

Cuddihy v Bronx Pro Group LLC

2019 NY Slip Op 35065(U)

October 28, 2019

Supreme Court, Bronx County

Docket Number: Index No. 25624/2019

Judge: Lucindo Suarez

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 19

Mtn. Seq. # 2

BRIAN CUDDIHY,

Index No.: 25624/2019

Plaintiff,

- against -

DECISION and ORDER

BRONX PRO GROUP LLC, DREAMYARD
1017 HOME STREET HOUSING DEVELOPMENT
FUND CORPORATION, HOME BUILDERS 1 L.P.,
INSPIRON CONSTRUCTION, LEMLE & WOLFF,
CONSTRUCTION CORP., 1017 HOME STREET
PARTNERS LLC, TPM MANAGEMENT LLC and
BRONX PRO REAL ESTATE MANAGEMENT INC.,

Defendants.

PRESENT: Hon. Lucindo Suarez

At issue is whether Defendant Inspiron Construction (“Inspiron”) made a *prima facie* showing that Plaintiff’s complaint should be dismissed under CPLR §3212. This court finds that Inspiron established its *prima facie* burden for dismissal as Plaintiff failed to raise any triable issues of fact to preclude same.

This action was commenced by Plaintiff for injuries he allegedly sustained while working on a construction site in May 2018. Inspiron contended that it should be dismissed from this matter because there is no evidence to establish that it was the owner of the subject construction site or the general contractor during the relevant time period. Further, Inspiron argued that it had no connection with the subject construction site or with the entity that employed Plaintiff at the time of his injury. Moreover, Inspiron argued that it established that it had no connection with the subject construction site or with Plaintiff’s injury-producing work via the affidavits of Inspiron’s President and Chief Executive Officer, Alen Gershkovich, and Inspiron’s Procurement

Manager, John Ciarico.

Inspiron contended that both Mr. Gershkovich and Mr. Ciarico attested that Inspiron was not involved with the subject construction site and that it never owned, maintained or controlled said site. Furthermore, Inspiron argued that both Mr. Gershkovich and Mr. Ciarico averred that Inspiron was never hired to perform any work or services at the subject construction site nor did it hire any other person or entity to perform work at same.

In opposition, Plaintiff posited that the instant motion should be denied as it was prematurely made since discovery is in its infancy. Plaintiff argued that discovery could yield information connecting Inspiron in some manner to Plaintiff's injury-producing work. In addition, Plaintiff attached an unverified printout of a work permit data form from the New York City Department of Buildings' ("DOB") website issued in relation to the subject construction site. Plaintiff argued that said work permit was sufficient to raise triable issues of fact as to Inspiron's role at the subject construction site since it provided that Kevin Mulvey was the Superintendent of Construction thereat and it listed his business as Inspiron.

This court finds that that Plaintiff's reliance on the unverified DOB's work permit, which listed Inspiron as Superintendent of Construction is unfounded as that alone is insufficient to establish general contractor status. *See Kosovrasti v. Epic (217) LLC*, 96 A.D.3d 695, 948 N.Y.S.2d 260 (1st Dep't 2012). Even if this court were to consider DOB's work permit, Mr. Gershkovich's reply affidavit effectively rebutted any assertions by Plaintiff that Mr. Mulvey had any apparent or actual authority on behalf of Inspiron when he obtained said permit. Further, this court finds that Plaintiff's argument with respect to discovery is unavailing. He cannot avoid summary judgment by speculating that discovery will provide the necessary evidence to demonstrate that Inspiron was involved with Plaintiff's injury-producing work. *See*

Baxter St. Condominium v. LPS Baxter Holding Co., LLC, 126 A.D.3d 417, 5 N.Y.S.3d 52 (1st Dep't 2015). Therefore, this court finds that Plaintiff does not possess a factual basis to assert Labor Law §§200, 240(1), and 241(6) claims against Inspiron.¹

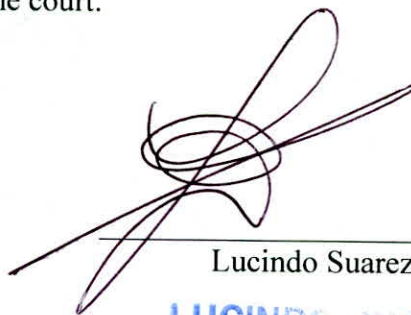
Accordingly, it is

ORDERED, that Inspiron's application seeking to dismiss Plaintiff's complaint is granted; and it is further

ORDERED, that the Clerk of Court shall enter judgment accordingly.

This constitutes the decision and order of the court.

Dated: October 28, 2019



Lucindo Suarez, J.S.C.

LUCINDO SUAREZ, J.S.C.

¹ This court does not reach Inspiron's application to dismiss Defendant Lemle & Wolff Construction Corp's. cross-claims as Defendant Lemle & Wolff Construction Corp. was dismissed from this action in this court's decision and order dated September 23, 2019.