

Tischio v Silvercup Scaffolding 1 LLC
2021 NY Slip Op 31470(U)
April 29, 2021
Supreme Court, Kings County
Docket Number: 506116/2020
Judge: Debra Silber
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At an IAS Term, Part 9 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 29th day of April, 2021.

P R E S E N T:

HON. DEBRA SILBER, Justice

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TARA TISCHIO,

Plaintiff,

-against-

SILVERCUP SCAFFOLDING 1 LLC, SILVERCUP SCAFFOLDING I LLC, 243 DEVELOPMENT LLC, PARLOUR CONDOMINIUMS, PARLOUR RESIDENCES, 249-251 4TH AVENUE PROPERTY LLC, MISSION DOLORES, LATEMPA SERVICES INC., and WERIZE INC.,

Defendants.

-----X

SILVERCUP SCAFFOLDING 1 LLC and SILVERCUP SCAFFOLDING I LLC,

Third-Party Plaintiffs,

-against-

CUETES CORP.,

Third-Party Defendant.

-----X

243 DEVELOPMENT LLC and WERIZE INC.,

Second Third-Party Plaintiffs,

-against-

C & L STUCCO CORP., MASTER ROOFING & SIDING CONS., INC., MASTER ROOFING & SIDING, INC., KONE INC., A-1 UNDERGROUND PLUMBING CONTRACTORS CORP., and SETHERA LAURENCY,

Second Third-Party Defendants.

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DECISION/ORDER

**Index No.: 506116/2020
Mot. Seq. No.: 1, 2**

The following papers were read on this motion:

<u>Papers</u>	<u>NYSCEF Doc</u>
Notice of Motion/Order to Show Cause, Affidavits/Affirmations, and Exhibits Annexed	<u>11-20, 22-28</u>
Opposing Affidavits/Affirmations	<u>30-33, 38</u>
Reply Affidavits/Affirmations	<u>39</u>

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

After both sides waived oral argument, these motions were submitted April 22, 2021, and upon review of the foregoing submissions, the court finds as follows:

Defendants SILVERCUP SCAFFOLDING 1 LLC and SILVERCUP SCAFFOLDING I LLC move, pursuant to CPLR 2201, for a stay of the instant civil matter until the completion of a Grand Jury Investigation (MS # 1).

Defendants SILVERCUP SCAFFOLDING 1 LLC and SILVERCUP SCAFFOLDING I LLC (hereinafter Silvercup) also move (MS # 2), pursuant to 22 NYCRR § 216.1 (a), for an order directing the Clerk of the Court, for good cause shown, to maintain and/or file under seal Silvercup’s Motion to Stay, along with the exhibits (NYSCEF Doc. Nos. 11-19); and granting Silvercup a temporary restraining order restricting public access to the Motion to Stay, along with the exhibits.

Plaintiff opposes both motions.

The court finds that there is no basis to issue a stay in the present matter. The Grand Jury Investigation will not affect defendants’ ability to conduct discovery in that there would be no danger of self-incrimination. In addition, issuing a stay in this matter would unduly prejudice the plaintiff in this action. Further, there are several similar cases arising

from the same accident, and the identical motions in those cases have already been denied.

With regard to the defendants' request in Mot. Seq. # 2 to seal the motion papers in Mot. Seq. # 1, the motion for a stay, pursuant to 22 NYCRR § 216.1 (a), a court "shall not enter an order in any action or proceeding sealing the court records, whether in whole or in part, except upon a written finding of good cause, which shall specify the grounds thereof." In order to determine whether good cause has been shown, the court must consider "the interests of the public as well as of the parties" (22 NYCRR § 216.1 [a]). Compelling circumstances are required in order to seal civil cases (*see Coopersmith v Gold*, 156 Misc 2d 594, 603 [Sup Ct, Rockland County 1992], quoting *Application of Natl. Broadcasting Co. v Myers*, 635 F2d 945, 952 [2d Cir 1980]).

The present case is one of several involving people injured by falling debris at a construction site on June 30, 2019 (e.g. NY County Index No. 157350/2019). Here, just as the Honorable W. Franc Perry (NY County Sup Ct) found in his December 7, 2020 decision in a case arising from an accident on the same date and involving the same defendants: "when balancing the public interest and preference for openness and transparency in the judicial process with the lack of any legitimate reason to seal this case, Silvercup has failed to demonstrate compelling circumstances to justify restricting the public's access to the underlying motion. Neither the possibility of harm claimed by Silvercup nor the potential for embarrassment or damage to reputation constitute good cause or a compelling interest to seal their motion to stay" (NYSCEF Doc. No. 32 [12/07/2020 Decision and Order, Index No. 157350/2019]; *see also Mosallon v Berenson*, 76 AD3d 345 [1st Dept 2011]). Likewise, Justice Richard Velasquez reached the same conclusion in his decision on nearly identical motions in another related action pending in Kings County, Index No. 515218/2019. In fact,

there would be little point granting a stay or sealing the motion papers in this action since this same relief was denied in those two other actions arising from the same facts and occurrences on the same date.

Accordingly, the motion of defendants Silvercup Scaffolding 1 LLC and Silvercup Scaffolding I LLC, pursuant to CPLR 2201, for a stay of the instant civil matter until the completion of the Grand Jury Investigation is hereby denied in its entirety for the reasons stated above (MS # 1). The motion of defendants Silvercup Scaffolding 1 LLC and Silvercup Scaffolding I LLC pursuant to 22 NYCRR § 216.1 (a), for an order directing the Clerk of the Court to seal their motion for a stay [MS # 1] along with the exhibits (NYSCEF Doc. Nos. 11-19), and for a temporary restraining order restricting access to those documents, is also denied for the reasons stated above (MS # 2).

This constitutes the Decision and Order of the court.

ENTER :



Hon. Debra Silber, J.S.C