

Becerra v LRC Constr. LLC

2018 NY Slip Op 34477(U)

January 29, 2018

Supreme Court, Bronx County

Docket Number: Index No. 30395/17E

Judge: Howard H. Sherman

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This opinion is uncorrected and not selected for official publication.

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NEW YORK SUPREME COURT - COUNTY OF BRONX

PART 4

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MAGALI BECERRA,

Index No.: 30395/17E

Plaintiff,

DECISION/ORDER

-against-

LRC CONSTRUCTION LLC, WP NORTH TOWER
LLC, BLUEGATE PARTNERS, LLC and LCOR 55
BANK STREET LLC,

Howard H. Sherman
JSC

Defendants.
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The following papers numbered 1 to 3 read on this motion for dismissal noticed and duly submitted on January 24, 2018.

	<u>PAPERS NUMBERED</u>	
Notice of Motion , Affirmation , Exhibits A-F	1	
Affirmation in Opposition	2	
Replying Affirmation	3	

Upon the foregoing papers this motion for an order pursuant to CPLR §3211[a][1] and [7] dismissing the complaint and any and all cross-claims ¹ asserted against moving Defendant BLUEGATE PARTNERS, LLC is granted for the reasons set forth below.

In this action seeking damages for personal injuries alleged to have been sustained in a construction accident on August 18, 2017 , defendant BLUEGATE PARTNERS, LLC (BLUEGATE) moves for dismissal of the complaint contending that it neither owned nor leased nor managed the White Plains, New York property at which plaintiff alleges to have sustained his injuries.

¹ In their answer, LCOR 55 BANK STREET LLC, LRC CONSTRUCTION LLC and WP NORTH TOWER LLC assert not cross-claims against the moving defendant.

The motion is supported by the affidavit of Mark DeLillo, a member of BlueGate, a real estate investment banking firm [Exhibit C]. DeLillo attests that the company's involvement with the 55 Bank Street property was limited solely to providing financing services to defendant LCOR 55 Bank Street LLC (LCOR) for the development of the property. A copy of the July 29, 2014 agreement between BlueGate and its client LCOR as authenticated by DeLillo is also submitted [Exhibit D], as are copies of the deed confirming ownership of the premises and deed records [Exhibits E, F].

Plaintiff opposes the motion as premature as discovery has yet to commence.

Discussion and Conclusions

A motion to dismiss on the ground that the action is barred by documentary evidence requires the court to accept the complaint's factual allegations as true, according to plaintiff the benefit of every possible favorable inference, and determining only whether the facts as alleged fit within any cognizable legal theory (see, CPLR 3211[a][1] , Amsterdam Hospitality Group, LLC v. Marshall-Alan Assoc., Inc., 120 A.D.3d 431, 433, 992 N.Y.S.2d 2 [1st Dept.2014]).

The established "sole" criteria for the court's consideration of a motion to dismiss a complaint pursuant to CPLR 3211 (a)(7) , " is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail (see Foley v D'Agostino, 21 AD2d 60, 64-65; Siegel, Practice Commentaries, McKinney's Cons Laws of

NY, Book 7B, CPLR 3211:24, p 31; 4 Weinstein-Korn-Miller, NY Civ Prac, par 3211.36). “ Guggenheimer v. Ginzburg, 43 N.Y.2d 268, 275 , 372 N.E.2d 17 [1977] To this end, the court is required to “ liberally construe the complaint (see e.g. Leon v Martinez, 84 NY2d 83, 87, 638 N.E.2d 511, 614 N.Y.S.2d 972 [1994]; CPLR 3026), and accept as true the facts alleged in the complaint and any submissions in opposition to the dismissal motion (see Sokoloff v Harriman Estates Dev. Corp., 96 N.Y.2d 409, 414, 729 N.Y.S.2d 425, 754 N.E.2d 184 [2001] [collecting cases]; Wieder v Skala, 80 NY2d 628, 631, 609 N.E.2d 105, 593 N.Y.S.2d 752 [1992]) “ , according plaintiff “ the benefit of every possible favorable inference (see Sokoloff, 96 N.Y.2d at 414, 729 N.Y.S.2d 425, 754 N.E.2d 184). “ 511 W. 232nd Owners Corp. v. Jennifer Realty Co., 98 N.Y.2d 144, 152, 773 N.E.2d 496 [2002] ; see also, Toth v. New York City Dept. of Citywide Admin. Servs., 119 A.D.3d 431, 988 N.Y.S.2d 488 [1st Dept. 2014] . The question of “[w]hether a plaintiff . . . can ultimately establish its allegations *is not taken into consideration* in determining a motion to dismiss” (*Philips S. Beach, LLC v ZC Specialty Ins. Co.*, 55 AD3d 493, 497, 867 NYS2d 386 [1st Dept 2008] [emphasis added], lv denied 12 NY3d 713, 910 NE2d 430, 882 NYS2d 682 [2009]). “ African Diaspora Mar. Corp. v. Golden Gate Yacht Club, 109 A.D.3d 204, 211, 968 N.Y.S.2d 459 [1st Dept. 2009]

Upon consideration of the pleadings here, and the submissions including documentary evidence establishing the terms of the relationship between BlueGate

Partners and LCOR 55 Bank Street LLC whereby the moving defendant provided equity financing in connection with the development of the property, and the deed as recorded in the Office of the Westchester County Clerk reflecting a 2015 transfer of the property from LCOR to defendant WP North Tower, LLC, and the transactions recorded in the history report, the court finds that defendant has made the requisite showing to warrant pre-answer dismissal of the claims for violation of the Labor Law and/or causative negligence.

Plaintiff's assertion that the motion is premature absent an evidentiary basis to suggest that further discovery may lead to relevant evidence, is unavailing.

Accordingly, it is

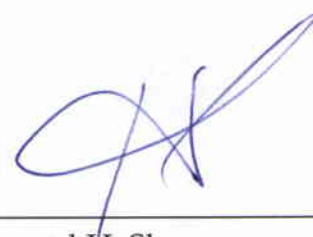
ORDERED that the motion be and hereby is granted, and it is

ORDERED that judgment be entered in favor of defendant

BlueGate Partners, LLC dismissing the above-entitled complaint as asserted against it.

This shall constitute the decision and order of this court.

Dated: January 29, 2018
Bronx, New York



Howard H. Sherman
J.S.C.