

**Ibrahim v City of New York**

2023 NY Slip Op 32380(U)

July 13, 2023

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 12

*Justice*

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YUSUF IBRAHIM,

Plaintiff,

INDEX NO. 159381/2021

MOTION DATE 03/07/2023

MOTION SEQ. NO. 003

- 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

Defendant.

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138

were read on this motion to/for REARGUMENT/RECONSIDERATION

Liro Program and Construction Management PE d/b/a the Liro Group (Liro) moves to reargue this Court's December 15, 2022 decision and order (prior decision) denying its motion to dismiss pursuant to CPLR 3211 (a) (1) and (7).

Liro argues that the Court erred in finding that plaintiff's direct claims against Liro are barred because it is undisputed that plaintiff received worker's compensation benefits from a policy issued to Liro. Plaintiff does not oppose the motion.

Co-defendants Steven Dubner Landscaping Inc., the City of New York, the City of New York s/h/a New York City Department of Parks and Recreations, and Anchormen Construction LLC's (co-defendants) partially oppose the motion. Specifically, co-defendants maintain that if the Court grants re-argument, their claims should be converted to third-party claims. Co-defendants argue that plaintiff's receipt of worker's compensation benefits does not bar their

claims for indemnification and contribution because plaintiff alleged that he has suffered a “grave injury” pursuant to Workers Compensation Law (WCL) § 11.

A motion for leave to reargue “shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion.” CPLR 2221. A motion for leave to reargue is addressed to the sound discretion of the Court and may be granted upon a showing that the Court overlooked or misapprehended the relevant facts or misapplied any controlling principle of law. *See Oparaji v. Yablon*, 159 AD3d 539 (1st Dept 2018).

Pursuant to WCL §11, benefits under the workers compensation statute are “[t]he sole and exclusive remedy of an employee against his employer for injuries [sustained] in the course of employment” (*Weiner v City of New York*, 19 NY3d 852 [2012] [internal citations and quotations omitted]) with certain limited exceptions (*see e.g., Martinez v Canteen Vending Services Roux Fine Dining Chartwheel*, 18 AD3d 274, 275 [1st Dept 2005] [plaintiff can bring a lawsuit against employer for common-law negligence for intentional tort perpetrated by employer or at employer's direction]). Accordingly, an employee forfeits his or her right to maintain a common law tort action against his or her employer after accepting workers' compensation benefits.

However, WCL §11 also provides that:

An employer shall not be liable for contribution or indemnity to any third person based upon liability for injuries sustained by an employee acting within the scope of his or her employment for such employer unless such third person proves through competent medical evidence that such employee has sustained a “grave injury” which shall mean only one or more of the following: death, permanent and total loss of use or amputation of an arm, leg, hand or foot, loss of multiple fingers, loss of multiple toes, paraplegia or quadriplegia, total and permanent blindness, total and permanent deafness, loss of nose, loss of ear, permanent and severe facial disfigurement, loss of an index finger or an acquired injury to the brain caused by an external physical force resulting in permanent total disability. (emphasis added)

Stated otherwise, an employer may be liable to a third party for contribution or indemnity for an employee's injury where the employee has sustained a “grave injury,” as defined by the statute.

Unlike on the original motion to dismiss, no party opposes the argument that plaintiff's direct claims against Liro, given its status as plaintiff's employer. Plaintiff does not now dispute that he received workers compensation benefits from a policy issued to Liro. Thus, plaintiff is barred from seeking further recovery from Liro in this negligence action, and the plaintiff's direct claims against Liro must be dismissed.

Moreover, no defendant objects to amending the caption and converting the cross-claims for contractual indemnity and breach of contract to third party claims. As noted in the prior decision, third parties may seek indemnification or contribution from employers where, the employee alleges a "grave injury," such a brain injury resulting in permanent total disability, as here. *See* WCL §11.

Although plaintiff's direct claims against Liro are dismissed, the co-defendants' may still maintain its claims against Liro for indemnification, contribution, breach of contract, and failure to procure insurance. Therefore, the co-defendants' cross claims are deemed converted to third-party claims. *See Jones v New York City Hous. Auth.*, 293 AD2d 371, 372 (1st Dept 2002), *citing Wayburn v Madison Land Ltd. Partnership*, 282 AD2d 301, 305 (1st Dept 2001).

Accordingly, it is

ORDERED that the motion of Liro Program and Construction Management PE d/b/a the Liro Group for leave to reargue its motion to dismiss is granted; and it is further

ORDERED that, upon re-argument, the Court vacates its prior order, dated December 15, 2022, and the motion of Liro Program and Construction Management PE d/b/a the Liro Group to dismiss the complaint herein is granted and the complaint is dismissed in as against said defendant; and it is further

ORDERED that all cross-claims against Liro Program and Construction Management PE d/b/a the Liro Group are converted to third-party claims, and it is further

ORDERED that the action shall bear the following caption:

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YUSUF IBRAHIM,

Plaintiff,

-against-

THE CITY OF NEW YORK, NEW YORK CITY  
DEPARTMENT OF PARKS AND RECREATIONS,  
STEVEN DUBNER LANDSCAPING INC,  
ANCHORMEN CONSTRUCTION LLC, ABC  
CORPORATION 1-10, JOHN DOE 1-10.

Defendants.

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THE CITY OF NEW YORK, NEW YORK CITY  
DEPARTMENT OF PARKS AND RECREATIONS,  
STEVEN DUBNER LANDSCAPING INC,  
ANCHORMEN CONSTRUCTION LLC,

Third-party plaintiff,

-against-

,LIRO PROGRAM AND CONSTRUCTION  
MANAGEMENT PE P.C. D/B/A THE LIRO GROUP.

Third-party defendants.


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And it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the parties being added pursuant hereto; and it is further

ORDERED that such service upon the County Clerk 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](http://www.nycourts.gov/supctmanh))).

The foregoing constitutes the decision and order of the Court.

  
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LESLIE A. STROTH, J.S.C.

7/13/2023  
DATE

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