

Mendoza v I&G Group Inc.
2022 NY Slip Op 35116(U)
July 8, 2022
Supreme Court, Bronx County
Docket Number: Index No. 32133/2020E
Judge: Alison Y. Tuitt
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NEW YORK SUPREME COURT-----COUNTY OF BRONX

PART IA-5

FRANCISCO MENDOZA,

Plaintiff(s),

Against

I & G GROUP INC.,

Defendant(s).

Index No.: 32133/2020E

Mot. Seq. 2

Present:

HON. ALISON Y. TUITT
Justice

The following efiled papers numbered 27 - 36,Read on this Defendant's Motion to Dismiss the Amended Complaint
pursuant to CPLR § 3211

On Calendar of 2/7/2022Notice of Motion – Affirmation, Affidavits and Exhibits: 1Affirmation in Opposition – Affirmation, Affidavit, and Exhibits 2

Upon the foregoing papers, Defendant's motion to dismiss pursuant to CPLR § 3211 is denied for the reasons set forth herein.

The within action involves personal injury claims asserted by Plaintiff, Francisco Mendoza wherein he allegedly sustained serious and protracted personal injury after working with an alleged defective saw and gloves on October 8, 2018. Plaintiff alleges that Defendant, I & G Group Inc. (hereinafter referred to as "I & G") failed to provide proper safety gloves and working equipment which cause Plaintiff to lose his left finger.

Now, on Defendant's motion to dismiss pursuant to CPLR § 3211. Plaintiff opposes the motion.

Defendant argues that New Jersey law is applicable to this matter as the injury occurred in New Jersey and all work completed by Plaintiff for Defendant occurred in New

Jersey. Defendant further argues that Plaintiff failed to exhaust all administrative remedies afforded to it pursuant to New Jersey law warranting the complaint's dismissal. In addition, Defendant states New Jersey and New York law are "substantially the same" and under New York law where a Plaintiff fails to plead that Worker's Compensation remedies have been exhausted, the Court can dismiss. Defendant continues that should there be an issue as to whether Plaintiff is an independent contractor or an employee, it should be disputed through the worker's compensation board. Defendant concludes that dismissal is warranted in its entirety.

In their Opposition to Defendant's motion, Plaintiff argues that he was an "self-employed independent contractor," as supported by his tax filings and correspondence with Defendant, and thus was not required to show that Worker's Compensation benefits were denied. Plaintiff avers that the use of the word "employee" in the Complaint or Amended Complaint was not to establish an employer-employee relationship but rather to "offer as a general description to establish that Mr. Mendoza's presence" at the work site. Plaintiff argues that assuming he was Defendant's employee, Defendant failed to establish that this action is barred by the exclusivity provisions of Workers' Compensation. Plaintiff states Defendant has not established that it secured Workers' Compensation insurance to cover Plaintiff as its "employee" pursuant to Worker's Compensation Law § 10, nor has it established that this action does not fall within the exception under Worker's Compensation Law § 11 for an employer that does not obtain the required coverage. In addition, Plaintiff argues that Defendant failed to establish that venue in New York is improper or that there are any conflicts of law regarding the Workers' Compensation issue that mandates the application of New Jersey law. Plaintiff continues that Defendant's reliance on Borges¹ is misplaced as the parties in this matter are both domiciled in New York, and that "there is nexus of issues that would make New Jersey law specifically and/or exclusively applicable.

In considering the sufficiency of a pleading subject to a motion to dismiss for failure to state a cause of action under CPLR 3211(a)(7), the court's role is to determine whether, accepting as true the factual averments of the complaint, plaintiff can succeed upon any reasonable view of the facts stated. (Campaign for Fiscal Equity v. State of New York, 86 N.Y.2d 307, 318 [1995]). On a motion to dismiss a complaint pursuant to CPLR 3211(a)(7) all allegations in the

¹ Borges v. Heldrich Assoc. LLC, 2012 U.S. Dist. LEXIS 123877, 2012 WL 3779214

complaint are deemed to be true; all reasonable inferences which can be drawn from the complaint and the allegations therein must be resolved in favor of the plaintiff. (Sokoloff v. Harriman Estates Dev. Corp., 96 N.Y.2d 409, 414 [2001]). When analyzing the complaint in the context of a motion to dismiss, the court must discern whether the facts as alleged fit within any cognizable legal theory. (Sokoloff v. Harriman Estates Development Corp., *supra* at 414; Leon v. Martinez, 84 N.Y.2d 83, 88 – 89 [1994].)

On a motion to dismiss for failure to state a cause of action under CPLR 3211 (a)(7), the facts as alleged in the complaint are accepted as true, and the plaintiff is accorded the benefit of every possible favorable inference. (Leon v. Martinez, 84 NY2d 83, 87-88, 638 N.E.2d 511, 614 N.Y.S.2d 972 [1994]). "At the same time, however, allegations consisting of bare legal conclusions . . . are not entitled to any such consideration." (Simkin v. Blank, 19 N.Y.3d 46, 52, 968 N.E.2d 459, 945 N.Y.S.2d 222 [2012] [internal quotation marks omitted]). "Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery." (Connaughton v. Chipotle Mexican Grill, Inc., 29 N.Y.3d 137, 141-142, 75 N.E.3d 1159, 1162, 53 N.Y.S.3d 598, 601 [2017].)

"When evidentiary material is considered on a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), and the motion has not been converted to one for summary judgment, the criterion is whether the plaintiff has a cause of action, not whether he or she has stated one, and, unless it has been shown that a material fact as claimed by the plaintiff to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it, dismissal should not eventuate." (Wells Fargo Bank N.A. v. E & G Dev. Corp., 138 A.D.3d 986, 986 – 987 [2d Dept. 2016] [citation omitted].)

Here, the complaint adequately states a cause of action against Defendant, and the evidentiary materials submitted by Plaintiff seemingly establishes that Plaintiff was an independent contractor of Defendant without evidence to the contrary presented by Defendants. It is expected that during discovery, this issue will be fleshed out further. Reviewing the Complaint in the light most favorable to the Plaintiff and the explanation given thereof for Plaintiff's use of the word "employee" is not dispositive as to Plaintiff's employment status with Defendant. Moreover, Defendant has failed to address the conflict of laws which

would warrant the Court to consider New Jersey law verses that of New York law. This motion is dismissed without prejudice to be remade once discovery is completed.

Accordingly, it is

ORDERED that Defendant's motion to dismissed pursuant to CPLR 3211 is denied without prejudice.

This constitutes the Order of this Court.

Dated: July 8, 2022

ENTER:



Hon. Alison Y. Tuitt, J.S.C