

Hunter v Bond Bros., Inc.
2021 NY Slip Op 30976(U)
March 29, 2021
Supreme Court, Kings County
Docket Number: 517675/2020
Judge: Debra Silber
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : PART 9**

-----X

LEROY HUNTER,

Plaintiff,

-against-

**BOND BROTHERS, INC.; BSC OWNER, LLC;
BSC RETAIL OWNER, LLC; BSC, LLC; and
BSC HOUSING COMPANY, INC.,**

Defendants.

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**BSC OWNER LLC, BSC RETAIL OWNER LLC,
and BSC HOUSING COMPANY, INC.,**

Third Party Plaintiffs,

-against-

STRUCTURAL PRESERVATION SYSTEMS, LLC,

Third Party Defendant.

-----X

Recitation, as required by CPLR § 2219 (a), of the papers considered in the review of defendant BSC, LLC's motion to dismiss the complaint and plaintiff's motion for leave to amend the complaint and to discontinue the action as against three of the defendants

Papers	NYSCEF Doc.
Notice of Motion, Affirmation, and Exhibits Annexed	<u>17-23 29-36</u>
Affirmation in Opposition and Exhibits Annexed	<u>26-27 37</u>
Replying Affirmation	<u>28 38</u>

Upon the foregoing cited papers, the Decision and Order on these motions is as follows:

This is a personal injury action arising from a workplace accident which took place at 165 Elmira Loop in Brooklyn, New York (part of the Starrett City complex) on December 2, 2019.

In Mot. Seq. #1, defendant BSC, LLC moves for an order dismissing the complaint as asserted against it, pursuant to CPLR 3211 (a) (7), and for an award of attorneys' fees. BSC, LLC argues that the property at 165 Elmira Loop (Block 4452, Lot 85 in Kings County) is owned by co-defendant BSC Housing Company, Inc. BSC, LLC contends that it has "nothing whatsoever to do with the property at issue." An officer of BSC, LLC, Nahum Schneerson, states in his affirmation that BSC, LLC is a shell company formed years ago for an investment that did not come to fruition and that it neither owns nor manages and property.

In his affirmation in opposition, plaintiff's attorney states that he recently learned the correct address of the alleged incident is 155 Elmira Loop (Block 4452, Lot 125), which is owned by co-defendants BSC Owner LLC and BSC Housing Co., Inc., and concedes that BSC, LLC should not be a named defendant. Plaintiff opposes motion #1 to the extent that BSC, LLC seeks attorneys' fees. Plaintiff argues that fees are not warranted because he learned the correct information from the defendants only after BSC, LLC's motion was filed.

Defendant replies that it is still entitled to attorneys' fees as plaintiff provides no reasonable excuse for not discontinuing the action against BSC, LLC in November 2020 when BSC, LLC purportedly told plaintiff it was not involved with the property.

In Motion Seq. #2, plaintiff moves for leave to amend the complaint to correct the place of the accident and for leave pursuant to CPLR 3217 to discontinue the action as against BSC, LLC and two other named defendants, BSC Retail Owner LLC and Bond Brothers Inc. (see E-File Docs # 29-36).

The court declines, in its discretion, to award BSC, LLC attorneys' fees as a form of sanctions under 22 NYCRR § 130-1.1, as there is insufficient competent evidence

that plaintiff's attorney's actions were frivolous within the meaning of the statute.

Accordingly, it is **ORDERED** that Motion 1 is granted to the extent that the complaint is dismissed as against defendant BSC, LLC, and it is further

ORDERED that Motion Seq. 2 is granted in its entirety, and plaintiff is granted leave to discontinue the action as against defendants BSC Retail Owner, LLC and Bond Brothers, Inc., and a Notice of Discontinuance shall be filed within 30 days; and

It is further **ORDERED** that the amended complaint in the form annexed to the moving papers (Doc. 31) shall be E-filed as the Amended Complaint, and shall be deemed to have been served on the remaining two defendants upon service by movant of a copy of this order with notice of entry upon their counsel; and it is further

ORDERED that defendants shall answer the amended complaint within 30 days; and it is further

ORDERED that the caption shall be amended to reflect the dismissal of BSC, LLC, and the discontinuance of the action against the other two defendants, and the Third-Party caption is similarly amended to remove the two parties as third-party plaintiffs which have been discontinued against as direct defendants, and all future papers filed with the court shall bear the amended captions as follows:

-----X

LEROY HUNTER,

Plaintiff,

Index No.: 517675/2020

-against-

BSC OWNER LLC and BSC HOUSING COMPANY, INC.,

Defendants.

-----X

BSC OWNER LLC and BSC HOUSING COMPANY, INC.,

Third Party Plaintiffs,

-against-

STRUCTURAL PRESERVATION SYSTEMS, LLC,

Third Party Defendant.

-----X

It is further **ORDERED** that the Third-Party plaintiffs shall E-file an amended Third-Party Complaint within 45 days which shall only be amended to remove BSC Retail Owner LLC and Bond Brothers Inc. as Third-Party Plaintiffs in the caption and in the body of the complaint. The Third-Party Defendant may amend its answer to the Third-Party Complaint if it wishes to, and any amended answer shall be E-filed within 30 days of the E-filing of the Amended Third-Party Complaint.

This shall constitute the decision and order of the court.

Dated: March 29, 2021

ENTER:



Hon. Debra Silber, J.S.C.