

Ibrahim v City of New York

2022 NY Slip Op 34329(U)

December 15, 2022

Supreme Court, New York County

Docket Number: Index No. 159381/2021

Judge: Leslie A. Stroth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LESLIE A. STROTH PART **52**

Justice

-----X	INDEX NO.	<u>159381/2021</u>
YUSUF IBRAHIM,	MOTION DATE	<u>05/13/2022</u>
Plaintiff,	MOTION SEQ. NO.	<u>001</u>

- v -

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF PARKS AND RECREATIONS, STEVEN
DUBNER LANDSCAPING INC, ANCHORMEN
CONSTRUCTION LLC, LIRO PROGRAM AND
CONSTRUCTION MANAGEMENT PE P.C. D/B/A THE
LIRO GROUP, ABC CORPORATION 1-10, JOHN DOE 1-10

**AMENDED
DECISION + ORDER ON
MOTION¹**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 82, 83

were read on this motion to/for DISMISSAL

This action seeks to recover damages for alleged injuries sustained by plaintiff Yusuf Ibrahim (plaintiff) on July 16, 2020, when he allegedly tripped and fell on debris while working at a construction site located at 2 Edgar Street, New York, N.Y.

In its answer, defendant Liro Program and Construction Management PE P.C. d/b/a The Liro Group (Liro) alleges that plaintiff filed a workers' compensation claim, received medical care and benefits from a policy issued to Liro, and was an employee of Liro on the date of the alleged accident. Liro now moves for an order pursuant to CPLR 3211(a) (1) and (7) dismissing plaintiff's amended complaint and any cross-claims and counterclaims against it. As per its attorney's

¹ The following amended decision and order supersedes the decision and order dated December 8, 2022, to reflect the withdrawal of the City of New York and New York City Department of Parks and Recreation's cross-motion. See NYSCEF doc. no. 82.

affirmation, the cross-motion of City of New York and New York City Department of Parks and Recreation (together, the City) is withdrawn. *See* NYSCEF doc. no. 82.

Pursuant to CPLR 3211 (a) (7), a party may move to dismiss a claim on the ground that the pleading fails to state a cause of action. Upon such a motion, the Court must accept the facts alleged as true and determine simply whether plaintiff's facts fit within any cognizable legal theory. *See* CPLR 3026; *Morone v Morone*, 50 NY2d 481 (1980). The complaint shall be liberally construed, and the allegations are given the benefit of every possible favorable inference. *See Leon v Martinez*, 84 NY2d 83, 87 (1994).

Liro argues that because plaintiff was an employee of Liro, which exclusively directed and supervised his work, plaintiff's claims are barred by Workers' Compensation Law (WCL) §§ 11 and 29 (6), and all cross-claims and counterclaims against Liro must be dismissed.

Plaintiff opposes Liro's motion in its entirety. Plaintiff argues that pursuant to WCL § 11, he must include Liro, his employer, in the action in order to receive contribution from Liro, should the Court find that he has sustained a "grave injury" and is entitled to monetary compensation. Plaintiff maintains that he has been incapacitated since the accident and that whether such incapacity resulted from the brain injury is an issue of fact to be determined during discovery. Therefore, plaintiff claims that Liro's motion to dismiss must be denied, because the complaint is not barred by WCL § 11.

Defendant Anchormen Construction LLC (Anchormen) does not oppose dismissal of plaintiff's direct claims as against Liro. However, Anchormen does oppose Liro's motion to the extent that it seeks dismissal of Anchormen's cross-claims asserted as against Liro.² Anchormen

² In the alternative, if the plaintiff's direct claims are dismissed as against Liro, Anchormen seeks to have the cross-claims converted to third-party claims. Liro's affirmation in support seems to consent to such alternative relief. *See* Defendant Liro's Affirmation in Support, NYSCEF doc. no. 17 at 6.

argues that if its direct claims against Liro are dismissed its cross-claims should be converted to third-party claims, reiterating that Liro may be found liable for contribution and indemnity if it is determined that plaintiff suffered a “grave injury” pursuant to WCL § 11. Anchormen asserts that plaintiff’s alleged brain injury qualifies as a “grave injury” under this statute, for which it is entitled to contribution and indemnity. Anchormen adds that plaintiff’s bill of particulars alleges he suffered a brain injury and has been incapacitated since the subject accident. According to Anchormen, whether the brain injury is the cause of the plaintiff’s inability to work and whether he is rendered unable to work in any capacity are issues that must be borne out in discovery.

Plaintiff correctly argues that if his brain injury constitutes a “grave injury” under WCL § 11, and said injury caused “permanent total disability” under same, Liro may be held liable for contribution or indemnity to third parties pursuant to WCL § 11. Liberally construing the allegations and affording them the benefit of every possible favorable inference, the complaint sets forth a cognizable legal theory. Therefore, Liro’s motion for an order dismissing plaintiff’s amended complaint, as well as any cross-claims and counterclaims against it, is denied. As the Court declines to dismiss plaintiff’s claims against Anchormen, Anchormen’s cross-claims and counterclaims need not be converted to third party claims.

Accordingly, it is hereby

ORDERED that defendant Liro Program and Construction Management PE P.C. d/b/a The Liro Group’s motion for an Order pursuant to CPLR 3211(a) (1) and (7) dismissing plaintiff’s amended complaint and any cross-claims and counterclaims against it is denied; and it is further


ORDERED that the decision and order dated December 8, 2022 is vacated and superseded by this amended decision and order; and it is further

ORDERED that counsel for the moving parties shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office 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).

This constitutes the decision and order of the Court.

12/15/2022
DATE


LESLIE A. STROTH, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE