

Senat v TEI Group, Inc.
2021 NY Slip Op 30017(U)
January 4, 2021
Supreme Court, Kings County
Docket Number: 514782/2017
Judge: Peter P. Sweeney
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73

Index No.: . 514782/2017
Motion Date: 11-2-20
Mot. Seq. No.: 3

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CLAUDE ALBERT SENAT,

Plaintiff,

-against-

DECISION/ORDER

TEI GROUP, INC. d/b/a TEI GROUP ELEVATOR
SERVICE, TEI GROUP AND ELECTRIC, INC.,
COURION INDUSTRIES, INC. d/b/a COURION THE
NEXT GENERATION, COURION, COURION
INDUSTRIES, PELLE NY INC. d/b/a PELLE
ELEVATOR COMPANY, THE PELLE COMPANY,

Defendants.

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The following papers numbered 1 to 4 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.....2-3
- Reply Affirmations/Affidavits/Exhibits/Memo of Law.....4
- Other.....

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

Defendant, COMPREHENSIVE MANUFACTURING SERVICES LLC d/b/a
COURION i/s/h/a COURION INDUSTRIES, INC. d/b/a COURION, THE NEXT
GENERATION, COURION (hereinafter “Courion”) moves for an Order: (1) pursuant to CPLR
Rule 3212 granting Courion summary judgment, dismissing all claims and crossclaims against
Courion; (2) pursuant to CPLR §8303 and 22 NYCRR 130-1.1(a) sanctioning plaintiff, co-
defendants, and their counsel and awarding it costs and fees due to their refusal to discontinue
the action and all claims against Courion; and (3) granting such other and further relief as this
Court deems just and proper.

The plaintiff commenced this action claiming that on August 23, 2016, while an
employee of Target, he sustained personal injuries when a bi-parting door of a freight elevator,
known and labeled as “freight elevator one”, came down and struck him. The accident occurred
at a Target Store located at 1598 Flatbush Avenue, Brooklyn, New York. At the time of

plaintiff's alleged accident, the doors, gates and door systems of the subject freight elevator and the other freight elevators at the store were being replaced. The project included removing the old doors, gates and door systems, which were manufactured by Courion, and replacing them with doors, gates and door systems manufactured by defendant Peele NY Inc. d/b/a Peelle Elevator Company and The Peelle Company ("Peelle"). The work was performed by that TEI Group, Inc. d/b/a TEI Group Elevator Service, TEI Group and Electric, Inc. ("TEI")

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]). In deciding a motion for summary judgment, the evidence must be viewed in the light most favorable to the party opposing the motion and all reasonable inferences must be drawn in that party's favor (see *McNulty v. City of New York*, 100 N.Y.2d 227, 230, 762 N.Y.S.2d 12, 792 N.E.2d 162; *Boyd v. Rome Realty Leasing Ltd. Partnership*, 21 A.D.3d 920, 921, 801 N.Y.S.2d 340; *Erikson v. J.I.B. Realty Corp.*, 12 A.D.3d 344, 783 N.Y.S.2d 661).

Here, contrary to plaintiff's and TEI's contention, Courion submitted sufficient proof which demonstrated that prior to plaintiff's accident, TEI had already removed the old doors, gate and door system of the subject freight elevator that had been manufactured by Courion and replaced these items with equipment manufactured by Peelle. Courion also sufficiently demonstrated that it did not maintain or repair the elevator from when this work was performed up to the time of the accident and that it was not contractually obligated to do so. The evidence submitted by Courion also demonstrated that there is no basis to hold Courion liable based on

any act or omission of Freight Tech, one of its subsidiaries, since the last time Freight Tech performed repairs to the subject freight elevator was on October 17, 2015, well before the elevator was overhauled.

Since Courion demonstrated that it did not manufacture, install, maintain or repair the doors, gate or door system of freight elevator one after they were replaced and that it was not contractually obligated to do so, Courion demonstrated that it did not owe a duty of care to plaintiff. Thus, defendant Courion demonstrated its prima facie entitlement to summary judgment dismissing all claims and cross-claims asserted against it. Plaintiff and TEI, the only parties that opposed the motion, failed to raise a triable issue of fact.

That branch of Courion's motion to sanction plaintiff and TEI for failing to discontinue the action against Courion is **DENIED**. "The decision whether to impose costs or sanctions against a party for frivolous conduct, and the amount of any such costs or sanctions, is generally entrusted to the court's sound discretion" (*Strunk v. New York State Bd. of Elections*, 126 A.D.3d 779, 781, 5 N.Y.S.3d 498). Here, the Court is not convinced that plaintiff's and TEI's conduct was frivolous within the meaning of 22 NYCRR 130-1.1(c) (*see Licalzi v. Wells Fargo Bank, N.A.*, 125 A.D.3d 942, 5 N.Y.S.3d 158).

Accordingly, it is hereby

ORDRED that the branch of Courion's motion which an order granting summary judgment dismissing all claims and cross claims asserted against Courion is **GRANTED**; and it is further

ORDRED that the motion is in all other respects **DENIED**.

This constitutes the decision and order of the Court.

Dated: January 4, 2021



PETER P. SWEENEY, J.S.C.

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