

ABBOSOV v Bordone Contr. LLC

2024 NY Slip Op 30644(U)

February 29, 2024

Supreme Court, Kings County

Docket Number: Index No. 522981/2018

Judge: Joy F. Campanelli

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 KINGS: IAS Part 6

-----X
ABBOS ABBOSOV and ALBINA ABBOSOV,

Plaintiff,

Index No.: 522981/2018

-against-

DECISION AND ORDER

BORDONE CONTRACTING LLC, SOUTH BAY
ENGINEERING PLLC, WILDFLOWER LTD LLC
and WF INDUSTRIAL I LLC,

Hon. Joy F. Campanelli, J.S.C.

Defendants.

-----X
WILDFLOWER LTD LLC and WF INDUSTRIAL I
LLC,

Third-Party Plaintiffs,

-against-

GSC SERVICE CORPORATION,

Third-Party Defendants,

-----X
BORDONE CONTRACTING LLC,
Second Third-Party Plaintiff,

-against-

GSC SERVICE CORPORATION,

Second Third-Party Defendant.

-----X
The following e-filed papers read herein:

NYSCEF Nos.:

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____	<u>506-521, 535-536</u>
Opposing Affidavits (Affirmations) _____	<u>561-565, 593-604</u>
Affidavits/ Affirmations in Reply _____	<u>647-655</u>
Other Papers: <u>Affidavits/Affirmations in Support</u> _____	_____

Plaintiff moves via order to show cause, (sequence 20), for an order “A. pursuant to CPLR §5015(a)(3), vacating the Court's February 1, 2023 Order, which denied plaintiffs' motion for

summary judgment, based upon the fraud and misconduct of defendant BORDONE CONTRACTING, LLC ("BORDONE") and its counsel; B. pursuant to CPLR §5015(a)(2), vacating the Court's February 1, 2023 Order, which denied plaintiffs' motion for summary judgment based on newly discovered evidence; C. upon said vacatur, granting plaintiffs' motion for summary judgment pursuant to the Labor Law; D. pursuant to CPLR §3126, striking the answer of BORDONE because BORDONE and its counsel have engaged in willful deceitful conduct including the fabrication of evidence, subornation of perjury and falsification of documents as to fall protection on the site, which is the central issue in this case; E. finding that BORDONE's counsel violated §§ 3.1, 3.2, 3.3, and 3.4 of the New York State Unified Court System Rules of Professional Conduct; and, thereafter setting the matter down for a hearing on the imposition of costs, fees and sanctions; F. awarding plaintiff judgment as against BORDONE retroactively to the date January 6, 2023; and G. pursuant to CPLR §2221, renewing plaintiffs' motion for summary judgment based on newly acquired evidence and, upon the grant of renewal, awarding plaintiffs summary judgment against BORDONE."

As a preliminary matter, the parties have informed the Court that Plaintiff has commenced a separate action against BORDONE's counsel alleging attorney fraud and misconduct on the Court. As such, this Court will not address those claims as they will be addressed in the separate action. Consequently, the branch of Plaintiff's order to show cause seeking a finding that BORDONE's counsel violated the NYS Unified Court System Rules of Professional Conduct is denied as moot.

That portion of Plaintiff's order to show cause seeking vacatur of the Judge Landicino's order dated January 26, 2023, and efiled on February 1, 2023, which denied Plaintiff's motion for summary judgment due to fraudulent affidavits submitted to the court is denied. Judge Landicino's

decision was not based on the affidavits of BORDONE and Francesco Mazzurco that Plaintiff now alleges are fraudulent. In fact, Judge Landicino's order clearly states that "plaintiffs have failed to establish their prima facie entitlement to summary judgment on their Labor Law §§ 240(1) and 241(6) claims." Judge Landicino's decision was based on the consideration of three affidavits that Plaintiff had submitted in support of his motion. He found that Mr. Winston Ariza's (hereinafter "Mr. Ariza") affidavit alleging that Plaintiff fell "due to the removal of the roof's membrane which resulted in the roof's instability following rain[...]" was speculative and conclusory. In addition, Judge Landicino found Mr. Dopsaj's affidavit lacked probative value as "he was not at the premises at the time of the accident" but had heard about it from Mr. Serenditsky. Lastly, Judge Landicino found that Mr. Serednitsky's affidavit was "insufficient to establish plaintiffs' entitlement to summary judgment" as he had not witnessed the accident.

Plaintiff's application to renew pursuant to CPLR 2221(e) based on the depositions held and OATH testimony obtained after the February 1, 2023, order is denied. Plaintiff made a premature motion for summary judgment which may provide a reasonable explanation for not having the depositions, but no explanation is provided for not providing or obtaining the OATH testimony on the prior motion. Plaintiff's affirmation in support and memorandum of law simply put forth these documents with no explanation as to how it would change the prior determination or address the concerns of the prior Judge.

With respect to striking of BORDONE's answer, the Court finds that Plaintiff has failed to establish by clear and convincing evidence that BORDONE's conduct is particularly egregious. There is no evidence that the logs disclosed were fabricated or part of a scheme designed to conceal critical matters from the court. While there are inconsistencies in 2021 and 2023 affidavits of BORDONE and Frank Mazzurco, and the testimony of Lisa Bagnoli the Court finds that it does

not warrant dismissal, and that portion of Plaintiff's order to show cause seeking the striking of the answer is denied.

Accordingly, it is

ORDERED that Plaintiff's application to find that BORDONE's counsel violated the New York State Unified Court System Rules of Professional conduct has been rendered moot and, consequently, is DENIED, and it is further

ORDERED that Plaintiff's application to vacate J. Landicino's order dated February 1, 2023, order is DENIED, and it is further

ORDERED that Plaintiff's application to renew J. Landicino's order dated February 1, 2023, order is DENIED, and it is further

ORDERED that plaintiff's application to strike BORDONE's answer is denied.

This constitutes the decision and order of the Court.

Dated: February 29, 2024
Brooklyn, NY



Hon. Joy F. Campanelli, J.S.C.