

Medina v Jet Aviation Flight Servs., Inc.
2022 NY Slip Op 35160(U)
March 10, 2022
Supreme Court, Bronx County
Docket Number: Index No. 32075/2020E
Judge: Alison Y. Tuitt
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX-----X
Paul Medina,

Plaintiff,

DECISION and ORDER
Index No. 32075/2020E

-against-

Jet Aviation Flight Services, Inc., et al.,

Defendant.
-----X

Alison Tuitt, J.

Defendants Daniel S. Loeb, Third Point LLC, Teragram LLC, and Big Dog Aviation LLC's ("Big Dog") (collectively the "Donor Defendants") move to dismiss the complaint with prejudice pursuant to CPLR 306-b, 3211(a)(1), 3211(a)(7), 3211(a)(8), and 3211(e). The Court notes that after the submission of this motion, the plaintiff stipulated to discontinue this action as to Big Dog.

Plaintiff was employed as a delivery person for the Afya Foundation ("Afya"), which delivers "medical and humanitarian supplies" to "areas devastated by natural disaster or public health crises." On October 22, 2017, Afya instructed plaintiff to deliver supplies to an airplane hangar in Teterboro, New Jersey, which were to be flown to Puerto Rico for a hurricane relief effort. The complaint alleges that plaintiff "was caused to strike his head on a parked jet airplane within the subject airplane hangar and be violently precipitated to the ground as the result of defendant's negligence in failing to properly maintain, control, supervise and/or inspect the subject premises." The jet was registered to defendant Big Dog. Plaintiff states that a pilot employed by defendant Jet Aviation Flight Services, Inc. ("Jet Aviation") directed the "manner" and "path" as to loading the plane, causing injury.

The Donor Defendants seek to establish on this motion that their only role was arranging for a charter plane for Afya's use. They assert that none of them owned or operated the Hangar, or were they responsible for parking the Aircraft or giving the plaintiff instructions.¹

Specifically, the Donor Defendants refer to an Aircraft Services Agreement ("ASA") (submitted by Jet Aviation in connection with Motion Sequence No. 3 as NYSCEF Doc. No. 31), between Jet Services and Third Point (one of the Donor Defendants). Jet Services agreed to arrange for storing the aircraft in the Hangar at Teterboro Airport, to supply Jet Aviation employees as flight personnel (including pilots), and to provide maintenance services. Also in connection with Motion Sequence No. 3, Jet Aviation admitted that it employed the pilot in connection with the transaction herein, who allegedly provided negligent instructions to Plaintiff.

According to the affidavit of Mendy R. Haas, Chief Financial Officer of defendant Third Point, Big Dog is the sole owner of an aircraft on which plaintiff struck his head. Big Dog does not employ a pilot or any other flight crew members. Instead, the flight crew, including the pilot, is employed and provided by Jet Aviation, which provides "turn-key" operation, staffing and maintenance of the aircraft. The Haas affidavit further reflects that Jet Aviation and JA Teterboro handle all aspects of bringing the Aircraft in and out of the Hangar, with passengers entering the Aircraft on the tarmac. She states:

"The Donor Defendants and their employees played no role in the events that allegedly occurred in the Hangar on October 22, 2017. They did not direct Jet Aviation's flight crew or Afya's personnel in connection with the October 22, 2017 shipment. They also had nothing to do with parking the Aircraft, and they did not possess or control the Hangar where the events allegedly occurred. The Donor Defendants and their employees were not present in the Hangar or even, to my knowledge, in Teterboro Airport on October 22, 2017."

In opposition, plaintiff argues that a duty existed on the part of the Donor Defendants based on a theory of respondeat superior. Plaintiff argues that defendant Third Point exercised significant

¹ The Donor Defendants contend that Jet Aviation and JA Teterboro operated the Hangar and providing pilot services for the Aircraft.

control over the pilot under the ASA. Conceding that pilots are and remain employees of Jet Aviation under the ASA, plaintiff nevertheless argues that Flight Support Personnel (the Pilot and other employees) were “special employees” of Third Point, in that: (1) Third Point determined the rate of compensation; (2) Third Point could request re-assignment or termination of Flight Support Personnel; (3) Flight Support Personnel were assigned exclusively to Third Point’s aircraft, but Jet Aviation could request to use any of Third Point’s Flight Support Personnel; (4) Third Point was responsible for costs of training; and (5) Third Point could request an annual performance review.

