

**Valdez v LIC Site B-1 Owner, LLC**

2023 NY Slip Op 34999(U)

February 17, 2023

Supreme Court, Bronx County

Docket Number: Index No. 25420/2020E

Judge: Paul L. Alpert

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: PART 26

-----X

Eliezer Moises Valdez

Index No. 25420/2020E

and

Hon. Paul L. Alpert

LIC Site B-1 Owner, LLC., and New Line Structures and Development, LLC.,

Justice Supreme Court

-----X

The following papers numbered 1 to \_\_\_\_\_ were read on this motion ( Seq. No. 1 )  
for \_\_\_\_\_ noticed on \_\_\_\_\_.

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	No(s).
Answering Affidavit and Exhibits	No(s).
Replying Affidavit and Exhibits	No(s).

The defendants' motion is denied in accordance with the annexed decision and order of the court.

Motion is Respectfully Referred to Justice: \_\_\_\_\_  
Dated: \_\_\_\_\_

Dated: 2/17/23

Hon.   
HON. PAUL ALPERT J.S.C.

1. CHECK ONE.....  CASE DISPOSED IN ITS ENTIRETY  CASE STILL ACTIVE
2. MOTION IS.....  GRANTED  DENIED  GRANTED IN PART  OTHER
3. CHECK IF APPROPRIATE.....  SETTLE ORDER  SUBMIT ORDER  SCHEDULE APPEARANCE
- FIDUCIARY APPOINTMENT  REFEREE APPOINTMENT



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: PART 26

-----X  
Eliezer Moises Valdez,

Index:25420/2020E

Plaintiff,

-against-

**DECISION/ORDER**

LIC Site B-1 Owner, LLC and New Line  
Structures and Development, LLC.,

Defendants.

-----X

Recitation, as required by CPLR §2219(a), of the papers considered in the review of the order to show cause as indicated below:

<b>Papers</b>	<b>Numbered</b>
<b>Notice of Motion &amp; Affirmation in Support &amp; Exhibits.....</b>	<b>1</b>
<b>Affirmation in Opposition &amp; Exhibits.....</b>	<b>2</b>
<b>Reply Affirmation.....</b>	<b>3</b>

*Upon the foregoing cited papers the Decision/Order on this motion is decided as follows:*

The plaintiff commenced this labor law action for injuries he allegedly sustained on July 7, 2018 at the premises located at 28-07 Jackson Avenue, Long Island City, NY 11101 while he was employed with Monolithic Contracting, Inc. The plaintiff claims that he injured his left ankle. The defendants move to amend their verified answer to assert the affirmative defense of collateral estoppel. They also move to dismiss the complaint pursuant to CPLR § 3211 arguing that the plaintiff previously litigated this issue before the Workers Compensation Board which held that the injuries to the left ankle, left knee, left hip and back were unsupported by competent evidence. The plaintiff does not oppose the motion to amend the answer to include the affirmative defense of collateral estoppel. However he does oppose the motion to dismiss based

on collateral estoppel and cross-moves for a stay of the proceedings in the interest of justice because there is a bill pending in the New York State Senate that would bar courts from giving collateral estoppel effect to decisions of the Workers' Compensation Board.

Governor Kathy Hochul signed New York State Senate Bill S9149 on December 30, 2022. This bill is also known as the Justice for Injured Workers Act. The bill adds a new section 118-a to the Workers Compensation Law that would bar a court or other forum from granting preclusive or collateral estoppel effect to decisions by the Workers Compensation Board in any other action or proceeding. Section 118-a provides " With respect to an action for a workers' compensation claim permissible under this chapter, no finding or decision by the worker's compensation board, judge or other arbiter shall be given collateral estoppel effect in any other action or proceeding arising out of the same occurrence, other than the determination of the existence of an employer-employee relationship." ( 2021 NY Senate Bill S9149 ).

Under the "Justification" section in the bill, it indicates that

**"in 2013 the New York Court of Appeals held that the collateral estoppel doctrine was being used to deny an injured worker his right to a fair trial. This ruling, in *Auqui v. Seven Thirty One Ltd. Partnership*, 22 NY3d 246 (2013), reinforced the concept that the party responsible for causing an injured worker's injuries remains obligated to pay for lost wages and medical expenses. Unfortunately, *Auqui* left open the possibility that courts could apply the collateral estoppel doctrine to a prior Workers' Compensation decision and deny injured workers the right to have a jury rule on their claims. This legislation is needed to ensure that findings from cursory Worker's Compensation Board hearings do not prevent workers from exercising their constitutional right to a jury trial."** (2021 NY Senate Bill S9149).

Accordingly, in light of the recently passed legislation, the defendants' motion to amend its answer to assert the affirmative defense of collateral estoppel is denied. The plaintiff's cross-

motion is denied as moot.

Based on the foregoing, it is hereby:

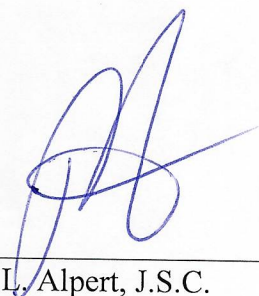
ORDERED AND ADJUDGED, that the defendants' motion is denied in its entirety, and it is further,

ORDERED AND ADJUDGE, that the plaintiff's cross-motion is denied as moot, and it is further,

ORDERED AND ADJUDGED, that the plaintiff shall serve a copy of this decision and order upon the defendants within twenty (20) days of notice of entry.

This constitutes the Decision and Order of the court.

Dated: February 17, 2023



---

Hon. Paul L. Alpert, J.S.C.