

Tropea v Tishman Constr. Corp.
2016 NY Slip Op 30240(U)
January 12, 2016
Supreme Court, Bronx County
Docket Number: 301679/2014
Judge: Lucindo Suarez
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART LPM

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JOSEPH V. TROPEA,

Plaintiff,

- against -

TISHMAN CONSTRUCTION CORP., AECOM,
AECOM TECHNOLOGY CORPORATION, MACK-
CALI REALTY CORPORATION and M-C 125 BROAD
C, L.L.C.,

Defendants.

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AECOM TECHNOLOGY CORPORATION, MACK-
CALI REALTY CORPORATION, and M-C 125
BROAD C L.L.C.,

Third-Party Plaintiffs,

- against -

USIS ELECTRIC, INC. and HARLEYSVILLE
INSURANCE COMPANY,

Third-Party Defendants.

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PRESENT: Hon. Lucindo Suarez

Upon plaintiff's notice of motion dated November 11, 2015 the affirmation and exhibits submitted in support thereof; the affirmation in opposition dated December 9, 2015 and the affidavit and exhibits submitted therewith; and due deliberation; the court finds:

In this Labor Law action, plaintiff moves for leave to serve and file a supplemental summons and amended complaint to add AECOM Real Estate Services ("AECOM Real Estate"), USIS Systems Inc. ("USIS"), and CBRE Group, Inc. ("CRBE") as party defendants. Generally, a motion for leave to amend the pleadings should be freely granted unless there is prejudice or surprise from the delay or if

DECISION AND ORDER

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the amendment is palpably insufficient or patently devoid of merit. *See McGhee v. Odell*, 96 A.D.3d 449, 946 N.Y.S.2d 134 (1st Dep't 2012). A party opposing the motion bears a heavy burden. *See McGhee v. Odell*, 96 A.D.3d 449, 946 N.Y.S.2d 134 (1st Dep't 2012). Where the application to amend clearly lacks merit, leave must be denied. *See Eighth Ave. Garage Corp. v. H.K.L. Realty Corp.*, 60 A.D.3d 404, 875 N.Y.S.2d 8 (1st Dep't 2009).

In his proposed second amended verified complaint, plaintiff claims he was injured on October 12, 2013 when he was struck by an object that fell from a height. Plaintiff alleges that AECOM Real Estate, a domestic or foreign corporation conducting business in this state, hired defendant Tishman Construction Corp. ("Tishman") as the construction manager and proposed defendant CBRE as the project manager for the "Fit Out Project" at 125 Broad Street. Proposed defendant USIS hired the predecessor to plaintiff's employer to furnish and install a soundbreaking system. The statute of limitations has not expired, and plaintiff has shown the involvement of CBRE and USIS in the work.

As for AECOM Real Estate, defendant AECOOM Technology Corporation ("AECOM Technology") argues that AECOM Real Estate is not a legal entity. Preston Hopson, the Senior Corporate Counsel and Assistant Secretary for AECOM, avers that AECOM Real Estate is not a distinct legal entity and exists solely as a corporate department within AECOM. AECOM Technology also submits a printout from the public website maintained by the New York State Department of State showing that AECOM Real Estate is not listed as a business entity that exists in this state. AECOM Real Estate has demonstrated that it is not a jural entity amenable to suit. *See Sheldon v. Kimberly-Clark Corp.*, 111 A.D.2d 912, 490 N.Y.S.2d 810 (2d Dep't 1985). Plaintiff submitted no evidence to refute Hopson's averments. Plaintiff also failed to forth a basis for the award of fees and costs associated with making the motion.

Accordingly, it is hereby

ORDERED, that plaintiff's motion is granted to the extent of granting him leave to serve and

file a supplemental summons and amended complaint adding USIS Systems Inc. and CBRE Group, Inc. as party defendants and denied as to all other requests for relief; and it is further

ORDERED, that the caption shall be amended to reflect the addition of USIS Systems Inc., and CBRE Group, Inc. as party defendants; and it is further

ORDERED, that the amended caption of the action shall read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX
-----X

JOSEPH V. TROPEA,

Plaintiff,

Index No. 301679/2014

- against -

TISHMAN CONSTRUCTION CORP., AECOM,
AECOM TECHNOLOGY CORPORATION,
MACK-CALI REALTY CORPORATION, M-C
125 BROAD C, L.L.C., USIS SYSTEMS INC.,
and CBRE GROUP, INC.

Defendants.
-----X

AECOM TECHNOLOGY CORPORATION,
MACK-CALI REALTY CORPORATION, M-C
125 BROAD C, L.L.C.,

Third-Party Plaintiffs,

Third-Party Index No. 84082/2014

- against -

USIS ELECTRIC, INC. and HARLEYSVILLE
INSURANCE COMPANY,

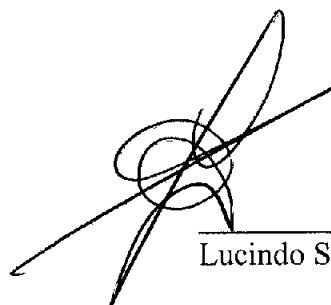
Third-Party Defendants.
-----X

and it is further

ORDERED, that within thirty (30) days after the date of this order, plaintiff shall serve upon all parties a supplemental summons and amended verified complaint in conformity with this order adding USIS Systems Inc. and CBRE Group, Inc. as party defendants.

This constitutes the decision and order of the court.

Dated: January 12, 2016

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Lucindo Suarez, J.S.C.