Plaintiff also contends that his Facility Tenant Agreement dated January 1, 2016, between Jet Aviation and Third Point gave Third Point the right to use the hangar, and thus operation and control. Consequently, plaintiff argues, Third Point was in control of the premises at the time of the plaintiff's accident, which is further evidenced by the fact that the deliverymen were told to meet the pilot in the subject hangar to load the plane at which point the pilot directed the manner, method and path of the delivery being completed. Plaintiff argues that liability attaches to Loeb and Teragram for the same reason, i.e., Third Point by and through its pilot had control of the hangar and negligently directed the manner, method and path of the delivery.

In considering a motion to dismiss, the complaint must be viewed in the light most favorable to plaintiff (*Arrington v. New York Times Co.*, 55 NY2d 433, 442 [1982]). To properly support a motion for dismissal pursuant to CPLR 3211 (a) (1), the contents of the proffered documentary evidence must be “essentially undeniable” (*Fontanetta v. John Doe 1*, 73 AD3d 78, 85-85 [2010].) Examples of such “essentially undeniable” documentary evidence include judicial records, mortgages, deeds, contracts, written agreements and notes (*Fontanetta*, 73 AD3d at 84-85). With respect to a motion to dismiss pursuant to CPLR 3211 (a) (7) for failing to state a cause of action “the pleadings must be liberally construed” and “[t]he sole criterion is whether from [the complaint's] four corners, factual allegations are discerned which taken together manifest any cause

of action cognizable at law" (*Gershon v. Goldberg*, 30 AD3d 372, 373 [2006], quoting *Guggenheimer v. Ginzburg*, 43 NY2d 268, 275 [1977].)

A general employee of one employer may also be a special employee of another employer (*Thompson*, 78 NY2d at 557; *see also Spencer v. Crothall Healthcare, Inc.*, 38 AD3d 527, 528 [2007]). "A person may be deemed to have more than one employer for purposes of the Workers' Compensation Law, a general employer and a special employer" (*Schramm v. Cold Spring Harbor Lab.*, 17 AD3d 661, 662 [2005]). A special employee is "one who is transferred for a limited time of whatever duration to the service of another" (*Thompson v. Grumman Aerospace Corp.*, 78 NY2d 553, 557, 585 N.E.2d 355, 578 N.Y.S.2d 106). "Although a person's status as a special employee is generally a question of fact, it may be determined as a matter of law 'where the particular undisputed critical facts compel that conclusion and present no triable issue of fact'" (*Degale-Selier v. Preferred Mgt. & Leasing Corp.*, 57 AD3d 825, 826 [2008], quoting *Thompson*, 78 NY2d at 557.)

In determining if an employee is a special employee, various factors are traditionally considered, the chief one being who controls and directs the manner, details, and ultimate result of the employee's work:

"Many factors are weighed in deciding whether a special employment relationship exists, and generally no single one is decisive . . . Principal factors include who has the right to control the employee's work, who is responsible for the payment of wages and the furnishing of equipment, who has the right to discharge the employee, and whether the work being performed was in furtherance of the special employer's or the general employer's business . . . The most significant factor is who controls and directs the manner, details, and ultimate result of the employee's work" (*Schramm v. Cold Spring Harbor Lab.*, 17 AD3d 661, 662, 793 NYS2d 530 [2d Dept. 2005].)

Here, viewing the evidence in the light most favorable to the plaintiff, the defendants have not established as a matter of law that the pilot was not the defendants' special employee. The ASA places all costs associated with the aircraft crew on the defendants, and the defendants had the right

to “request” that any crew member be re-assigned, replaced or terminated. As to the most significant factor, it is not clear which entity had the right to “direct[s] the manner, details, and ultimate result of the employee's work” (*Schramm v Cold Spring Harbor Lab., supra.*)

While the defendants’ regular employees may not have been present at the time of the accident, according to the Hass affidavit, does not establish that the pilot was not a special employee. Instead, it must still be shown who had the right to direct his work.

Accordingly, it is

ORDERED that the motion is granted only to the extent of dismissing the action as to Big Dog based on the stipulation of the parties for failure to effectuate service, and the motion is otherwise denied, and it is

ORDERED that the Clerk may enter judgment dismissing the complaint as to Big Dog Aviation LLC.

This is the Decision and Order of the Court.

Dated: 3/10/22


Alison Tuitt, J.S.C.