

Richardson v Restani Constr. Corp.
2022 NY Slip Op 30639(U)
March 2, 2022
Supreme Court, New York County
Docket Number: Index No. 159277/2020
Judge: David B. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. DAVID B. COHEN **PART** **58**

Justice

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INDEX NO. 159277/2020

LEROY RICHARDSON and LAURA WEBSTER a/k/a
LAURA RICHARDSON,

Plaintiffs,

MOTION SEQ. NO. 001

- v -

RESTANI CONSTRUCTION CORP., 170 VAN BRUNT
STREET, LLC, JAM PROJECTS, LLC, and JAM
PROJECTS, INC.,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36

were read on this motion to/for DISMISSAL AND SUMMARY JUDGMENT.

In this personal injury action commenced by Leroy Richardson (“plaintiff”) and Laura Webster a/k/a Laura Richardson (“Mrs. Richardson”) (collectively “plaintiffs”), defendant 170 Van Brunt Street, LLC (“Van Brunt”) moves: 1) pursuant to CPLR 3212 for summary judgment dismissing the complaint and all cross claims against it; and 2) pursuant to CPLR 3211(a)(1) and (a)(7), to dismiss the complaint based on documentary evidence and for failure to state a cause of action. Plaintiffs submit partial opposition to the motion. After a review of the parties’ contentions, as well as a review of the relevant statutes and case law, the motion is decided as follows.

Plaintiffs commenced the captioned action by filing a summons and complaint on October 30, 2020. Doc. 1. In his amended complaint, plaintiff alleged that he was injured on August 28, 2017 when he tripped and fell in a defective roadway or parking lot adjacent to the premises located

at 95 Bowne Street, Brooklyn, New York a/k/a 62 Imlay Street, Brooklyn, New York a/k/a 100 Imlay Street, Brooklyn, New York and/or 75 Bowne Street, Brooklyn, New York (“the premises”). Doc. 4 at par. 7. Plaintiff claimed that he was injured due to the negligence of defendants Restani Construction Corp. (“Restani”), Van Brunt, Jam Projects, LLC (“JPLLC”), and Jam Projects, Inc. (“JPI”), which owned, operated, controlled, managed, inspected, maintained, and/or supervised the premises. Doc. 4 at pars. 16-24. Mrs. Richardson asserted a claim for loss of consortium. Doc. 4 at pars. 26-29.

Restani joined issue by its verified answer filed June 2, 2021, in which it denied all substantive allegations of wrongdoing, asserted various affirmative defenses, and cross-claimed against Van Brunt, JPLLC, and JPI for contribution and common-law indemnification. Doc. 6. Van Brunt joined issue by its answer filed August 17, 2021. Doc. 8. There is no indication in NYSCEF that either JPLLC or JPI has answered or otherwise appeared in this action.

Van Brunt now moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint and all cross claims against it, and pursuant to CPLR 3211(a)(1) and (a)(7), to dismiss the complaint based on documentary evidence and for failure to state a cause of action. Docs. 10-30. It also seeks the costs of its motion. Doc. 10. In support of the motion, Van Brunt submits deeds reflecting that it did not own the premises where the alleged accident occurred. Docs. 19, 21-22. Van Brunt also submits the affidavit of its owner, Dominick Incantalupo, who represents that his company did not own or make use of any parking lot adjacent to the properties named in the complaint.¹

¹ Incantalupo also asserts that Van Brunt did not own or make use of any property referred to in the complaint in a separate action commenced by plaintiffs arising from the incident. He claims that the other action, *Leroy Richardson and Laura Webster a/k/a Laura Richardson v The City of New York, et. al.*, is pending in the Supreme Court, Bronx County under Ind. No. 29924/18E (“the Bronx County action”). However, by order entered February 11, 2019 (Danziger, J.), the venue of the Bronx County action was changed to Kings County. On June 11, 2020, the Appellate Division, First Department reversed the February 11, 2019 order and changed the venue of the Bronx County action to New York County, where it is now pending under Index Number 451396/21 and assigned to Hon.

Although plaintiffs submit what they refer to as an affirmation in partial opposition to the motion, they state that they do not oppose Van Brunt's request for the dismissal of the complaint and all cross claims against it. Doc. 35 at par. 3. However, plaintiffs assert that they object to any other relief sought by Van Brunt. Doc. 35 at par. 4.

In its reply, Van Brunt reiterates its argument that the complaint and all cross claims must be dismissed against it, and also withdraws its request for costs, the only other relief it had sought in its motion. Doc. 36.

Van Brunt's submissions proving that it did not own the premises establish its prima facie entitlement to summary judgment dismissing the complaint pursuant to CPLR 3212 (*see Brandner v Boricua Coll. Dev. Corp.*, ___ AD3d ___, 2022 NY App Div LEXIS 1229*, 2022 NY Slip Op 01234**, 2022 WL 548811 [1st Dept February 24, 2022]). Additionally, since Van Brunt established that it did not own the premises, plaintiff fails to state a cause of action against it (*see* CPLR 3211[a][7]; *Moroshkin v Trinity Church*, ___ AD3d ___, 156 NYS3d 853 [1st Dept 2022]). Therefore, the complaint and all cross claims asserted against Van Brunt are dismissed.

Accordingly, it is hereby:

ORDERED that the motion for summary judgment of defendant 170 Van Brunt Street, LLC is granted and the complaint is dismissed against it; and it is further

ORDERED that the cross claims asserted against defendant 170 Van Brunt Street, LLC by defendant Restani Construction Corp. are dismissed; and it is further

ORDERED that the said claims and cross claims against defendant 170 Van Brunt Street, LLC are severed and the balance of the action shall continue; and it is further

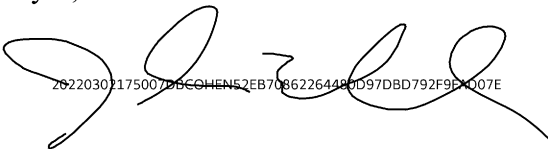
J. Mabelle Sweeting. Van Brunt's attorney represents, and this Court's review of the NYSCEF records confirms, that the erstwhile Bronx County action "has not been joined for trial with the instant action" (Doc. 11 at par. 5).

ORDERED that the Clerk of the Court shall enter judgment in favor of defendant 170 Van Brunt Street, LLC dismissing the claims and cross claims made against it in this action; and it is further

ORDERED that counsel for the defendant shall serve a copy of this order, with notice of entry, upon the Clerk of the Court (60 Centre Street, Room 141B); and it is further

ORDERED that such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that the remaining parties shall appear for a preliminary conference on May 10, 2022 at 3:30 p.m. unless they email a completed preliminary conference form to the Part 58 Clerk (SFC-Part58-Clerk@nycourts.gov) on or before May 6, 2022.

<u>3/2/2022</u> DATE	 20220302:1750070B:COHEN52EB70862264480D97DBD792F9E4007E DAVID B. COHEN, J.S.C.			
CHECK ONE:	☐	CASE DISPOSED	☒	NON-FINAL DISPOSITION
	☒	GRANTED	☐	GRANTED IN PART
APPLICATION:	☐	SETTLE ORDER	☐	SUBMIT ORDER
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN	☐	FIDUCIARY APPOINTMENT
			☐	OTHER
			☐	REFERENCE