

Matter of 91st St. Crane Collapse Litig.

2014 NY Slip Op 30637(U)

March 13, 2014

Sup Ct, NY County

Docket Number: 117469/08

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:

XHEVAHIRE SINANAJ and SELVI SINANOVIC as Co-Administrators of the Estate of RAMADAN KURTAJ, Deceased & SELVI SINANOVIC Individually,

INDEX NO. 117469/08 MOTION DATE 1-28-2014 MOTION SEQ. NO. 057 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 12 were read on this motion and cross-motion to/ for Summary Judgment:

Table with 2 columns: NUMBERED and PAPERS. Rows include Notice of Motion/ Order to Show Cause, Answering Affidavits, and Replying Affidavits.

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, M.G. McLaren, P.C., doing business under the assumed name of McLaren Engineering Group, ("McLaren"), Motion pursuant to CPLR Section 3212 seeking Summary Judgment and dismissing the Complaint as against McLaren and any and all cross-claims against McLaren is granted.

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.

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).

McLaren states it was retained by the New York City Department of Buildings ("DOB") to perform structural engineering services in support of the DOB's inspection of construction sites within New York City.

McLaren asserts that the scope of its duties as to its work related to the Crane only involved the tower mast upon which the Crane rested. McLaren states as a structural engineering firm its area of expertise is support structures, not mechanical machines such as the Crane.

McLaren submits all of the contracts pursuant to which it was working for the DOB and affidavits from three professional engineers from McLaren. All three engineers state that the entirety of McLaren's work was limited to the tower mast which supported the Crane.

McLaren further clarifies that it did not do any work on the tower mast, but reviewed the calculations and plans drafted prior to the tower mast's erection. As the tower mast was being erected, McLaren inspected the tower mast's support base and its connection to the building.

McLaren asserts that the cause of the Crane collapse was the failure of the weld between the spacer ring and the top section of the turntable within the Crane. McLaren further asserts that the tower mast remained intact and attached to the structure following the accident.

In support of its assertion that the Crane collapse was caused by a failed weld, McLaren submits the report issued following an investigation conducted at the behest of the New York County District Attorney and transcripts of testimony related to the investigation from the criminal trial resulting from the Crane collapse.

In support of its assertion that the tower mast remained intact, McLaren submits the deposition testimony of Malcolm McLaren who testified he observed the accident site on the day of the accident.

McLaren argues that the Crane collapse in no way involved the tower mast, therefore there is no basis to assert negligence on the part of McLaren in connection with the Crane Collapse.

Plaintiff Xhevahire Sinanaj and Selvi Sinanovic as co-administrators of the Estate of Ramadan Kurtaj deceased and Selvi Sinanovic, individually (“plaintiff”) opposes the Motion arguing that there are outstanding questions of fact and that McLaren has not demonstrated it is entitled to Summary Judgment.

Defendants New York Crane & Equipment Corp., James F. Lomma, J.F. Lomma Inc., and T.E.S., Inc. i/s/h/a TES Inc. (collectively, “NY Crane”) submit an Affidavit, not in opposition to the Motion, but merely in opposition to one of McLaren’s assertion as to the cause of the Crane collapse.

Plaintiff’s opposition alleges that McLaren was negligent in that it failed to properly inspect the Crane. Plaintiff does not submit any affidavits from individuals with knowledge or experts to support the allegation that McLaren was responsible for the inspection of the Crane at the behest of the DOB. Plaintiff submits press documents purporting to have been issued by the DOB which describe the DOB’s efforts to ensure safety at construction sites around the city following other crane accidents. The press documents make no mention of McLaren.

None of the documents submitted by Plaintiff support the allegation that McLaren was retained to inspect any cranes, let alone this Crane. Nor has Plaintiff submitted affidavits that even suggest McLaren would be or should be responsible for such. Plaintiff offers nothing, other than the urging of her attorney, to support the assertion that McLaren assumed the entirety of the DOB’s inspection duties as to cranes operating in the City of New York.

“[A]llegations consisting of bare legal conclusions, as well as factual claims inherently incredible or flatly contradicted by documentary evidence are not” enough to oppose dismissal. See *Caniglia v. Chicago Tribune-New York News Syndicate, Inc.*, 204 A.D.2d 233, 612 N.Y.S.2d 146 (N.Y.A.D. 1st Dept. 1994).

Nor is NY Crane’s opposition to McLaren’s allegation that it was a failed weld within the Crane that caused the Crane collapse sufficient to oppose the Motion. NY Crane states as much in its papers, making it clear that it takes no position on the Motion.

This Court recognizes that there is more than one theory as to what caused the Crane collapse. However, one theory posits a failed weld caused the collapse while the other posits that Crane operator error and/or a lack of proper Crane maintenance caused the collapse. Neither theory in any way suggests that the tower mast was in any way a contributing factor to the collapse. So no matter which theory is given every favorable inference, no party has raised a question of fact that would warrant denial of McLaren's Motion.

Accordingly, it is ORDERED that McLaren's Motion seeking Summary Judgment and dismissing the Complaint as against McLaren and any and all cross-claims against McLaren is granted, and it is further

ORDERED that the Complaint and any and all cross-claims against Defendant(s) M.G. McLaren, P.C., doing business under the assumed name of McLaren Engineering Group, are severed and dismissed, and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

ENTER : MANUEL J. MENDEZ
J.S.C.

Dated: March 13, 2014



MANUEL J. MENDEZ
J.S.C.

Check one: FINAL DISPOSITION X NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE