

Arguelles v Hunter Roberts Constr. Group, LLC

2020 NY Slip Op 30417(U)

February 14, 2020

Supreme Court, New York County

Docket Number: 158479/2019

Judge: Margaret A. Chan

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARGARET A. CHAN PART IAS MOTION 33EFM

Justice

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ANTHONY ARGUELLES,
Plaintiff,

- v -

HUNTER ROBERTS CONSTRUCTION GROUP,
LLC, SOUTH STREET SEAPORT LIMITED PARTNERSHIP,
SEAPORT MANAGEMENT DEVELOPMENT COMPANY,
LLC, THE HOWARD HUGHES CORPORATION, CROSS
MANAGEMENT CORP., GTL CONSTRUCTION, LLC

Defendants.

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INDEX NO. 158479/2019
MOTION DATE 10/04/2019, 12/12/2019
MOTION SEQ. NO. (MS) 001; 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 19, 31, 32, 33, 34, 35, 39

were read on this motion to/for DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 002) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 36, 37, 38, 40, 41

were read on this motion to/for DISMISS

In this Labor Law matter, plaintiff Anthony Arguelles alleges that he sustained personal injuries on October 18, 2017, while working at the construction site at 89 South Street, Pier 17, located in the city, state, and county of New York, and asserts claims under Labor Law § 200, § 240(1), and § 241(6). In MS 1, The Howard Hughes Corporation moves to dismiss the complaint pursuant to CPLR 3211(a)(1) and CPLR 3211(c) on the grounds that it had no ownership interest, possession, or control of the accident site or had any involvement with any construction, repair, or renovation at the accident site. In MS 2, GTL Construction, LLC, a general contractor, likewise moves pursuant to CPLR 3211(a)(1) and CPLR 3211(a)(7) for dismissal of the complaint on the grounds that it had not started work at the premises at the time the accident occurred. Plaintiff opposes both motions. The Decision and Order is as follows:

FACTS

As alleged in his verified complaint (NYSCEF #13), plaintiff was performing construction-related work for his employer, non-party National Acoustics, LLC, at the construction site when he was injured. Plaintiff claims that The Howard

Hughes Corp. (“Howard Hughes”) and GTL Construction LLC (“GTL”) operated, controlled and developed Pier 17 at 89 South Street (“the Pier 17 project”), and hired and supervised contractors to perform construction, demolition, and renovation work at for the Pier 17 project (*id.*, ¶¶ 39, 40, 60-62).

Howard Hughes, through its Assistant General Counsel, Aaron Grodin, generally avers that it was not the owner, lessee or lessor, development manager, construction manager, general contractor, or subcontractor at 89 South Street or for non-party NEP Image Group, LLC (“NEP”), the lessor of 89 South Street. Howard Hughes had not entered into any contracts related to the work done for NEP and had no presence in the premises on October 18, 2017 (NYSCEF #15 – Grodin aff).

GTL’s Chief Financial Officer, Sheldon Ruggles, affirms that GTL is a general contractor and construction management firm, but was not involved in the Pier 17 project on or before October 18, 2017 (NYSCEF #25 – Ruggles aff, ¶¶ 2, 3). In fact, as of October 31, 2019, GTL was still in the process of awarding sub-contractor agreements for the project (*id.*, ¶6). Ruggles claims that GTL applied for and received several work permits, the earliest of which was on November 9, 2017, hence, no work was performed before the permits were issued, with the exception of some electrical work that was done pursuant to a work permit issued to non-party E-J Electric Installation Co. on October 30, 2017 (*id.*). Ruggles avers that the work eventually completed by GTL did not involve plaintiff or his employer, which was not one of GTL’s sub-contractors (*id.*, ¶ 7). Ruggles add that GTL is not an owner of the premises (*id.*, ¶ 9).

DISCUSSION

Howard Hughes and GTL move pursuant to CPLR 3211(a) to dismiss plaintiff’s complaint as it relates to them. In deciding a motion to dismiss pursuant to CPLR 3211(a), the court must liberally construe the pleading, accept the alleged facts as true, and accord the non-moving party the benefit of every possible favorable inference (*see Leon v Martinez*, 84 NY2d 83, 87 [1994]; *Goldman v Metropolitan Life Ins. Co.*, 5 NY3d 561, 570 [2005]). “The court must determine only whether the facts as alleged fit within any cognizable legal theory” (*Leon*, 84 NY2d at 88). However, the court need not accept “conclusory allegations of fact or law not supported by allegations of specific fact” or those that are contradicted by documentary evidence (*Wilson v Tully*, 43 AD2d 229, 234 [1st Dept 1998]).

