

Petrov v Monadnock Constr., Inc.

2023 NY Slip Op 33699(U)

October 10, 2023

Supreme Court, Kings County

Docket Number: Index No. 525924/2021

Judge: Devin P. Cohen

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**Supreme Court of the State of New York
County of Kings**

Index Number 525924/2021
Seqs. 002

Part LL1

DECISION/ORDER

GERMAN PETROV,

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

Plaintiff,

Papers Numbered

against

Notice of Motion and Affidavits Annexed	<u>1</u>
Order to Show Cause and Affidavits Annexed.	<u>2</u>
Answering Affidavits	<u>3</u>
Replying Affidavits	<u>3</u>
Exhibits	<u> </u>
Other	<u> </u>

MONADNOCK CONSTRUCTION, INC., THE DOMAIN COMPANIES LLC, 445 GERARD OWNER LLC, AND 417 GERARD AVENUE HOLDINGS LLC,

Defendants.

Upon the foregoing papers, defendant’s motion for summary judgment (Seq. 002) is determined as follows:

Procedural History and Factual Background

This action arises from injuries that the plaintiff claims to have sustained when he fell on an exterior set of stairs at a worksite on August 30, 2021 (Bill of Particulars at ¶¶ 4, 6–7). Plaintiff was employed by non-party M. Early Plumbing and Heating Corp at the time of the occurrence (Petrov C-3 Form). Plaintiff testified during his Workers’ Compensation hearing that he tripped on debris at the site and fell (Hearing Transcript at 8).

Plaintiff filed Workers’ Compensation claim on September 7, 2021. On March 29, 2022, Workers’ Compensation Administrative Judge Meira Mednik disallowed the plaintiff’s claim, finding that the plaintiff’s testimony “was not deemed credible” as to the mechanism of injury (Decision of Mednik, J., at 1). Plaintiff then appealed the decision to the Workers’ Compensation Board (WCB) on April 25, 2022. The WCB affirmed Judge Mednik’s decision

on August 29, 2022. The plaintiff did not appeal the WCB determination and the time to do so has expired.

Analysis

On a motion for summary judgment, the moving party bears the initial burden of making a prima facie showing that there are no triable issues of material fact (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003]). Once a prima facie showing has been established, the burden shifts to the non-moving party to rebut the movant's showing such that a trial of the action is required (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).

In the instant action, defendants argue that the plaintiff is collaterally estopped from pursuing his claims in this action by the WCB determination (*Lennon v. 56th & Park [NY] Owner, LLC*, 199 A.D.3d 64 [2d Dep't 2021]). New York courts have historically recognized the applicability of *res judicata* and collateral estoppel to the quasi-judicial determinations of administrative agencies (*see DeSimone v S. African Mar. Corp., S.A.*, 82 AD2d 820 [2d Dept 1981]). However, on December 30, 2022, the New York Legislature promulgated NY Workers Compensation Law (WCL) § 118-a, the "Justice for Injured Workers Act" (JIWA). WCL § 118-a precludes the use of determinations by the WCB for the purpose of collateral estoppel, except as to the issue of an employer-employee relationship.

The issue before the court, therefore, is whether WCL § 118-a was intended by the Legislature to be solely prospective in scope or to have retroactive applicability. Statutes are presumed to be prospective in scope unless the Legislature clearly intended retroactivity to apply (*Majewski v. Broadalbin-Perth Cent. Sch. Dist.*, 91 N.Y.2d 577, 581 [1998]). Where the Legislature's intent to promulgate a statute that was remedial in nature is clear and retroactive application would not result in unfairness or impair substantive rights, retroactive application

may be appropriate (*Posillico v Southold Town Zoning Bd. of Appeals*, 219 AD3d 885 [2d Dept 2023]).

Plaintiff contends that the “Justification” section of JIWA states that the statute is meant to correct court determinations that have estopped plaintiffs from bringing claims based on administrative determinations. Factors to consider when determining retroactivity are “whether the statute was designed to rewrite an unintended judicial interpretation; and whether the enactment itself reaffirms a legislative judgment about what the law in question should be” (*Marrero v Crystal Nails*, 114 AD3d 101, 112 [2d Dept 2013]).

In that section, the Legislature explains that, in 2013, the Court of Appeals held that allowing WCB determinations to collaterally estop third-party actions denied plaintiffs their right to a fair trial (citing *Augui v Seven Thirty One Ltd. Partnership* (22 NY3d 246, 255–57 [2013])). The Legislature deemed WCL § 118-a necessary because New York courts after *Augui* continued to improperly grant defendants efforts to collaterally estop plaintiffs based on WCB determinations. In light of the Legislature’s clear intent to preclude a practice it states has been improper since 2013, it is clear that the Legislature intended JIWA to be remedial in nature—an indicia of retroactivity. Additionally, it seems clear that the application of JIWA to prevent collateral estoppel does not increase the defendants’ ultimate liability—rather, it allows plaintiff an opportunity to exercise his right to a fair trial.


Accordingly, JIWA applies and the defendant’s motion for summary judgment, predicated on collateral estoppel, is denied without prejudice to a new motion after discovery has concluded.

Conclusion

Defendant's motion for summary judgment (Seq. 002) is denied.

This constitutes the decision of the court.

October 10, 2023
DATE


DEVIN P. COHEN
Justice of the Supreme Court

[Order denying defendants' motion for summary judgment, Seq. 002, in the action *Petrov v Monadnock Construction, Inc., et al.*, Index No. 525924/2021.]