

Stankes v Vornado Realty Trust
2022 NY Slip Op 35095(U)
June 10, 2022
Supreme Court, Queens County
Docket Number: Index No. 705118/17
Judge: Janice A. Taylor
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE JANICE A. TAYLOR IAS Part 15
Justice

-----x
JAMES STANKES,

Plaintiff(s),

- against -

VORNADO REALTY TRUST and LEND LEASE (US)
CONSTRUCTION LMB INC.,

Defendant(s).

-----x
VORNADO REALTY TRUST and LEND LEASE (US)
CONSTRUCTION LMB INC.,

Third-Party Plaintiff(s),

- against -

S.J. ELECTRIC INC.,

Third-Party Defendant(s).

-----x
S.J. ELECTRIC INC.,

Second Third-Party Plaintiff(s),

- against -

CROSS COUNTRY CONSTRUCTION INC.,

Second Third-Party Defendant(s).

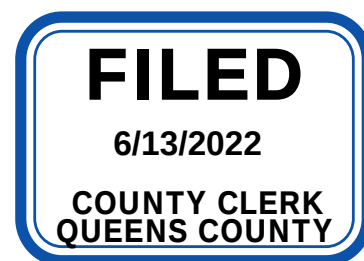
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Index No.: 705118/17

Motion Date: 4/5/22

Motion Cal. No.: 25,
26 and 27

Motion Seq. No.: 4, 5,
and 6



The following papers numbered 1 - 35 read on this motion by plaintiff, pursuant to CPLR § 3212, for summary judgment on certain causes of action in the main action, and on this cross-motion by defendants/third-party plaintiffs for summary judgment dismissing the entire amended complaint in the main action; on this motion by third-party defendant/second third-party plaintiff, pursuant to CPLR §§ 3124 and 3212, to compel disclosure, supplement its papers on these motions, and for summary judgment dismissing the third-party complaint, or for summary judgment on the second third-party complaint; and on this motion by defendants/third-party plaintiffs, pursuant to CPLR § 3212, for summary judgment on the third-party complaint.

PAPERS
NUMBERED

Motion Seq. # 4

Notice of Motion-Affirmation-Exhibits-Service.....	1 - 4
Notice of Cross-Motion-Affirmation-Exhibits-Service.....	5 - 8
Memorandum of Law in Support of Cross-Motion.....	9
Affirmation in Opposition to Cross-Motion-Service.....	10 - 11
Affirmation in Reply to Opp. to Cross-Motion-Service.....	12 - 13
Affirm. in Reply and in Opp. to Cross-Motion-Service.....	Not Considered ¹

Motion Seq. # 5

Notice of Motion-Affirmation-Exhibits-Service.....	14 - 17
Memorandum of Law in Support of Motion.....	18
Affirmation in Opposition-Service.....	19 - 20
Reply Affirmation-Service.....	21 - 22

Motion Seq. # 6

Notice of Motion-Affirmation-Exhibits-Service.....	23 - 26
Notice of Cross-Motion-Affirmation-Exhibits-Service.....	27 - 30
Affirmation in Opp. to Cross-Motion-Exhibits-Service.....	31 - 33
Affirmation in Reply to Opp. to Cross-Motion-Service.....	34 - 35

Upon the foregoing papers, it is **ORDERED** that the above-referenced motions and cross-motion are decided as follows:

This personal injury action arises from an August 26, 2016, workplace accident at a construction site located at 220 Central Park South, in the County, City, and State of New York. In his amended complaint, plaintiff alleges that defendant/third-party plaintiff Vornado Realty Trust ("Vornado") owned the premises. It is, apparently, undisputed that Vornado retained defendant/third-party plaintiff Lend Lease (US) Construction LMB, INC. ("Lend

¹The court did not consider plaintiff's reply affirmation in support of his motion and in opposition to the cross-motion, as it was e-filed more than two hours after the second and final calendar call on the motion submission date.

Lease") to serve as the general contractor or construction manager on the project. It is also undisputed that Lend Lease retained both third-party defendant/second third-party plaintiff S.J. Electric, Inc. ("SJE"), to serve as the electrical subcontractor, and second third-party defendant Cross Country Construction, Inc. ("CCC"), to serve as the concrete work subcontractor.

Plaintiff was employed by SJE, which sent him to work at the site on the day of the accident. Plaintiff was allegedly injured when, while installing temporary lighting within a temporary staircase, a piece of plywood fell from one of the higher floors and struck him in the head. It is alleged that the plywood was dropped by one of CCC's workers, and that there was inadequate protection to secure against such incidents. Plaintiff, thus, commenced the main action against defendants/third-party plaintiffs Vornado and Lend Lease, asserting causes of action arising under Labor Law §§ 200, 240 (1), and 241 (6), as well as the common law. These defendants commenced a third-party action against third-party defendant/second third-party plaintiff SJE, asserting claims for common law indemnification/contribution and breach of contract for failure to procure insurance. In turn, SJE commenced a second third-party action against second third-party defendant CCC, asserting claims for common law indemnification/contribution.

In motion sequence no. 4, plaintiff now moves for summary judgment in the main action against Vornado and Lend Lease on his causes of action arising under the Labor Law, and they cross-move for summary judgment dismissing the amended complaint. In motion sequence no. 5, SJE moves for an order compelling disclosure from Lend Lease and CCC; for summary judgment dismissing the third-party complaint against it, or, alternatively, for summary judgment on its second third-party complaint against CCC; and for leave to supplement SJE's various moving and responsive papers after receipt of the outstanding disclosure. In motion sequence no. 6, Vornado and Lend Lease move for summary judgment on its third-party complaint against SJE.

It is noted that several weeks after all of these motions were marked as fully submitted, plaintiff e-filed and served a second supplemental bill of particulars ("BP"), alleging additional injuries, including to his head and spine. Counsel for all other parties objected to the supplemental BP, while reserving their rights to demand additional disclosure from plaintiff, including a further deposition, independent medical examination, and authorizations to obtain medical records pertaining to the new injuries.

It is also noted that in its motion under motion sequence no. 5, SJE moves to compel disclosure from Lend Lease and CCC which was ordered pursuant to the November 12, 2020 order of the Honorable Maureen A. Healy, J.S.C. and duly demanded post-deposition

disclosure. SJE explains that it moved for summary judgment solely to comply with the June 14, 2021 deadline ordered by the undersigned, but maintains that it requires the outstanding disclosure which bears on its claims and defenses against both Lend Lease and CCC.

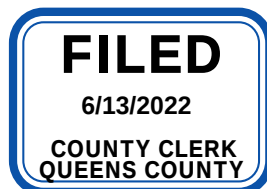
In light of the above, it is clear that this case is not ready for trial, and that it should be returned to pre-note of issue status, so that the parties can resolve all of these outstanding and newly developed disclosure issues.

Accordingly, the above-referenced motions and cross-motion are, each **DENIED to the extent that it is**

ORDERED that the note of issue is vacated, and the parties are directed to contact the Compliance Conference Part to schedule a conference to address the above-referenced disclosure issues.

The foregoing shall constitute the decision and order of this court.

Dated: June 10, 2022





JANICE A. TAYLOR, J.S.C.

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