Howard Hughes’ Motion to Dismiss

Howard Hughes’s motion to dismiss is denied. The only evidence supporting Howard Hughes’ claim of non-ownership of the premises at the time of plaintiff’s

accident is its Assistant General Counsel's one-and-a-half-page affidavit¹ consisting of eight sentences. Grodin's affidavit does not speak to the source of his knowledge about Howard Hughes's property holdings, and it does not constitute documentary evidence for CPLR 3211(a)(1) purposes (*see Bou v Llamozza*, 173 AD3d 575, 575-576 [1st Dept 2019] [affidavit of employee does not constitute documentary evidence for CPLR 3211(a)(1) purposes and affiant's failure to show personal knowledge of lease resulted in the proper denial of defendant's motion to dismiss]; *see also Art and Fasion Group Corp. v Cyclops Production, Inc.*, 120 AD3d 436, 437 [1st Dept 2014] ["affidavits 'which do no more (than) assert the inaccuracy of plaintiffs' allegations' cannot be considered"]).

In any event, even if Grodin's affidavit were sufficient, for argument's sake, plaintiff submits evidence that raises an issue of fact as to Howard Hughes' ownership of the premises at the time of plaintiff's accident. To wit, plaintiff proffers an affidavit of Saul Scherl, Howard Hughes' President for the New York Tri-State Region from a different case, *TB Fulton 2 LLC v Howard Hughes Corporation*, Index No. 653150/2018 (Sup Ct NY County), in which Scherl averred that he was in charge of day-to-day operations at the South Street Seaport, including the Pier 17 building and that, since the beginning of 2017, he had entered into license agreements with leaseholder South Street Seaport Limited Partnership that allowed Howard Hughes to use the premises (NYSCEF #32 – Scherl Aff, ¶¶ 1-4). Plaintiff's submission, at the very least, raises a question of fact as to Howard Hughes's control/use of the subject premises on October 18, 2017. As such, Howard Hughes's motion to dismiss is denied at this time.

GTL Motion to Dismiss

GTL's motion to dismiss is denied. GTL submitted Sheldon Ruggles' affidavit, New York City Department of Building permits, a "two-week look ahead" schedule, a job schedule, and an electrician permit for a subcontractor, to show that GTL was not hired as a general contractor or engaged in construction work at the time of plaintiff's accident (NYSCEF ##25-29).

Here, the submitted evidence does not conclusively establish, for CPLR 3211(a)(1) purposes, that GTL was not engaged in construction work on the date of plaintiff's accident (*see Goshen v Mutual Life Ins. Co. of New York*, 98 NY2d 314, 326 [2002] [CPLR 3211(a)(1) motion only granted where documentary evidence utterly refutes plaintiff's factual allegations and conclusively establishes a defense as a matter of law]). In particular, the omission of the controlling GTL general contractor agreement, which is referenced in Ruggles' affidavit (NYSCEF #25, ¶ 4) does not conclusively show that GTL was not the general contractor on the Pier 17

¹ The court notes that Grodin's affidavit fails to comply with CPLR 2309(c) which requires that an out of state affidavit include a certificate of conformity.

project at the time of plaintiff's accident. As such, it remains a question of fact as to what, exactly, GTL's contractual status was at the time of plaintiff's accident.

Further, the submitted documents, while all tending to show that GTL was not yet engaged in construction work at the time of plaintiff's accident, also point to GTL engaging in pre-construction activity at the time of plaintiff's accident. As such, it remains a question of fact as to what GTL's role was on the Pier 17 project at the time of plaintiff's accident. As such, GTL's motion is denied.

Accordingly, it is ORDERED that defendants Howard Hughes Corporation's motion pursuant to CPLR 3211(a) and 3211(3) to dismiss the complaint is denied; it is further

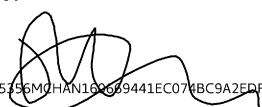
ORDERED that GTL Construction, LLC's motion pursuant to CPLR 3211(a)(1) and CPLR 3211(a)(7)) to dismiss the complaint is denied; it is further

ORDERED that Howard Hughes Corporation and GTL Construction, LLC, shall file its respective answer to the complaint within 20 days of service of a copy of this Decision and Order; it is further

ORDERED that plaintiff shall serve a copy of the Decision and Order with notice of entry within seven days of this order.

ORDERED the parties shall appear for a preliminary conference on March 18, 2020, at 10:00 AM in Part 33, 71 Thomas Street, New York, New York.

This constitutes the Decision and Order of the court.


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<u>2/14/2020</u> DATE					<u>MARGARET A. CHAN, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE