the Crane collapse have been joined for the supervision of discovery.

Plaintiff, Donald R. Leo, Administrator of his son's estate, Donald Christopher Leo, ("Leo") commenced this action to recover damages as a result of personal injuries suffered by and death of Leo's son on May 30, 2008, when the Crane collapsed.

As an initial matter, this Court must address an issue noted in the Affirmation of Leo in opposition to the Motion. Leo correctly states that this Court's Part Rules limit motion papers to twenty pages and that HISAPC's Motion papers, excluding exhibits, totaled eighty nine pages. Oddly, Leo's Motion papers also violated the page length Part Rule. HISAPC also submitted Reply papers which totaled forty five pages. This Court will continue to address papers which violate Part Rules on a case-by-case basis, but for the purposes of this Motion, the Court considered only the first twenty pages of each of the papers submitted by the parties.

HISAPC moves for Summary Judgment based on the Affidavit of Lawrence K. Shapiro ("Shapiro"), a principal of HISAPC.

In order to prevail on a motion for summary judgment, the proponent must make a prima facie showing of entitlement to judgment as a matter of law, through admissible evidence demonstrating the absence of any material issue of fact. See *Klein v. City of New York*, 89 N.Y.2d 883, 652 N.Y.S.2d 723 (1996); *Ayotte v. Gervasio*, 81 N.Y.2d 1062, 601 N.Y.S.2d 463 (1993); *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986).

Shapiro asserts that, "HISAPC does not provide any engineering services concerning the mechanical component parts of cranes." Shapiro asserts that the services HISAPC provided with respect to the Crane were: site analysis, design drawings for the installation of tower footing for the Crane, design drawings for structural tie-backs to anchor the Crane, confirming Crane placement to allow for unobstructed operation of the Crane, and expedited services relating to filings with

the New York City Department of Buildings (the "DOB"). Shapiro asserts that these services were provided to Crane operator Sorbara Construction Corporation ("Sorbara") pursuant to an oral agreement.

Shapiro asserts that he was notified of the Crane collapse by the DOB and inspected the wreckage on the day of the collapse. Shapiro asserts that he concluded the welds on the lower half of the Crane turntable had not achieved proper fusion. Shapiro further asserts that the tower and its supporting tie-backs did not present a safety or stability issue or concern following the Crane collapse.

HISAPC submits a report by Arup USA, Inc. ("Arup"), which investigated the Crane collapse on behalf of the District Attorney of New York. HISAPC relies on the unsworn report by Arup to confirm Shapiro's assertion that it was the welds on the lower half of the Crane turntable that failed and caused the Crane collapse. As an unsworn statement, the report by Arup is not admissible evidence. See *Zuckerman v. City of New York*, 49 N.Y.2d 557, 404 N.E.2d 718 (1980).

Even if the Arup report were admissible, HISAPC's Motion would still have to be denied. In determining a Motion for Summary Judgment, the Court must construe the evidence in the light most favorable to the non-moving party. See *SSBS Realty Corp. v. Public Service Mut. Ins. Co.*, 253 A.D.2d 583, 677 N.Y.S.2d 136 (N.Y.A.D. 1st Dept. 1998); *Martin v. Briggs*, 235 A.D.2d 192, 663 N.Y.S.2d 184 (N.Y.A.D. 1st Dept. 1997).

Leo submits a letter, dated May 21, 2008 from Shapiro to the DOB (the "Inspection Letter"). In the Inspection Letter, Shapiro states that, "[a] technician under [his] direction inspected the tower Crane on [May 21, 2008]. The inspection focused on the changes due to climbing that occurred since the previous inspection. The inspector reported no notable deficiencies or discrepancies." One week after the Inspection Letter was sent, the Crane collapsed.

The Inspection Letter raises a question of fact as to the duties HISAPC was obligated to perform per the oral contract with Sorbara. The direction of Crane inspections is not one of the duties listed by Shapiro in his Affidavit. There is a question of fact as to the scope of and responsibilities assumed by HISAPC's direction of the inspector, and precisely what HISAPC was certifying to the DOB in the Inspection Letter as to the soundness of the Crane.

Accordingly, it is the decision and order of this Court that HISAPC's Motion seeking Summary Judgment and dismissing the Complaint as against HISAPC and any and all Third Party Complaints against HISAPC is denied.

Accordingly, it is ORDERED that HISAPC's Motion seeking Summary Judgment and dismissing the Complaint as against HISAPC and any and all Third Party Complaints against HISAPC is denied.

ENTER :

Dated: June 12, 2013



MANUEL J. MENDEZ
J.S.C.

MANUEL J. MENDEZ
J.S.C.

Check one: FINAL DISPOSITION X NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE