

Harris v New York City Dept. of Educ.

2015 NY Slip Op 31035(U)

June 16, 2015

Supreme Court, Kings County

Docket Number: 507407/2013

Judge: Mark I. Partnow

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 43 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 21st day of May, 2015

P R E S E N T:

HON. MARK I. PARTNOW,

Justice.

-----X

CARL HARRIS,

Plaintiff,

- against -

Index No. 507407/2013

NEW YORK CITY DEPARTMENT OF EDUCATION, CITY OF NEW YORK and NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY,

Defendants.

-----X

The following papers numbered 1 to 4 read herein:

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) Annexed _____
Opposing Affidavits (Affirmations) _____
Reply Affidavits (Affirmations) _____
Other Papers _____

Papers Numbered

1-2

3

4

Upon the foregoing papers, defendant New York City Construction Authority (hereinafter “The Authority”) moves seeking an order pursuant to CPLR § 3211(a)(5), dismissing plaintiff’s (hereinafter “Harris”) complaint against the Authority for failing to commence the action within the applicable statute of limitations.

Background

This is an action for alleged personal injuries sustained by Harris from defendants’ purported negligence and violations of Labor Law § 240, 240(1) and 241(6). Harris’ complaint filed on November 25, 2013, alleges that on September 17, 2012, Harris was injured while working within premises known as I.S. 318, located at 101 Walton Street, in Brooklyn, New York.

Contentions

The Authority contends that Public Authorities Law § 1725 and 1744(1) sets forth a one year statute of limitations for personal injury actions commenced against it. The Authority alleges that Harris’ accident occurred on September 17, 2012 and thus the statute of limitations, as it relates to it, expired on September 17, 2013. The Authority contends that the suit was untimely commenced on November 25, 2013 because it was commenced sixty- nine days after the expiration of the statute of limitations. Therefore, the Authority seeks to have the action dismissed as time-barred.

In opposition, Harris contends that the action was timely commenced against the City of New York and the Department of Education because the summons and complaint

was filed within one year and ninety days of the occurrence of the subject accident. Harris further contends that the motion should be denied without prejudice to renew after the completion of discovery. Harris argues that evidence exists to show that the Authority and the other named defendants are united in interest for statute of limitation purposes.

Harris contends that he is able to satisfy all three prongs of the united in interest standard. First, Harris alleges that the Authority's negligence and labor law causes of action against all of the defendants arise from the same occurrence. Harris argues that only one accident is alleged, at one location against all three defendants. Second, Harris contends that all of the defendants received timely Notice of Claim and participated in the 50-h hearing. Harris further contends that depositions have not yet been held and he should be afforded the opportunity to proceed with discovery to determine the depth of unity between the defendants.

Harris further argues that the Authority's website states that it is consolidated with the Department of Education since October 2002. Harris claims that the Authority makes no mention or argument attempting to establish the entities as separate in interest. Furthermore, Harris contends that it is axiomatic that the City of New York controls the New York City Department of Education and the Authority, thereby satisfying the united in interest doctrine. Additionally, Harris points out that all three defendants are represented by the same counsel and argues that counsel could not represent the three defendants if they had separate interests. Harris further avers that the Authority cannot

argue that they are prejudiced by continued participation in the instant action because it received timely notice of claim and participated in the 50-h hearing.

Lastly, Harris argues that the third prong of the united in interest standard is satisfied because sufficient evidence exists to show that all of the defendants were so intertwined that knowledge can be imputed between all. Harris claims that the Authority supervises the construction of school properties, the New York City Department of Education supervises the schools constructed, and the City of New York supervises both of these entities. He further alleges that an injury sustained by a construction worker on the construction site of a New York City public school necessarily concerns all three defendants. Therefore, Harris argues that the instant motion should be denied because sufficient evidence exists to show that all three defendants are united in interest.

Discussion

“On a motion to dismiss a complaint pursuant to CPLR § 3211(a)(5) on statute of limitations grounds, the moving defendant must establish, prima facie, that the time in which to commence the actions has expired” (*Lake v. New York Hosp. Medical Cent. Of Queens*, 119 AD3d 843, 844 [2d Dept 2014]; *citing Zaborowski v. Local 74, Serv. Empls. Intl. Union, AFL-CIO*, 91 AD3d 768, 768 [2d Dept 2012]). “In considering the motion, a court must take the allegations in the complaint as true and resolve all inferences in favor of the plaintiff” (*id.*; *citing Island ADC, Inc. v. Baldassano Architectural Group, P.C.*, 49 AD2d 815, [2d Dept 2008]). “If the defendant meets that burden, the burden then shifts to

the plaintiff to aver evidentiary facts establishing that the action was timely commenced or to raise a question of fact as to whether the action was timely” (*id.*; citing *Lessoff v. 26 Ct. St. Assoc., LLC.*, 58 AD3d 610 [2d Dept 2009]). “The plaintiff has the burden of establishing that the statute of limitations has not expired, that it is tolled, or that an exception to the statute of limitations applies” (*id.*; see *Masie v. Crawford*, 78 NY2d 516, 577 [1991]).

Public Authorities Law § 1744(1), which is found under Title 6 of the New York City School Construction Authority Act, states that

”Except in an action for wrongful death, no action or proceeding shall be prosecuted or maintained against the authority, or any member, officer, agent, or employee thereof, for personal injury or damage to real or personal property alleged to have been sustained by reason of the negligence or wrongful act of the authority or of any such member, officer, agent or employee thereof, or for any other alleged tort of the authority or of such member, officer, agency or employee thereof, unless...the action or proceeding shall be commenced within one year after the happening of the event upon which the claim is based.”

Accordingly, any cause of action brought against the School Construction Authority, that is not an action for wrongful death, must be commenced within one year of the accrual of any cause of action against it. (*D & L Associates, Inc. v. New York City School Const. Auth.*, 69 AD3d 435 [1st Dept 2010]); see also *Ramirez v. New York City School Constr. Auth.*, 229 AD2d 313 [1st Dept 1996]). Generally, “a cause of action for personal injuries, whether sounding in negligence, malpractice, or products liability,

accrues at the time of injury” (*Barrell v. Glen Oaks Village Owners, Inc.*, 29 AD3d 612, 613 [2d Dept 2006]; quoting *Fleishman v. Lilly & Co.*, 96 AD2d 825, *affd.* 62 NY2d 888, *cert. denied* 469 U.S. 1192). CPLR § 304 provides that an action is commenced by filing a summons and complaint or summons with notice.

The Authority’s motion to dismiss is granted. The pleadings establish that Harris allegedly sustained injury on September 17, 2012. The cause of action accrued on September 17, 2012, at the time of the alleged injury. However, the instant action was not commenced until November 25, 2013 with the filing of the summons and complaint, roughly 14 months after the action accrued. Therefore, the action was not timely commenced as the applicable statute of limitations prescribed by Public Authorities Law § 1744(1) is one year. The Authority has met its prima facie burden in establishing that the time in which to commence the instant action has expired. In opposition, Harris has failed to present evidentiary facts establishing that the statute of limitations has not expired, that it is tolled, or that an exception to the statute of limitations applies.

Harris’ argument that the Authority is united in interest with the City of New York and the New York City Department of Education is unpersuasive. “Parties are united in interest only where the interest of the parties in the subject-matter is such that they stand or fall together and that judgment against one will similarly affect the other” (*Gatto v. Smith-Eisenberg*, 280 AD2d 640, 641 [2d Dept 2001]; quoting *Desiderio v. Rubin*, 234

AD2d 581 [2d Dept 1996]). Harris has failed to establish that a judgment against the Authority will have a similar affect on the other defendants. Accordingly, it is hereby

ORDERED that the motion to dismiss the action against the Authority pursuant to CPLR § 3211(a)(5) is granted

The foregoing constitutes the decision and order of the court.

E N T E R,



J. S. C.

**HON. MARK I PARTNOW
SUPREME COURT JUSTICE**



FILED
JAN 5 2015
AM 8:03
CLERK