

DeJesus v SLG 100 Park LLC
2019 NY Slip Op 31146(U)
April 15, 2019
Supreme Court, New York County
Docket Number: 162535/2014
Judge: Debra A. James
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

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ANITA DEJESUS,

Plaintiff,

- v -

SLG 100 PARK LLC, MILROSE CONSULTANTS, INC., FIRST
QUALITY MAINTENANCE II, LLC D/B/A FIRST QUALITY
MAINTENANCE, WERNER KREBS INC., PAR PLUMBING CO.,
INC., SL GREEN REALTY CORP., SL GREEN MANAGEMENT,
LLC, FIRST QUALITY MAINTENANCE, L.P., 1 FIRST QUALITY
MAINTENANCE LLC, and THE PAR GROUP,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 69, 70, 71, 72, 73, 74

were read on this motion to/for

JUDGMENT - SUMMARY

ORDER

Upon the foregoing documents, it is

ORDERED that defendant Milrose Consultants, Inc.'s motion for summary judgment is granted and the complaint is dismissed against it, with costs and disbursements as taxed by the Clerk; and it is further

ORDERED that the cross-claims against defendant, Milrose Consultants, Inc. by the co-defendants are dismissed; and it is further

ORDERED that plaintiff's claims and co-defendants' cross-claims against Milrose Consultants, Inc. are severed, and the balance of the action shall continue; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of defendant, Milrose Consultants, Inc. dismissing the claims and cross-claims made against it in this action; and it is further

ORDERED that the portion of Milrose Consultants, Inc.'s motion seeking attorney's fees is denied in its entirety; and it is further

ORDERED that the cross motion of plaintiff, Anita DeJesus, to compel depositions is granted to the extent that all remaining defendants who have yet to be deposed are directed to appear for depositions within 60 days of the date of this order, and no further adjournments of depositions will be granted without prior order of this court.

DECISION

Plaintiff commenced this negligence action seeking to recover monetary damages for personal injuries she allegedly sustained in a slip and fall accident.

Defendant Milrose Consultants, Inc. (Milrose) moves for an order, pursuant to CPLR 3212, granting summary judgment in its favor and dismissing the complaint and any cross claims asserted against it. Plaintiff, Anita DeJesus, opposes the motion and cross-moves for an order compelling all parties who have yet to be deposed, to comply with the prior order of this court dated June 27, 2017. Defendants, Quality Maintenance II, LLC, and

First Quality Maintenance, L.P., Werner Krebs, Inc., Par Plumbing Co., Inc, The Par Group and Third-party Defendant, Wells Fargo Trade Capital Services, Inc. separately submit opposition.

Background

In her complaint, plaintiff alleges that Milrose caused and/or created a hazardous dust/debris condition to accumulate in a stairwell at the premises located at 100 Park Avenue, New York, New York, and, thereby, caused her to slip and fall.

Analysis

I. Milrose's Motion for Summary Judgment and Costs

It is well established that

"[There are] three situations in which a party who enters into a contract to render services may be said to have assumed a duty of care, and thus be potentially liable in tort, to third persons: '(1) where the contracting party, in failing to exercise reasonable care in the performance of his duties, launch[es] a force or instrument of harm; (2) where the plaintiff detrimentally relies on the continued performance of the contracting party's duties and (3) where the contracting party has entirely displaced the other party's duty to maintain the premises safely'" (Rodriguez v County of Westchester, 138 AD3d 713, 716-717, [2d Dept 2016] quoting Espinal v Melville Snow Contrs., 98 NY2d 136, 140 [2002] [additional citations omitted]).

Based upon the affidavit of its senior project manager, Milrose was retained by SL Green Realty Corp., the owner of the subject premises, to prepare and secure the required Department of Buildings permits necessary for alteration and demolition


work on the third floor of the subject premises; Milrose provided no tools, equipment or materials and performed no work at the premises; nor did Milrose provide any supervision of the work at the site. On that basis, Milrose has established its entitlement to summary judgment dismissing the complaint against it and shifts the burden of refutation to plaintiff and co-defendants to establish the existence of a material issue of fact. In opposition, plaintiff and co-defendants merely argue that summary judgment is premature as discovery is not complete. However, such parties offer no more than mere hope of locating additional evidence that support liability of Milrose, which is not a basis for the denial of the relief sought (see Kent v 534 East 11th Street, 80 AD3d 106, 114 [1st Dept 2010]).

As there are no triable issues of fact, the motion by Milrose for summary judgment dismissing the complaint and all cross claims against it must be granted. Milrose sets forth no basis for any award of attorneys' fees.

II. Plaintiff's Cross Motion to Compel Depositions

The court issued a compliance conference order on June 27, 2017 in which it set forth a deposition schedule of all parties. It is undisputed that plaintiff, defendant/third-party plaintiff, SLG 100 Park, LLC, and Milrose have been produced for depositions. At the time the instant motion was filed, an automatic stay was issued, pursuant to CPLR 3214 [b]. On

February 6, 2018, the court lifted the stay and set a new discovery schedule and ordered all parties to comply with the June 27, 2017 order. The court issued a subsequent status conference order which indicated depositions were to be adjourned or moved, depending on motion status. Accordingly, the remaining co-defendants are directed to appear for depositions, as set forth above.

<u>4/15/2019</u> DATE	 DEBRA A. JAMES, J.S.C.			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE