SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH **PART** 12

Justice

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MICHAEL MICCIULLI

Plaintiff,

- v -

PLAZA TOWER, LLC,

Defendant.

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INDEX NO.	153087/2020
MOTION DATE	08/01/2023
MOTION SEQ. NO.	002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35

were read on this motion to/for JUDGMENT - SUMMARY.

Plaintiff Michael Micciulli (plaintiff) commenced this action to recover damages for personal injuries he allegedly sustained when he fell from a ladder while working at 885 Second Avenue, New York, New York (the premises), on August 8, 2018. The premises is owned by defendant Plaza Tower, LLC, (Plaza).

At the time of the accident, plaintiff was working as an operating engineer and full-time employee of Sixone Building Services, LLC (Sixone). Sixone was the affiliated entity responsible for the employment of all union employees working at the subject building. Plaintiff was in the course of his employment when he was allegedly injured, and he received Workers' Compensation benefits after his accident. Plaintiff filed a Summons and Complaint against Plaza pleading causes of action for common law negligence, New York State Labor Law § 200, New York State Labor Law § 240 (1), and New York State Labor Law § 241 (6). Plaza now moves for summary judgment pursuant to CPLR 3212 and Workers' Compensation Law §§ 11 and 29(6), dismissing plaintiff's complaint on the grounds that, as Plaza alleges it is an alter-ego of plaintiff's employer, Sixone, the action is barred by the exclusivity provisions of the Workers' Compensation Law.

I. Analysis

It is well-established that the "function of summary judgment is issue finding, not issue determination." *Assaf v Ropog Cab Corp.*, 153 AD2d 520 (1st Dept 1989), quoting *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 (1957). As such, the proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law. *See Alvarez v Prospect Hospital*, 68 NY2d 320 (1986); *Winegrad v New York University Medical Center*, 64 NY2d 851 (1985). The party opposing a motion for summary judgment is entitled to all favorable inferences drawn from the evidence submitted. *See Dauman Displays, Inc. v Masturzo*, 168 AD2d 204 (1st Dept 1990), citing *Assaf v Ropog Cab Corp.*, 153 AD2d 520, 521 (1st Dept 1989).

It is also well-settled that the sole and exclusive remedy of an employee against his employer for injuries sustained in the course of employment is to receive benefits under the Workers' Compensation Law. *See* Workers' Compensation Law §§ 11, 29(6); *see Gonzales v Armac Ind.*, Ltd., 81 NY2d 1 (1993); *Lane v Fisher Park Lane Co.*, 276 AD2d 136 (1st Dept 2000). The defense afforded to employers by the exclusivity provisions of the Workers' Compensation Law extends to suits brought against an entity, which is found to be the "alter ego" of the plaintiff's employee. *Hageman v B & G Bldg. Servs.*, LLC, 33 AD3d 860 (2d Dept 2006); *Ortega v Noxxen Realty Corp.*, 26 AD3d 361 (2d Dept 2006); *Thompson v Bernard G. Janowitz Constr. Corp.*, 301 AD2d 588 (2d Dept 2003).

A corporation is the "alter ego" of another where the corporations "function as one company." In that case, an employee of either corporation receiving Workers' Compensation benefits is barred from bringing a tort claim against the other corporation pursuant to Workers' Compensation Law. *See Hernandez v Sanchez*, 40 AD3d 446 (1st Dept 2007); *Paulino v Lifecare*

Transp., 57 AD3d 319 (1st Dept 2008). Whether an entity is considered an "alter ego" turns upon factors such as whether the entities share a common purpose, have integrated or commingled assets, share a tax return, are treated by the owners as a single entity, share the same insurance policies, and share managers or are owned by the same person. *See Buchwald v 1307 Porterville Rd.*, LLC, 160 AD3d 1464 (4th Dept 2018). Additional factors include whether the alter ego has any employees; if the alter ego leases property pursuant to a written lease or pays rent to the plaintiff's employer; and if one entity pays the bills for the other, even if those bills are for the benefit of the nonpaying entity. *Id.*; *see also Crespo v Pucciarelli*, 21 AD3d 1048 (2d Dept 2005).

Plaza argues that it is an alter ego of Sixone because while Plaza is the owner, Sixone supplied and managed the employees who worked at Plaza's property. Additionally, it asserts that both entities have common management, share a single general liability insurance policy, share a Workers' Compensation policy, and share a single human resources department. In support of its motion for summary judgement, Plaza submits the affidavit of Joseph Zarrella, Managing Director of Finance and Accounting for RMS Group, LLC, and its affiliates. In his sworn statement, Mr. Zarrella states, in relevant part:

> RMS Group, LLC is part of a larger group of affiliated entities which are engaged in the investment in and ownership, and management of commercial properties throughout the United States. The numerous affiliated companies included in my duties at RMS Group, LLC, include, among many others, RMS Group, LLC, Ruben Management Services, LLC, *Plaza Tower, LLC*, and *Sixone Building Services, LLC*, and Lawrence Ruben Company. RMS Group, LLC, including its wholly owned subsidiary Sixone Building Services, LLC which was plaintiff's employer at the time of his alleged accident, acts on behalf of the various affiliated entities as pay agent for its and their respective employees. *See* NYSCEF doc. no. 22. (emphasis added).

Furthermore, he states:

> Plaza Tower, LLC was the single-purpose entity which owned the property located at One Dag Hammarskjold Plaza, 885 2nd Avenue, New York, New York, on August 8, 2018. Sixone Building Services, LLC, a wholly-owned subsidiary of RMS Group. LLC, was the affiliated entity responsible for the employment of all union employees working at One Dag Hammarskjold Plaza, 885 2nd Avenue, New York, New York, on August 8, 2018. *Id.*

Mr. Zarrella also relays:

> In addition to the various other services provided by RMS Group, LLC to its affiliates, including, without limitation, Plaza Tower, LLC and Sixone Building Services, LLC, RMS Group, LLC performs all human resources functions for both Plaza Tower, LLC and Sixone Building Services, LLC. Plaza Tower, LLC, Sixone Building Services, LLC, RMS Group, LLC, and Ruben Management Services, LLC share the same corporate officers...Plaza Tower, LLC, Ruben Management Services, LLC, RMS Group, LLC, and Sixone Building Services, LLC share the same corporate offices and principal place of business at 600 Madison Avenue, New York, New York 10022. Plaza Tower, LLC, Ruben Management Services, LLC, RMS Group, LLC, and Sixone Building Services, LLC are all covered by the same general liability insurance policy and the same Workers' Compensation insurance policy. *Id.*

Notably, since his alleged accident on August 8, 2018, plaintiff has been receiving Workers' Compensation benefits through the Workers' Compensation insurance policy. *Id.*

In opposition, plaintiff argues that Plaza's motion for summary judgement should be denied because it failed to raise the Workers' Compensation statute as an affirmative defense in its answer and Plaza has not put forth sufficient evidence that it is an alter-ego of Sixone.

As an initial matter, in its answer, Plaza does plead as its 12th affirmative defense that, "plaintiff was in the scope of employment at the time of the incident and received certain benefits under Workers Compensation laws." *See* NYSCEF doc. no. 24, at 4. Thus, Plaza did not waive the protection of the Workers' Compensation Law.

With respect to Plaza's assertion that it is an alter-ego of Sixone, plaintiff argues that issues of fact exist. Plaintiff submits the contract between Plaza and Ruben Management Services, LLC and the contract between Ruben Management Services, LLC and Lawrence Ruben Company, Inc. to disprove Plaza's alter-ego argument. Plaintiff points to language within the contracts that indicates an "Independent Contractor Relationship" between entities, asserting that this contractual relationship inherently precludes an alter-ego relationship.

However, the Court considers a variety of factors when evaluating whether an entity is an alter-ego of another entity, or corporation, as here. The fact that the contract between Plaza and its management company name the company as an independent contractor, and sets forth separate roles for both Plaza and the management company, does not alone bar the entities from acting as

one single integrated entity for the purposes of the Workers' Compensation. Here, Plaza owned the subject premises and plaintiff's employer, Sixone, was responsible for the employment of all of its union employees. Moreover, as stated previously, both Plaza and Sixone were directed by common management, share a single general liability insurance policy, share a Workers' Compensation policy, and share a single human resources department. Plaza owned the building where the incident occurred and had no employees. Sixone and its affiliated companies were responsible for staffing the building and for the operation and maintenance of the building. In fact, Sixone was formed to provide the employees who would operate and maintain the premises. Notably, Plaza and Sixone also share corporate officers, and corporate offices. Therefore, when reviewing the factors together, it is clear Plaza is Sixone's alter-ego for the purposes of Workers' Compensation Law. *See Buchwald v 1307 Porterville Rd.*, LLC, 160 AD3d 1464 (4th Dept 2018); *see also Crespo v Pucciarelli*, 21 AD3d 1048 (2d Dept 2005).

As plaintiff was an employee of Sixone and doing work at Plaza in the course of his employment at the time of his accident, his sole and exclusive remedy is Workers' Compensation benefits. *See* Workers' Compensation Law §§ 11, 29(6); *see Gonzales v Armac Ind.*, Ltd., 81 NY2d 1 (1993); *Lane v Fisher Park Lane Co.*, 276 AD2d 136 (1st Dept 2000). Plaintiff is barred from bringing a personal injury lawsuit against his employer, Sixone, and as Plaza is Sixone's alter-ego, plaintiff is also barred from bringing a personal injury lawsuit against Plaza. *See Hernandez v Sanchez*, 40 AD3d 446 (1st Dept 2007); *Paulino v Lifecare Transp.*, 57 AD3d 319 (1st Dept 2008). Plaintiff has raised no triable issues of material fact to defeat Plaza's prima facie case. Thus, Plaza is entitled to summary judgment as a matter of law.

II. Conclusion

Accordingly, it is hereby

ORDERED that defendant Plaza Tower, LLC's motion for summary judgment is granted, and the complaint is dismissed with costs and disbursements to plaintiff as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

The foregoing constitutes the Order and Decision of the Court.

1/10/2024
DATE

LESLIE A. STROTH, J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[X]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE