

Peczek v 2 World Trade Ctr. LLC
2014 NY Slip Op 31202(U)
May 6, 2014
Sup Ct, NY County
Docket Number: 159442/2014
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

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MARIUSZ PECZEK,

Plaintiff,

Index No.:
159442/2014

- against -

Decision and
Order

Mot. Seq.: 01

2 WORLD TRADE CENTER LLC, SILVERSTEIN
PROPERTIES, INC., SILVERSTEIN WTC
PROPERTIES, LLC and TISHMAN CONSTRUCTION
CORPORATION OF NEW YORK,

Defendants.

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HON. EILEEN A. RAKOWER, J.S.C.

Plaintiff, Mariusz Peczek (“Plaintiff”) brings this action for personal injuries allegedly sustained on August 20, 2013, when Plaintiff fell from a ladder while purportedly working on the construction site located at 2 World Trade Center, New York, New York. Plaintiff asserts negligence and statutory causes of action under New York Labor Law §§ 200, 240, and 241(6) against defendants, 2 World Trade Center, LLC (“2 WTC”), Silverstein Properties, Inc., Silverstein WTC Properties, LLC, and Tishman Construction Corporation of New York (“Tishman”) (collectively “Defendants”).

Defendants now move for an Order, pursuant to CPLR §§ 3211(a)(1) and (a)(7), dismissing Plaintiff’s complaint on the basis of documentary evidence and failure to state a claim upon which relief may be granted. Defendants submit the cover and signature pages of a contract between a joint venture, known as “Gilston Electrical Contracting Corp., Five Star Electric Corp., A Joint Venture”

("Gilston/Fivestar"), and another joint venture, known as "Tishman/Turner", two accident reports regarding the subject incident, and affidavits of non-involvement on behalf of each of the defendants named herein.

Plaintiff opposes.

CPLR § 3211 provides, in relevant part:

(a) a party may move for judgment dismissing one or more causes of action asserted against him on the ground that:

(1) a defense is founded upon documentary evidence;

(7) the pleading fails to state a cause of action.

On a motion to dismiss pursuant to CPLR §3211(a)(1), "the court may grant dismissal when documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law." (*Beal Sav. Bank v. Sommer*, 8 NY3d 318, 324 [2007]) (internal citations omitted). A movant is entitled to dismissal under CPLR § 3211 when his or her evidentiary submissions flatly contradict the legal conclusions and factual allegations of the complaint. (*Rivietz v. Wolohojian*, 38 A.D.3d 301 [1st Dept. 2007]) (citation omitted). "When evidentiary material is considered, the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one." (*Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 275 [1977]).

In determining whether dismissal is warranted for failure to state a cause of action, the court must "accept the facts alleged as true ... and determine simply whether the facts alleged fit within any cognizable legal theory." (*People ex rel. Spitzer v. Sturm, Ruger & Co., Inc.*, 309 AD2d 91[1st Dept. 2003]) (internal citations omitted) (*see* CPLR § 3211[a][7]).

Defendants argue that Plaintiff's complaint must be dismissed, because Plaintiff's accident occurred at the World Trade Center Transportation Hub (the "Hub"), rather than at 2 World Trade Center, as alleged in Plaintiff's complaint. Defendants argue that this action is not properly brought against Defendants because Defendants had no ownership or leasehold interest in the Hub at the time of the alleged accident.

Defendants argue that, at the time of the alleged accident, Plaintiff was employed by Gilston Electric Contracting Corp. ("Gilston"). Defendants argue that the cover and signature pages of the contract between Gilston/Fivestar and Tishman/Turner constitute documentary evidence warranting dismissal of Plaintiff's complaint, because they establish that Gilston, via Gilston/Fivestar, contracted with Tishman/Turner, as agent for owner Port Authority of New York and New Jersey, to perform work at the Hub, not at 2 World Trade Center.

Defendants also submit the accident report from the New York Port Authority Police Department regarding the incident in question, which notes the Hub as the accident location. Defendants further submit a "C-2" accident report form, which notes "WTC Transit Hall" as the site of the alleged accident. Defendants argue that the WTC Transit Hall is located within the Hub.

Plaintiff's complaint alleges that "plaintiff was caused to fall when the ladder he was on fell, as a result of which plaintiff suffered severe and permanent personal injuries." Plaintiff's complaint further alleges that "plaintiff was employed by Gilston Electric Contracting Corp. . . . [and] was lawfully upon the premises, particularly at the '229 elevation' which is four levels down in the northeast corner, called the Central Fan room, within the scope of his employment, performing construction work as defined by the Labor Law of the State of New York" when the subject accident occurred. Additionally, Plaintiff's complaint alleges that 2 WTC and the Silverstein Defendants owned, operated, and maintained the premises where the subject incident occurred, and asserts that Tishman was "the general contractor and/or construction manager with respect to construction taking place at the aforementioned premises."

Accepting Plaintiff's allegations as true, and drawing all inferences in favor of the non-moving party, the four corners of Plaintiff's complaint adequately plead common law and statutory causes of action against Defendants, for purposes of surviving the instant motion to dismiss at this early stage of the litigation.

The "documentary evidence" submitted in support of Defendants' motion—namely, the cover and signature pages of a contract between Gilston/Firestone and Tishman/Turner, and the two accident reports—fails to flatly contradict the factual allegations or legal conclusions contained in Plaintiff's complaint, and is insufficient to conclusively establish a defense to Plaintiff's complaint as a matter of law.

Although Defendants aver that they have no ownership or leasehold interest in the Hub, that they were not present at the site of the alleged accident, and that they did not participate in or exercise control over any of the work performed there, "it is clear that affidavits . . . are not 'documentary evidence' within the intendment of a CPLR 3211(a)(1) motion to dismiss," (*Fontanetta v. John Doe 1*, 73 A.D.3d 78, 86 [2d Dep't 2010]), and without these affidavits it cannot be concluded that Defendants are not properly named as parties in the instant complaint. (*Flowers v. 73rd Townhouse LLC*, 99 A.D.3d 431 [1st Dep't 2012]).

Wherefore it is hereby,

ORDERED that the motion to dismiss is denied.

This constitutes the decision and order of the Court. All other relief requested is denied.

Dated: May 6, 2014



Eileen A. Rakower, J.S.C.