

Peranzo v WFP Tower D Co. L.P.
2019 NY Slip Op 32152(U)
July 16, 2019
Supreme Court, New York County
Docket Number: 154704/2016
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

AMEDEO PERANZO,

Index No. 154704/2016

Plaintiff

- against -

WFP TOWER D CO. L.P., BROOKFIELD
FINANCIAL PROPERTIES L.P., STRUCTURE
TONE, INC., and TITANIUM SCAFFOLD
SERVICES, LLC,

Defendants

-----X
-----X

TITANIUM SCAFFOLD SERVICES, LLC,

Index No. 595094/2017

Third Party Plaintiff

- against -

PIER HEAD ASSOCIATES, LTD., and
COMMODORE CONSTRUCTION CORP.,

Third Party Defendants

-----X
-----X

STRUCTURE TONE, INC.,

Index No. 595128/2017

Second Third Party Plaintiff

- against -

COMMODORE CONSTRUCTION CORP.,

Second Third Party Defendant

-----X

DECISION AND ORDER

LUCY BILLINGS, J.S.C.:

Plaintiff sues to recover damages for injuries sustained September 1, 2015, when he fell over scaffold bracing at a construction work site. The scaffolding contractor, defendant-third party plaintiff Titanium Scaffold Services, Inc., subcontracted the scaffold erection to third party defendant Pier Head Associates, Ltd. Titanium Scaffold moves to reargue or renew, C.P.L.R. § 2221(d) and (e), plaintiff's motion to join Pier Head Associates Ltd. as a defendant and to amend his complaint by alleging his original claims against the new defendant, which the court denied in an order dated October 19, 2018. C.P.L.R. §§ 1002(b), 3025(b). Titanium Scaffold also moves to vacate the prior order insofar as it affects Titanium Scaffold's duties and rights at issue in this action, particularly its third party claims against Pier Head. C.P.L.R. § 2221(a).

I. THE OCTOBER 2018 ORDER'S PRECLUSIVE EFFECT

The October 2018 order did not determine or otherwise affect Titanium Scaffold's third party claims against Pier Head or its duties toward or rights against plaintiff, co-defendants, or co-third party defendant Commodore Construction Corp. The law of the case doctrine precludes parties in an ongoing action from relitigating only issues that were resolved after those parties received a full and fair opportunity to address those issues. Goldstein v. Zabel, 146 A.D.3d 624, 631 (1st Dep't 2017); Delgado v. City of New York, 144 A.D.3d 46, 53 (1st Dep't 2016); Carmona v. Mathisson, 92 A.D.3d 492, 493 (1st Dep't 2012). Because

plaintiff's prior motion to join Pier Head as a direct defendant and to amend his complaint sought no relief against Titanium Scaffold, it lacked any grounds to support or oppose the relief sought and rightfully took no position on his motion. Whether or not plaintiff prevailed on his motion, Titanium Scaffold was not aggrieved. Titanium Scaffold had no reason or need to address plaintiff's motion to interpose claims against Pier Head, because his motion did not affect Titanium Scaffold's duties or rights already implicated by plaintiff's claims against Titanium Scaffold and its third party claims against Pier Head.

In the October 2019 order, the court instead considered the positions and evidence presented by plaintiff and Pier Head. Plaintiff's motion provided no opportunity for Titanium Scaffold to establish its duties or rights, to show that it was not negligent and did not violate the New York Labor Law, or to urge that, even if Pier Head owed no duty to plaintiff, Pier Head did owe a duty to Titanium Scaffold. Therefore the October 2018 order has preclusive effect only on Pier Head's duties toward plaintiff and not on Titanium Scaffold in any respect.

