

Gramarossa v New York State Urban Dev. Corp.

2024 NY Slip Op 32744(U)

August 5, 2024

Supreme Court, New York County

Docket Number: Index No. 158342/2020

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M

Justice

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JOE GRAMAROSSA,

Plaintiff,

- v -

NEW YORK STATE URBAN DEVELOPMENT CORPORATION, EMPIRE STATE DEVELOPMENT CORPORATION, LENDLEASE TURNER, A JOINT VENTURE BETWEEN LENDLEASE (US) CONSTRUCTION LMB, INC AND TURNER CONSTRUCTION COMPANY, LENDLEASE (US) CONSTRUCTION LMB, INC., TURNER CONSTRUCTION COMPANY, NEW YORK CONVENTION CENTER DEVELOPMENT CORPORATION, NEW YORK CONVENTION CENTER OPERATING CORPORATION,

Defendant.

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NEW YORK STATE URBAN DEVELOPMENT CORPORATION, EMPIRE STATE DEVELOPMENT CORPORATION, LENDLEASE TURNER, A JOINT VENTURE BETWEEN LENDLEASE (US) CONSTRUCTION LMB, INC AND TURNER CONSTRUCTION COMPANY, LENDLEASE (US) CONSTRUCTION LMB, INC., TURNER CONSTRUCTION COMPANY, NEW YORK CONVENTION CENTER DEVELOPMENT CORPORATION, NEW YORK CONVENTION CENTER OPERATING CORPORATION

Plaintiff,

-against-

SIRINA FIRE PROTECTION CORP., COMPONENT ASSEMBLY SYSTEMS, INC., LEVEL 5 CONSTRUCTION, INC., BANKER STEEL COMPANY LLC, BEACH ERECTORS, INC.

Defendant.

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COMPONENT ASSEMBLY SYSTEMS, INC.

Plaintiff,

-against-

DECISION + ORDER ON MOTION

Third-Party
Index No. 595686/2021

Second Third-Party
Index No. 595686/2023

CREATIVE CONSTRUCTION SERVICES CORP.

Defendant.

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NEW YORK STATE URBAN DEVELOPMENT CORPORATION, EMPIRE STATE DEVELOPMENT CORPORATION, LENDLEASE TURNER, A JOINT VENTURE BETWEEN LENDLEASE (US) CONSTRUCTION LMB, INC AND TURNER CONSTRUCTION COMPANY, LENDLEASE (US) CONSTRUCTION LMB, INC., TURNER CONSTRUCTION COMPANY, NEW YORK CONVENTION CENTER DEVELOPMENT CORPORATION, NEW YORK CONVENTION CENTER OPERATING CORPORATION

Third Third-Party
Index No. 596125/2023

Plaintiff,

-against-

CREATIVE CONSTRUCTION SERVICES CORP.

Defendant.

-----X

COMPONENT ASSEMBLY SYSTEMS, INC.

Fourth Third-Party
Index No. 595279/2024

Plaintiff,

-against-

JD TRADITIONAL INDUSTRIES INC.

Defendant.

-----X

NEW YORK STATE URBAN DEVELOPMENT CORPORATION, EMPIRE STATE DEVELOPMENT CORPORATION, LENDLEASE TURNER, A JOINT VENTURE BETWEEN LENDLEASE (US) CONSTRUCTION LMB, INC AND TURNER CONSTRUCTION COMPANY, LENDLEASE (US) CONSTRUCTION LMB, INC., TURNER CONSTRUCTION COMPANY, NEW YORK CONVENTION CENTER DEVELOPMENT CORPORATION, NEW YORK CONVENTION CENTER OPERATING CORPORATION

Fifth Third-Party
Index No. 595442/2024

Plaintiff,

-against-

JD TRADITIONAL INDUSTRIES, INC.

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 131, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155

were read on this motion to/for

DISMISS

Upon the foregoing documents, and after oral argument, which took place on June 4, 2024, where Anthony Broccolo, Esq. appeared for Third-Party Defendant Beach Erectors, Inc. (“Beach Erectors”) in support of its motion for summary judgment, and the following parties appeared in opposition: Tracy L. Frankel, Esq. appeared for the Defendants/Third-Party Plaintiffs, John F. Gillespie, Esq. appeared for Third-Party Defendant Banker Steel Company LLC, Austin Hanover, Esq. appeared for Third-Party Defendant Component Assembly Systems Inc., Chelsea Karen, Esq. appeared for Third-Party Defendant Sirina Fire Protection Corp. (“Sirina”), Ivanna D. Tellez, Esq. appeared for Third-Party Defendant Level 5 Construction, Inc. and George Caran, Esq. appeared for Second Third-Party Defendant Creative Construction Services Corp. Based on the papers and oral argument, Beach Erectors’ motion for summary judgment seeking dismissal of the Third-Party Complaint asserted against it is denied without prejudice, with leave to renew after further fact depositions are complete.

This action arises out of alleged personal injuries sustained by Plaintiff Joe Gramarossa (“Plaintiff”) on February 18, 2020 at 655 West 34th Street, New York, New York (the “Worksite”). Plaintiff was employed by Third-Party Defendant Sirina, who was conducting fire protection work as part of the Jacob Javits Center Expansion Project. Due to the numerous third-party actions, discovery is not yet complete, and the note of issue has not been filed.

Nonetheless, Beach Erectors moved for summary judgment seeking dismissal of the Third-Party Complaint and all cross-claims asserted against it. Beach Erectors claims that it did not cause or contribute to the condition which caused Plaintiff’s accident and therefore there can be no claim for contribution, common law indemnity or contractual indemnity claims against it.

Plaintiff was deposed and testified he was carrying a pipe when he slipped on a white substance (NYSCEF Doc. 113 at 45:2-16). Plaintiff testified he was told by the general contractor after he fell that the white substance was Hilti acoustic liquid (*id.* at 65). Plaintiff stated the only reason he believed the white liquid was Hilti acoustic liquid was due to the conversation he had with the general contractor (*id.* at 222-23).

Based on Plaintiff's wavering deposition testimony, and the fact that Beach Erectors has not produced a witness for a deposition, the Defendants/Third-Party Plaintiffs oppose Beach Erectors' motion. These parties argue that discovery is not complete and the party who created the condition and the substance on which Plaintiff fell has yet to be affirmatively identified by anyone with personal knowledge of the incident. Therefore, they argue summary judgment is premature. Third-Party Defendants Banker Steel Company LLC, Sirina Fire Protection Corp., Level 5 Construction, Inc., and Component Assembly Systems, Inc. all oppose Beach Erectors' motion on the same grounds. Beach Erectors has not submitted any reply.

The Court agrees with the numerous opposing parties and finds Beach Erectors' motion for summary judgment is premature, especially as all parties admit there are numerous outstanding depositions and discovery remains ongoing. In fact intensive Labor Law cases such as this, where there are numerous trades who may have played a role in creating a dangerous condition, summary judgment is premature where the moving party has not produced a representative to be deposed and numerous other parties have also not yet been deposed (*Estate of Osorio v J & P Watson, Inc.*, 224 AD3d 550, 551 [1st Dept 2024]; *Pineda v 525 Sma Owner LLC*, 216 AD3d 475, 276 [1st Dept 2023]; *Lyons v New York City Economic Dev. Corp.*, 182 AD3d 499, 499-500 [1st Dept 2020]; *Marabyan v 511 W 179 Realty Corp.*, 165 AD3d 581 [1st Dept 2019]).

Accordingly, it is hereby,

ORDERED that Third-Party Defendant Beach Erectors, Inc.’s (“Beach Erectors”) motion for summary judgment seeking dismissal of the Third-Party Complaint asserted against it is denied without prejudice, with leave to renew after further fact depositions are complete; and it is further

ORDERED that counsel shall comply with the deposition deadlines set forth in the compliance conference order dated June 5, 2024 (NYSCEF Doc. 198) and shall contact this Court via e-mail should any issues arise with compliance with those Court Ordered deadlines; and it is further

ORDERED that within ten days of entry, counsel for Defendants/Third-Party Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

8/5/2024
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE