

Masi v Cassone Traileer & Container Co.
2014 NY Slip Op 33424(U)
December 12, 2014
Supreme Court, Bronx County
Docket Number: 305749/2013
Judge: Lucindo Suarez
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 19

-----X
ANTHONY MASI,

Plaintiff,

- against -

CASSONE TRAILER & CONTAINER CO., CASSONE
LEASING, INC., and SIMONE DEVELOPMENT
CORPORATION, SIMONE DEVELOPMENT
COMPANY, L.L.C., and P.D.J. SIMONE REALTY
COMPANY, L.L.P.,

Defendants.
-----X

CASSONE LEASING INC.,

Third-Party Plaintiff,

- against -

LKQ HUNTS POINT AUTO PARTS,

Third-Party Defendant.
-----X

SIMONE DEVELOPMENT CORPORATION, SIMONE
DEVELOPMENT COMPANY, L.L.C., and P.D.J.
SIMONE REALTY COMPANY LLP.,

Second Third-Party Plaintiffs,

- against -

LKQ HUNTS POINT AUTO PARTS CORP.,

Second Third-Party Defendant.
-----X

PRESENT: Hon. Lucindo Suarez

DECISION AND ORDER

Index No. 305749/2013

Third-Party Index No.
83827/2014

Second Third-Party Index No.
83864/2014

Upon the notice of motion dated October 7, 2014 of defendant/third-party defendant Cassone

Leasing Inc. also sued herein as Cassone Trailer & Container Co. and the affirmation and exhibits submitted in support thereof; the notice of cross-motion dated October 30, 2014 of defendants/second third-party plaintiffs Simone Development Corporation, Simone Development Company, L.L.C., and P.D.J. Simone Realty Company LLP and the affirmation submitted in support thereof; the notice of cross-motion dated November 28, 2014 of third-party and second third-party defendant LKQ Hunts Point Auto Parts Corp. and the affirmation submitted in support thereof; plaintiff's affirmation in opposition dated October 20, 2014 and the exhibits annexed thereto; the reply affirmation dated October 15, 2014 of defendant/third-party defendant Cassone Leasing Inc. also sued herein as Cassone Trailer & Container Co. and the exhibits annexed thereto; and due deliberation; the court finds:

In this action, plaintiff alleges that he suffered injuries when he fell from temporary stairs leading to an office trailer located at 1480 Sheridan Expressway. Plaintiff's employer, third-party and second third-party defendant LKQ Hunts Point Auto Parts Corp. ("LKQ"), purchased the trailer and stairs from defendant/third-party plaintiff Cassone Leasing Inc. ("Cassone"). Defendants/second third-party plaintiffs Simone Development Corporation, Simone Development Company, L.L.C. and P.D.J. Simone Realty Company LLP (collectively "Simone") leased the premises to LKQ in 1999. Cassone now moves pursuant to CPLR 3212 for summary judgment dismissing plaintiff's complaint on the ground that the action is barred by a Section 32 Settlement Agreement: Claimant Release executed October 16, 2013 and a Complete Release and Settlement Agreement executed November 7, 2013, both entered between plaintiff and LKQ or its insurance carrier. Simone and LKQ cross-move and join the application. Plaintiff has submitted opposition.

Principles of contract law govern the interpretation of a written release. *See Greenebaum v. Barthman*, 210 A.D.2d 160, 620 N.Y.S.2d 954 (1st Dep't 1994). The plain language of a release controls, *see Sicuranza v. Philip Howard Apts. Tenants Corp.*, 121 A.D.3d 966, 995 N.Y.S.2d 157 (2d Dep't 2014), and a valid release constitutes a complete bar to an action on a claim which is the subject

of the release. *Centro Empresarial Cempresa S.A. v. América Móvil, S.A.B. de C.V.*, 17 N.Y.3d 269, 276, 952 N.E.2d 995, 1000, 929 N.Y.S.2d 3, 8 (2011) (internal citation omitted). After reviewing the documents provided, the court finds that plaintiff's current claims are not precluded. The first agreement clearly pertains to the settlement of plaintiff's worker's compensation claim brought against LKQ. See Worker's Compensation Law §§ 2(6), 32; 12 NYCRR § 300.36. Paragraph 1 in the first agreement referenced plaintiff's waiver of "all future claims or potential claims, responsibilities and or liability associated" with the compensation claim. The agreement also contemplated the insurance carrier's right to assert a lien on any proceeds from a third-party action brought in connection with the accident. See Workers' Compensation Law § 29. As for the second document, paragraph 2 provided that plaintiff "fully releases and forever discharges [LKQ] from any and all claims . . . which may have existed, or which do exist" and specifically referenced certain federal employment and discrimination statutes. The release made no reference to any movant other than LKQ, although General Obligations Law § 15-108(a) does not require the naming or identification of every party to be released "so long as the parties' intent is clear." *Morales v. Rotino*, 27 A.D.3d 433, 434, 812 N.Y.S.2d 582, 584 (2d Dep't 2006). The agreement defined the releasee as LKQ and its "divisions, subsidiaries, affiliates, predecessors, parents, successors, assigns, directors, trustees, officers, attorneys, agents and [sic] past and present." Here, movants have not argued that they fit into any of the categories listed. See *Argyle Capital Mgmt. Corp. v. Lowenthal, Landau, Fischer & Bring, P.C.*, 261 A.D.2d 282, 690 N.Y.S.2d 256 (1st Dep't), *lv denied*, 93 N.Y.2d 817, 719 N.E.2d 925, 697 N.Y.S.2d 564 (1999); see also *Wells v. Shearson Lehman/American Express, Inc.*, 72 N.Y.2d 11, 526 N.E.2d 8, 530 N.Y.S.2d 517 (1988). Moreover, plaintiff has not brought a direct action against LKQ.

Accordingly, it is

ORDERED, that the motion of defendant/third-party defendant Cassone Leasing Inc. also sued herein as Cassone Trailer & Container Co. for summary judgment dismissing plaintiff's complaint is

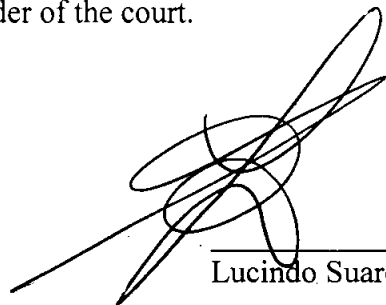
denied; and it is further

ORDERED, that the cross-motion of defendants/second third-party plaintiffs Simone Development Corporation, Simone Development Company, L.L.C., and P.D.J. Simone Realty LLP for summary judgment dismissing plaintiff's complaint is denied; and it is further

ORDERED, that the cross-motion of third-party and second third-party defendant LKQ Hunts Point Auto Parts Corp. for summary judgment dismissing plaintiff's complaint and the third-party complaints is denied.

This constitutes the decision and order of the court.

Dated: December 12, 2014



Lucindo Suarez, J.S.C.