

**Mironov v Memorial Hosp. for Cancer & Allied
Diseases**

2020 NY Slip Op 31066(U)

April 27, 2020

Supreme Court, New York County

Docket Number: 155433/2017

Judge: Kathryn E. Freed

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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. KATHRYN E. FREED PART IAS MOTION 2EFM

Justice

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INDEX NO. 155433/2017

SVETLANA MIRONOV,

Plaintiff,

MOTION SEQ. NO. 003

- v -

MEMORIAL HOSPITAL FOR CANCER AND ALLIED DISEASES, EWING COLE, INC., HUNTER ROBERTS CONSTRUCTION GROUP, L.L.C., WJL ARCHITECTURE & ENGINEERING, D.P.C. D/B/A EWING COLE, WILSON JARVIS PATEL ARCHITECTURE & ENGINEERING, P.C. D/B/A EWING COLE, JAROS, BAUM & BOLLES, INC., JAROS, BAUM & BOLLES CONSULTING ENGINEERS, LLP, ROBERT SILMAN ASSOCIATES STRUCTURAL ENGINEERS, D.P.C., STANTEC CONSULTING SERVICES INC., GRANARY ASSOCIATES, INC., ORANGE COUNTY IRON WORKS, LLC, A-VAL ARCHITECTURAL METAL III LLC, PORT MORRIS TILE & MARBLE, CORP., IMPERIAL WOODWORKING COMPANY, RE SOURCE NEW JERSEY, INC., WEST-FAIR ELECTRIC CONTRACTORS, INC.,

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 194, 197, 198

were read on this motion to/for SUMMARY JUDGMENT.

In this personal injury action commenced by plaintiff Svetlana Mironov, defendant Re:Source New Jersey, Inc. ("RSNJ") moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint. Plaintiff opposes the motion. After oral argument, and after a review of the motion papers and the relevant statutes and case law, the motion is denied with leave to renew at the close of discovery.

Plaintiff was allegedly injured on September 25, 2015 when she slipped or tripped on an interior stairway (“the stairway”) between the first and second floors of the Memorial Sloan Kettering Westchester building at 500 Westchester Avenue in West Harrison, New York. On August 20, 2018, she commenced the captioned action by filing a summons and complaint against Memorial Hospital for Cancer and Allied Diseases, the owner of the building, as well as Ewing Cole, Inc. and Hunter Roberts Construction Group, L.L.C. (“HRC”), entities involved in remodeling and/or renovating the building. Doc. 1.

On or about September 10, 2018, plaintiff amended the complaint to name additional parties which were allegedly involved in the renovation and/or remodeling work at the building, including RSNJ. Doc. 89.

RSNJ now moves, pursuant to CPLR 3212, to dismiss the complaint on the ground that it was not involved in any way with the work performed on the stairway. In support of the motion, RSNJ submits the affidavit of its President, Peter De Benedetto, who attests that, although the company entered into a contract with HRC, the construction manager on the project, to perform flooring work, the scope of its work did not include the stairway. De Benedetto maintains that the stairway on which plaintiff fell was made of concrete, and that RSNJ did not build it. He further represents that, although RSNJ installed rubber stair treads in two different locations at the building, it did not install a tread on the stairway in question.

In opposition to the motion, plaintiff argues that RSNJ’s motion is premature. Specifically, plaintiff claims that no depositions have been held and that DeBenedetto’s affidavit is self-serving and conclusory. Additionally, urges plaintiff, RSNJ submits in support of its motion color coded floor finish plans which allegedly demonstrate that it did not work on the

stairway and, since such plans were not exchanged prior to this motion, she has not had an opportunity to question RSNJ regarding the same.

Plaintiff further asserts that the scope of RSNJ's work, as set forth in its contract with HRC, is too vague to establish, as a matter of law, that it had no involvement in constructing the stairway. In this vein, plaintiff claims that the scope of RSNJ's work included the installation of "all . . . resilient stair treads and risers" as well as "all miscellaneous accessories required to complete the flooring installation in locations including but not limited to . . . stairs."

"Where essential facts to justify opposition to a motion for summary judgment might exist, but cannot be stated because they are in the moving party's exclusive knowledge or control, summary judgment must be denied. CPLR 3212(f)." *Curry v Hundreds of Hats, Inc.*, 146 AD3d 593, 594 (1st Dept 2017) (citation omitted). The party invoking [CPLR 3212(f)] must provide a proper evidentiary basis supporting its request for further discovery. *See Global Mins. & Metals Corp. v Holme*, 35 AD3d 93, 102-103 (1st Dept 2006) citing *Ruttura & Sons Constr. Co. v Petrocelli Constr.*, 257 AD2d 614, 615 (2d Dept 1999), *lv dismissed in part and denied in part* 93 NY2d 956 (1999); *Jones v New York City Tr. Auth.*, 166 AD2d 293 (1st Dept 1990).

This Court agrees with plaintiff that the instant motion is premature and that plaintiff is entitled to conduct the deposition of De Benedetto or another representative of RSNJ to determine precisely what work it performed at the site, including whether such work was limited to the scope of the work as set forth in the contract between HRC and RSNJ.

Therefore, in light of the foregoing, it is hereby:

ORDERED that the motion for summary judgment by defendant Re:Source New Jersey, Inc. is denied with leave to renew the application at the completion of discovery; and it is further

ORDERED that the parties are directed to appear for a previously scheduled compliance conference on June 21, 2020 at 2:15 p.m. at 80 Centre Street, Room 280, unless notified by the Court of a different date; and it is further

ORDERED that this constitutes the decision and order of the court.



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4/27/2020

DATE

KATHRYN E. FREED, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
	<input type="checkbox"/>		<input type="checkbox"/>	REFERENCE
APPLICATION:	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:				