

Pizarro v Dennis James Boyle, Inc.

2014 NY Slip Op 33577(U)

September 24, 2014

Supreme Court, New York County

Docket Number: 102474/2011

Judge: Lucy Billings

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This opinion is uncorrected and not selected for official publication.

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

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JOHN PIZARRO,

Plaintiff,

-against-

DENNIS JAMES BOYLE, INC., AND
CATHERINE LIGNELLI,

Defendants.

and

DENNIS JAMES BOYLE, INC

Third Party Plaintiff,

-against-

COMPLETE COPPER WORKS, INC.,

Third Party Defendant.

-----X

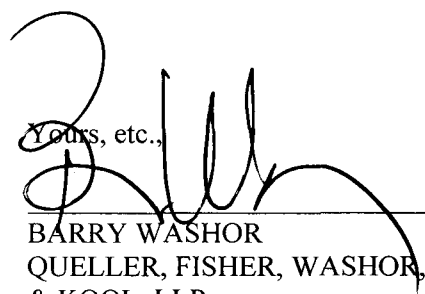
**ORDER WITH
NOTICE OF ENTRY**

Index No.:102474/2011

FILED
OCT 21 2014
COUNTY CLERKS OFFICE
NEW YORK

PLEASE TAKE NOTICE, that annexed is a true copy of an Order duly entered in the office of the Clerk of the within named Court on October 17, 2014.

Dated: New York, New York
October 17, 2014


Yours, etc.,

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

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JHON PIZARRO,

Index No. 102474/2011

Plaintiff

- against -

DENNIS JAMES BOYLE, INC., and
CATHERINE LIGNELLI,

Defendants

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DENNIS JAMES BOYLE, INC.,

Third Party Plaintiff

- against -

COMPLETE COPPER WORKS, INC.,

Third Party Defendant

-----x

DECISION and ORDER

APPEARANCES:

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LUCY BILLINGS, J.:

In an order dated January 6, 2014, the court granted original defendant Jeffrey Lignelli's motion for summary judgment dismissing all claims against him based on the exemption from liability under New York Labor Law §§ 240(1) and 241 for owners of single family dwellings and the similar standard for liability under Labor Law § 200 and for negligence. C.P.L.R. § 3212(b). The court also granted plaintiff's cross-motion to join Catherine Lignelli as a defendant and to amend the complaint to add claims against her, but only under Labor Law §§ 240(1) and 241(6), similar to the claims originally alleged under those statutes against Jeffrey Lignelli. C.P.L.R. §§ 1002(b), 3025(b). The court denied plaintiff's cross-motion insofar as it sought to amend his complaint to add claims against Catherine Lignelli under Labor Law § 200 or based on her negligence. Plaintiff was to serve and file a supplemental summons and amended complaint as permitted. C.P.L.R. §§ 305(a) and (c).

Nonetheless, Jeffrey Lignelli now moves again to dismiss the second amended complaint served and filed by plaintiff, based on the law of the case, insisting that the second amended complaint still includes claims against Jeffrey Lignelli. People v. Evans, 94 N.Y.2d 499, 503 (2000); Dukett v. Wilson, 31 A.D.3d 865, 868-69 (3d Dep't 2006); Brownrigg v. New York City Hous. Auth., 29 A.D.3d 721, 722 (2d Dep't 2006); Kye Po Choi v. Q.R. Dev. Corp., 17 A.D.3d 538 (2d Dep't 2005). See BDCM Fund Advisor, L.L.C. v. Zenni, 106 A.D.3d 596, 597 (1st Dep't 2013); Chappelear v. Dollar Rent-A-Car, 33 A.D.3d 513 (1st Dep't 2006). In opposition,

plaintiff insists that he does not claim against Jeffrey Lignelli. Based on this concession, as well as the order of January 6, 2014, there are no longer any claims against Jeffrey Lignelli in this action, and the second amended complaint shall not be construed as including such claims.

Catherine Lignelli also now moves to dismiss the second amended complaint's claims against her, insisting that the second amended complaint, like plaintiff's proposed second amended complaint supporting his cross-motion to join her and to amend the complaint to add claims against her, still includes claims against her on legal grounds other than under Labor Law §§ 240(1) and 241(6). In opposition, plaintiff again insists that he does not claim against Catherine Lignelli on any other grounds. Based on this concession and the order of January 6, 2014, there are no claims against Catherine Lignelli in this action other than under Labor Law §§ 240(1) and 241(6), and the second amended complaint shall not be construed as including such claims.

In sum, the claims under Labor Law §§ 240(1) and 241(6) are against Catherine Lignelli and not against Jeffrey Lignelli, and all other claims against either Jeffrey Lignelli or Catherine Lignelli have been dismissed or discontinued. C.P.L.R. § 3212(b), 3217(b). Complete elimination of these claims against the Lignellis from this action prevents the possibility of any confusion as to construction of the second amended complaint in these respects. All the above limitations on this action, however, are of course without prejudice to the parties' rights

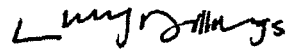
upon appeal of the order of January 6, 2014.

Finally, Catherine Lignelli moves to dismiss the second amended complaint's claims against her because they are barred by the applicable statute of limitations of three years. C.P.L.R. §§ 214(2) and (5), 3211(a)(5). Plaintiff's claims accrued September 10, 2010, when he was injured. He filed his cross-motion to join Catherine Lignelli and to amend the complaint to add claims against her January 9, 2013, when only two years, three months, and 19 days of the limitations period had expired and therefore still within the limitations period. C.P.L.R. § 214(2) and (5). This filing tolled the statute of limitations until the January 2014 order was entered January 16, 2014, extending the limitations period to Monday, September 22, 2014. Perez v. Paramount Communications, 92 N.Y.2d 749, 755-56 (1999); Long v. Sowande, 27 A.D.3d 247, 248 (1st Dep't 2006). See, e.g., Hickman v. Motor Veh. Acc. Indem. Corp., 75 N.Y.2d 975, 977 (1990); Ambrus v. City of New York, 87 A.D.3d 341, 342, 344-45 (2d Dep't 2011). Plaintiff filed his second amended complaint February 3, 2014, well within that deadline. Perez v. Paramount Communications, 92 N.Y.2d at 756; Long v. Sowande, 27 A.D.3d at 249. Therefore the court denies Catherine Lignelli's motion insofar as it seeks to dismiss the two claims against her under Labor Law §§ 240() and 241(6) in the second amended complaint. C.P.L.R. §§ 214(2) and (5), 3211(a)(5).

Catherine Lignelli's motion insofar as it seeks to dismiss any other claims against her and Jeffrey Lignelli's motion to

dismiss claims against him are denied as moot based on plaintiff's concessions and the order of January 6, 2014, as set forth above. This decision constitutes the court's order.

DATED: September 24, 2014



LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C.