

Ramirez v 1351-1355 Dekalb Holdings LLC
2020 NY Slip Op 34501(U)
August 14, 2020
Supreme Court, Kings County
Docket Number: 506271/2019
Judge: Peter P. Sweeney
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73

Index No.: 506271/2019
Motion Date: 8-3-20
Mot. Seq. No.: 2

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ISAURO RAMIREZ,

Plaintiff,

-against-

1351-1355 DEKALB HOLDINGS LLC, 1351 DEKALB
CONDO DEVELOPMENT LLC, IST EXCAVATION
GROUP OF N.Y. INC., DCD GROUP, INC., AND
DCD CONSTRUCTION, LLC,

Defendants.

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DECISION/ORDER

DCD GROUP, INC.,

Third-Party Plaintiff,

-against-

RAYMOND'S PLBG & HTG LLC,

Third-Party Defendant,

-----X

The following papers numbered 1 to 3 were read on this motion:

Papers:	Numbered:
Notice of Motion/Order to Show Cause	
Affidavits/Affirmations/Exhibits/Memo of Law.....	1
Answering Affirmations/Affidavits/Exhibits/Memo of Law.....	2
Reply Affirmations/Affidavits/Exhibits/Memo of Law.....	3
Other.....	

Upon the foregoing papers, the motion is decided as follows:

In this action to recover damages for personal injuries, the defendant, DCD GROUP, INC., moves for an order pursuant to CPLR §3212 granting summary judgment and dismissing plaintiff's complaint and all crossclaims insofar as asserted against DCD GROUP, INC.

This action arises out of an accident that occurred on July 15, 2017, upon the premises located at 1351-1355-1357 Dekalb Avenue, Brooklyn, New York. In the complaint, plaintiff

alleges that “while lawfully upon the aforesaid premises, [he] was caused to fall and be precipitated to the ground and sustain permanent injuries as a result of hazardous, dangerous, and defective conditions existing thereat.” Plaintiff alleges, in sum and substance, that defendant DCD GROUP, INC. owned, operated and maintained the premises and/or contracted for and/or performed demolition, construction, renovation or alteration upon the premises. Defendant DCD GROUP, INC. was apparently named as a party to the action based on a contract of sale of the real property located 1351, 1355 & 1357 DeKalb Avenue, Brooklyn, New York which is dated February of 2017. The contract identifies 1351-1355 DeKALB HOLDINGS LLC, as the seller and DCD GROUP, INC., as the buyer. The contract was signed on behalf of DCD GROUP, INC. by Denis Portuev.

In support of the motion, DCD GROUP, INC. submitted, among other things, the affidavit of Elvira Serini, the President of DCD GROUP, INC. Therein, she stated that the sole function of DCD GROUP, INC. is to manage a business known as Salon 137, which is located at 137 Wolfs Lane, Pelham, New York. She averred that DCD GROUP, INC. does not own, maintain or have any involvement with the premises where plaintiff’s accident is alleged to have occurred or with other real property other than the property where Salon 137 is located.

She stated she has sole authority to negotiate contracts on behalf of DCD GROUP, INC., that she never negotiated a contract on its behalf involving the property located at 1351-1355-1357 Dekalb Avenue and that the contract of sale dated February of 2017 improperly listed DCD GROUP, INC. as a party to the contract. She averred that DCD GROUP, INC., who was also named as a defendant, is an entirely separate corporate entity than DCD CONSTRUCTION, LLC. and that DCD CONSTRUCTION, LLC. does not and has never employed any individuals from DCD GROUP, INC. She maintains that she never authorized DCD CONSTRUCTION,

LLC. to call or refer to itself as DCD GROUP, INC. and that no other defendant to this action was ever authorized to enter into a contract on behalf of DCD GROUP, INC.

She stated that Denis Porteav, the individual who signed the contract on behalf of DCD GROUP, INC., has no involvement with DCD GROUP, INC. and that she never met him before.

It is axiomatic that to succeed on a motion for summary judgment, the moving party must first “make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572, citing *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642; see also CPLR 3212[b]). If the movant makes such a showing, in order to defeat the motion “the burden shift[s] to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*Alvarez*, 68 N.Y.2d at 324, 508 N.Y.S.2d 923, 501 N.E.2d 572). If the movant fails to make such a showing, the motion must be denied regardless of the sufficiency of the opposing papers” (*Vega*, 18 N.Y.3d at 503, 942 N.Y.S.2d 13, 965 N.E.2d 240 [internal quotation marks and alterations omitted]).

Here, through the submission of the affidavit of Serini, defendant DCD GROUP, INC. established prima facie showing of entitlement to summary judgment dismissing all claims and crossclaims asserted against it. Plaintiff, the only party that has opposed the motion, failed a triable issue of fact. Contrary to plaintiff’s contention, the motion is not premature. “[A] grant of summary judgment is not premature merely because discovery has not been completed” (*U.S. Bank N.A. v. Wiener*, 171 AD3d 1241, 1242, quoting *Lamore v. Panapoulos*, 121 AD3d

863, 864; *see Mogul v. Baptiste*, 161 AD3d 847, 848). “In order for a motion for summary judgment to be denied as premature, the opposing party must provide an evidentiary basis to suggest that discovery might lead to relevant evidence or that the facts essential to justify opposition to the motion were in the exclusive knowledge and control of the moving party” (*Mogul v. Baptiste*, 161 AD3d at 848 [internal quotation marks omitted]); *see Reale v. Tsoukas*, 146 AD3d 833, 835). “The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is insufficient to deny the motion” (*HSBC Bank USA, N.A. v. Armijos*, 151 AD3d at 944 [internal quotation marks omitted]; *see Cenlar FSB v. Tenenbaum*, 172 AD3d 806, 807; *Reale v. Tsoukas*, 146 AD3d at 835–836; *Lamore v. Panapoulos*, 121 AD3d at 864). The plaintiff has not offered any evidence which would give rise to something more than “mere hope or speculation” that further discovery will demonstrate that the moving defendant’s inclusion as a party defendant was a mistake.

Accordingly, it is hereby

ORDRED that defendant, DCD GROUP, INC.’s motion for summary judgment dismissing plaintiff’s complaint and all cross-claims insofar as asserted against it is **GRANTED**.

This constitutes the decision and order of the Court.

Dated: August 14, 2020



PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020