II. REARGUMENT

For the same reason, the court did not overlook anything that Titanium Scaffold presented previously, to provide a basis for Titanium Scaffold to reargue plaintiff's motion. C.P.L.R. § 2221(d)(2); Jones v. City of New York, 146 A.D.3d 690, 690-91 (1st Dep't 2017); Windham v. New York City Tr. Auth., 115 A.D.3d 597, 600 (1st Dep't 2014); Hernandez v. St. Stephen of Hungary

School, 72 A.D.3d 595, 595 (1st Dep't 2010). In suddenly now taking a position in support of plaintiff's prior motion, Titanium Scaffold insists that his motion did not require him to demonstrate any merit to joinder of Pier Head as a direct defendant, C.P.L.R. § 1002(b), or to his proposed claims against it. C.P.L.R. § 3025(b). Even the authority Titanium Scaffold cites, however, requires a showing of facial merit. MBIA Ins. Corp. v. Greystone & Co., Inc., 74 A.D.3d 499, 499-500 (1st Dep't 2010); Pier 59 Studios, L.P. v. Chelsea Piers, L.P., 40 A.D.3d 363, 366 (1st Dep't 2007). Based on the plain terms of Pier Head's subcontract for the scaffold erection, plaintiff failed to make that minimal showing. Davis v. South Nassau Communities Hosp., 26 N.Y.3d 563, 581 (2015); Koch v. Sheresky, Aronson & Mayefsky LLP, 161 A.D.3d 647, 648 (1st Dep't 2018); Farpoint Cos., LLC v. Vella, 134 A.D.3d 645, 645 (1st Dep't 2015); Oleh v. Anlovi Corp., 106 A.D.3d 445, 445 (1st Dep't 2013). See Kellogg v. All Sts. Hous. Dev. Fund Co., Inc., 146 A.D.3d 615, 617 (1st Dep't 2017); Stewart Tenants Corp. v. Square Indus., 269 A.D.2d 246, 248 (1st Dep't 2000). In fact, Titanium Scaffold concedes that, if plaintiff's claims against Pier Head were devoid of merit, as the court determined, his motion warranted denial. MBIA Ins. Corp. v. Greystone & Co., Inc., 74 A.D.3d at 499-500; Pier 59 Studios, L.P. v. Chelsea Piers, L.P., 40 A.D.3d at 366. Therefore, even were Titanium Scaffold aggrieved by the denial of plaintiff's motion, so as to provide Titanium Scaffold a basis to reargue his motion, the court did not overlook any evidence that

Titanium Scaffold presented previously, nor misapprehend the legal standards applicable to his motion. C.P.L.R. § 2221(d)(2); Jones v. City of New York, 146 A.D.3d at 690-91; Windham v. New York City Tr. Auth., 115 A.D.3d at 600; Hernandez v. St. Stephen of Hungary School, 72 A.D.3d at 595.

III. RENEWAL

Nor is any evidence that Titanium Scaffold considers relevant to its duties or rights a basis for renewal of plaintiff's motion, which did not implicate its duties or rights. C.P.L.R. § 2221(e)(2); Omansky v. 160 Chambers St. Owners, Inc., 155 A.D.3d 460, 462 (1st Dep't 2017); Jones v. City of New York, 146 A.D.3d at 691; Sarfati v. Palazzolo, 142 A.D.3d 877, 877-78 (1st Dep't 2016); South Bronx Unite! v. New York City Indus. Dev. Agency, 138 A.D.3d 462, 462-63 (1st Dep't 2016). See Goldstein v. Zabel, 146 A.D.3d at 631; Plaza PH2001 LLC v. Plaza Residential Owner LP, 98 A.D.3d 89, 99 (1st Dep't 2012); Carmona v. Mathisson, 92 A.D.3d at 493; Board of Mgrs. of Europa Condominium v. Orenstein, 1 A.D.3d 206, 207 (1st Dep't 2003). For purposes of determining Pier Head's liability to plaintiff, the court did, necessarily, interpret the plain terms of its subcontract with Titanium Scaffold. Those terms, however, will not change depending on which party's rights or duties are being determined, unless Titanium Scaffold successfully disputes the authenticity of the subcontract with Pier Head, which Titanium Scaffold has not disputed as yet, but is free to dispute in the future. When the court has determined that there is no ambiguity

in the contractual terms, as here, witnesses' testimony regarding parties' responsibilities under those terms, on which Titanium Scaffold relies, is meaningless. The plain terms, which are not reasonably susceptible of more than one interpretation, dictate those responsibilities. Beardslee v. Inflection Energy, LLC, 25 N.Y.3d 150, 157 (2015); IDT Corp. v. Tyco Group, S.A.R.L., 13 N.Y.3d 209, 214 (2009); Gilbane Bldg. Co./TDX Constr. Corp. v. St. Paul Fire & Mar. Ins. Co., 143 A.D.3d 146, 156 (1st Dep't 2016); Orix Venture Fin. LLC v. Eagle Ltd., 120 A.D.3d 1108, 1109 (1st Dep't 2014). See Universal Am. Corp. v. Natl. Union Fire Ins. Co. of Pittsburgh, Pa., 25 N.Y.3d 675, 680 (2015); Ellington v. EMI Music, Inc., 24 N.Y.3d 239, 244 (2014); Gilbane Bldg. Co./TDX Constr. Corp. v. St. Paul Fire & Mar. Ins. Co., 143 A.D.3d at 151; Chen v. Yan, 109 A.D.3d 727, 729 (1st Dep't 2013). The subcontract's provisions are not ambiguous merely because the parties may interpret the provisions differently. Universal Am. Corp. v. Natl. Union Fire Ins. Co. of Pittsburgh, Pa., 25 N.Y.3d at 680; Lend Lease (U.S.) Constr. LMB Inc. v. Zurich Am. Ins. Co., 136 A.D.3d 52, 56 (1st Dep't 2015), aff'd, 28 N.Y.3d 675 (2017); CT Inv. Mgt. Co., LLC v. Chartis Specialty Ins. Co., 130 A.D.3d 1, 6-7 (1st Dep't 2015).

If an issue arises regarding parties' responsibilities for work site safety or what responsibilities the parties to the subcontract between Titanium Scaffold and Pier Head intended to assume under the subcontract, its terms, not the parties' awareness or understanding of them, will govern the parties'

responsibilities and rights under the subcontract. If an issue arises regarding a party's contractual obligation to indemnify another party, the contractual terms will govern. If the indemnification provisions are ambiguous, unlike the provisions relevant to plaintiff's prior motion, the indemnification provisions will be construed against indemnification. Bradley v. Earl B. Feiden, Inc., 8 N.Y.3d 265, 274 (2007); Nicholson v. Sabey Data Ctr. Props., LLC, 160 A.D.3d 587, 687 (1st Dep't 2018); Martinez v. Benau, 103 A.D.3d 545, 546 (1st Dep't 2013); 546-552 W. 146th St. LLC v. Arfa, 99 A.D.3d 117, 122 (1st Dep't 2012). See Gregware v. City of New York, 132 A.D.3d 51, 64 (1st Dep't 2015).

IV. CONCLUSION

Because plaintiff, not Titanium Scaffold, is aggrieved by the denial of his motion to interpose claims against Pier Head, Titanium Scaffold may neither appeal that ruling nor seek reargument or renewal of plaintiff's motion for that relief. The remedy for Titanium Scaffold is to seek its own opportunity to show the absence of any negligence or violation of law on its part and to urge that, even if Pier Head owed no duty to plaintiff, Pier Head owed a duty to Titanium Scaffold. Any evidence Titanium Scaffold considers relevant to its duties and rights it may present in support of or in opposition to any future motion or at trial. For the reasons explained above, the court denies Titanium Scaffold's current motion for reargument, renewal, or vacatur of the order dated October 19, 2018, insofar

as it affects Titanium Scaffold's duties or rights in this action, since it has no such effect. C.P.L.R. § 2221(a), (d), and (e).

DATED: July 16, 2019

Lucy Billings

LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C.