Brown v Dormitory Auth. of the State of N.Y.
2016 NY Slip Op 31992(U)
September 16, 2016
Supreme Court, Bronx County
Docket Number: 20937/15
Judge: Robert T. Johnson
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 12

CARLTON BROWN

DECISION AND ORDER

Plaintiff,

Index No. 20937/15

-against-

DORMITORY AUTHORITY OF THE STATE OF NEW YORK, NEW YORK STATE OFFICE OF MENTAL HEALTH, THE CITY OF NEW YORK, NEW YORK STATE URBAN DEVELOPMENT CORPORATION, HUTCH REALTY PARTNERS, LLC, And ARC ELECTRICIAL & MECHANICAL CONTRACTORS CORP.

Defendants.

DORMITORY AUTHORITY OF THE STATE OF NEW YORK

Third-Party Plaintiff,

-against-

SOR-MAL PLASTERING & CONSTRUCTION CORP.

Third-Party Defendant.

The following papers, numbered 1-3 were considered on the motion for summary judgment:

PAPERS	NUMBERED
Notice of Motion and annexed Exhibits, and Affidavits	1
Answering Affidavits and Exhibits	2, 3
Replying Affidavit	

Upon the foregoing papers, it is ordered that the motion to dismiss is denied.

This action was commenced to recover damages based upon violations of Labor Law §§ 200, 240(1), and 241(6). Plaintiff alleges that he suffered serious injuries as a result of a fall from an elevated scaffolding while performing construction on the premises located at 1500 Waters Place, Bronx, N.Y. (the "premises"). At the time of the accident, plaintiff was an employee of third-party defendant Sor-Mal Plastering & Construction Corp., a subcontractor hired to perform construction. Defendant ARC Electrical & Mechanical Constructors Corp. was the general contractor for construction being performed on the premises. The remaining defendants, including Hutch Realty Partners, LLC (defendant "Hutch"), are alleged to have owned, operated, maintained and controlled the premises.

Defendant Hutch now moves for an order dismissing the complaint pursuant to CPLR §§3211(a)(1), (7) and (10) asserting that the documentary evidence shows that plaintiff cannot sustain a cause of action against defendant Hutch.

In opposition, plaintiff contends that defendant Hutch does not establish any basis for dismissal under CPLR §3211 as the motion is based "entirely upon a conclusory and self-serving affidavit of mere denials and has provided no evidentiary predicate in support of said affidavit." Specifically, plaintiff maintains that he has sufficiently stated a cause of action pursuant to Labor Law §240(1) as Labor Law §240(1) imposes strict liability on owners and employer to protect workers from risks inherent in elevated work sites. Plaintiff further maintains that he has sufficiently stated a cause of action pursuant to Labor Law §200 as defendant Hutch failed to provide reasonable and adequate protection for the safety of plaintiff. Additionally, plaintiff contends that the branch of defendant Hutch's motion for dismissal pursuant to CPLR §3211(1)(10) should be denied as defendant Hutch has failed to address this branch of its motion.

Defendant/third-party plaintiff Dormitory Authority of the State of New York ("DASNY") also opposes defendant Hutch's motion arguing that plaintiff's allegations against defendant Hutch do fit into a cognizable legal theory.

Generally, in a CPLR §3211 motion to dismiss for failure to state a cause of action, the factual allegations of the complaint are deemed true and the affidavits submitted on the motion are considered only for the limited purpose of determining whether the plaintiff has stated a claim, not whether plaintiff has one (*Wall Street Associates v Brodsky*, 257 A.D.2d 526 [1st Dept. 1999]). It is well-settled that a pleading shall be liberally construed and will not be dismissed for insufficiency merely because it is inartistically drawn (*Foley v D'Agostino*, 21 AD2d 60 [1st Dept. 1964]). The relevant inquiry is whether the requisite allegations of any valid cause of action cognizable by the state courts can be fairly gathered from the four corners of the complaint (*Id.*).

A motion to dismiss under CPLR §3211(a)(1) is granted only if the documentary evidence submitted, 'utterly refutes plaintiff's factual allegations" (*Goshen v. Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 [2002]) and "conclusively establishes a defense to the asserted claims as a matter of law" (*Weil, Gotshal & Manges, LLP v. Fashion Boutique of Short Hills, Inc.*, 10AD3d 267, 270-271 [1st Dept. 2004]. Here, defendant Hutch's "documentary evidence" merely consists of a conclusory affidavit from the majority owner and manager of defendant Hutch. This affidavit fails to do more than "assert the inaccuracy of plaintiff's allegations" (*Tsimerman v. Janoff*, 40 AD3d 242, 242 [1st Dept.2007) and does not "conclusively dispose" of plaintiff's claims (*See Fortis Fin. Servs., LLC v. Fimat Futures USA, Inc.*, 290 AD2d 383 [1st Dept. 2002]). Accordingly, this branch of defendant Hutch's motion is denied.

In considering a motion to dismiss pursuant to CPLR §3211(a)(7), this Court must determine whether the facts as alleged fit within any cognizable legal theory (*Rovello v. Orofino Realty Co. Inc.*, 40 NY2d 633 [1976]). A motion to dismiss under CPLR §3211(a)(7) must be denied "unless it has been shown that a material fact as claimed by the pleader to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it" (*Guggenheimer v. Ginzburg*, 43 NY2d 268, 275 [1977]).

This Court finds that plaintiff has sufficiently stated a cause of action under Labor Law §200. Labor Law §200 codifies "the common law duty imposed upon an owner or general contractor to maintain a safe construction site" (*Rizzuto v L.A. Wenger Contr. Com., Inc.*, 91 NY2d 343, 352 [1998]). Plaintiff has pleaded sufficient facts that a safe construction site was not maintained and that this failure was the proximate cause of his injuries.

In the instant matter, plaintiff has sufficiently pleaded a cause of action pursuant to Labor Law §240(1) as this section of the Labor Law is "intended to place the ultimate responsibility for building practices on the owner and general contractor in order to protect the workers who are required to be there but who are scarcely in a position to protect themselves from accidents" (*Lombardi v Stout*, 80 NY2d 290, 296 [1992]). Similarly, plaintiff has alleged sufficient facts that he was not protected from risks inherent in elevated work sites.

As to plaintiff's cause of action pursuant to Labor Law §241(6), plaintiff has pleaded sufficient facts to state a claim under Labor Law §241(6). Plaintiff was injured on the premises owned, operated and/or controlled by defendant Hutch and defendant Hutch's violation of this section of the Labor Law was the proximate cause of his injuries.

With respect to the branch of defendant Hutch's motion for dismissal under CPLR §3211(a)(10), this branch is denied as defendant Hutch has failed to identify which indispensable party has not been joined.

Accordingly, it is ORDERED, that defendant Hutch's motion for order to dismiss pursuant to CPLR §§3211(a)(1), 3211(a)(7) and 3211(a)(10) is denied in its entirety.

This reflects the decision and order of this court.

Dated: September 16, 2016

Robert T. Johnson, J.S.C.