

Jones v Schindler El. Corp.

2024 NY Slip Op 33598(U)

September 17, 2024

Supreme Court, Kings County

Docket Number: Index No. 506604/2024

Judge: Rupert V. Barry

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This opinion is uncorrected and not selected for official publication.

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Statute of Limitations

Under CPLR 3211(a)(5), the movant must establish, *prima facie*, that the statute of limitations has expired (*Goodman v Skanska USA Civ., Inc.*, 169 AD3d 1010, 1011 [2d Dept 2019]). CPLR 214(5) provides that an action to recover damages for personal injuries must be commenced within three years. Post the Covid-19 era, a court must also consider the toll, due to the global pandemic, enacted by then Governor Cuomo. That toll was for 228 days beginning on March 20, 2020, until November 3, 2020 (*Ruiz v Sanchez*, 219 AD3d 1363 [2d Dept 2023]).

Here, Plaintiff filed for Chapter 7 bankruptcy on May 30, 2019. After filing for bankruptcy, Plaintiff commenced her action for damages against Defendant Schindler on June 4, 2019 (Index No.: 512396/2019). Next, Plaintiff commenced another action for damages against Defendant Freight Tech on February 10, 2022 (Index No.: 504227/2022). The two actions were consolidated on August 4, 2022, into Index No.: 512936/2019.

On July 27, 2023, the bankruptcy judge¹ issued an order reappointing Lori Lapin Jones as Chapter 7 Trustee. That order also allowed Plaintiff to amend her bankruptcy schedules to list and exempt pre-petition assets. Plaintiff amended her bankruptcy schedule and listed, for exemption, the personal injury claim reflected in her Supreme Court action. Thereafter, Defendants moved to dismiss the Supreme Court action, arguing Plaintiff's lack of standing because Plaintiff could not sue in her individual capacity in that she was in the midst of a bankruptcy proceeding. That motion was granted, without prejudice on November 2, 2023.

After the dismissal, the Chapter 7 Bankruptcy Trustee Lori Lapin Jones commenced the instant action on March 6, 2024. Defendants moved to dismiss, arguing, amongst other things, that this action was untimely and thereby barred by the statute of limitations. Defendants stated in their affirmations in support that Plaintiff is not entitled to the savings provisions of CPLR 205 (a), which states:

If an action is timely commenced and is terminated in any other manner than by a voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, a dismissal of the complaint for neglect to prosecute the action, or a final judgment upon the merits, the

¹ Hon. Elizabeth S. Stong, United States Bankruptcy Judge

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plaintiff, or, if the plaintiff dies, and the cause of action survives, his or her executor or administrator, may commence a new action upon the same transaction or occurrence or series of transactions or occurrences within six months after the termination provided that the new action would have been timely commenced at the time of commencement of the prior action and that service upon defendant is effected within such six-month period. Where a dismissal is one for neglect to prosecute the action made pursuant to rule thirty-two hundred sixteen of this chapter or otherwise, the judge shall set forth on the record the specific conduct constituting the neglect, which conduct shall demonstrate a general pattern of delay in proceeding with the litigation.

This Court finds that Plaintiff timely brought this action within the six-month timeframe as required by CPLR 205(a), including the statutory toll of 228 days. Additionally, the previous action was dismissed without prejudice due to Plaintiff inability to bring this action on her own behalf. The Chapter 7 Bankruptcy Trustee, however, is permitted to bring this action on behalf of Plaintiff (*see Goodman v Skanska, USA Civ., Inc.*, 169 AD3d 1010, 1012 [2d Dept 2019]). Therefore, for the aforementioned reasons, the statute of limitations branch of Defendants' motion is denied.

Judicial Estoppel

“The doctrine of judicial estoppel precludes a party from taking a position in one legal proceeding which is contrary to that which it took in a prior proceeding, simply because its interest have [sic] changed” (*Moran Enters., Inc v Hurst* 160 AD3d 638, 639 [2d Dept 2018]). Judicial estoppel may prevent a person from pursuing a case which they did not previously mention in their bankruptcy filing (*id*). However, there must be a final determination from the bankruptcy proceeding for judicial estoppel to apply (*Flanders v E.W. Howell Co.*, 193 AD3d 822, 823 [2d Dept 2021]). Furthermore, “there must be a ‘final determination in the bankruptcy proceeding endorsing the party’s inconsistent position’” (*id* at 823).

In this case, Plaintiff’s initial bankruptcy filing on May 30, 2019, did not include her personal injury case. Plaintiff later moved to reopen her bankruptcy proceeding and amend her schedules to list and exempt her personal injury case. However, that personal injury case was later dismissed, without prejudice, due to Plaintiff’s lack of capacity to sue on her own behalf. Therefore, the issue remaining to be decided is whether there was a final determination in the bankruptcy proceeding which would invoke the doctrine of judicial estoppel, and bar Plaintiff from bringing the instant action.

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This Court finds that Plaintiff is not barred from bringing the instant action. Although judicial estoppel may bar a party from pursuing claims not previously listed, there must be a final determination from, in this case, the bankruptcy court (*Goodman v Skanska USA Civ., Inc.*, 169 AD3d 1010,1013 [2019]). A reopening of the bankruptcy proceeding nullifies “the final determination upon which. . . judicial estoppel could be predicated” (*id.*). Since Plaintiff was permitted to reopen her bankruptcy case to amend the schedule to include her personal injury action, this branch of Defendants’ motion is denied.

Failure to State a Claim

A defendant can move to dismiss pursuant to CPLR 3211(a)(1) provided that their basis is supported by documentary evidence (*Sokol v Leader*, 74 AD3d 1180 [2010]). “Initially, the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismiss will fail” (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]). Here, Defendants asserts that Plaintiffs claims are refuted by documentary evidence because when filing for bankruptcy, she failed to include her personal injury action in her schedule of assets. When reviewing a motion to dismiss under CPLR 3211(a)(1), courts are permitted to review documentary evidence. However, when documentary evidence is considered, the standard is whether there is a cause of action, not whether one has been stated. Additionally, absent proof that a material fact is not a fact at all, and there is no dispute as to that fact, dismissal should be denied (*id.*).

This Court finds that Plaintiff has a cause of action, and it cannot be said that no significant dispute exists as to those material facts stated by Plaintiff. Therefore, this branch of Defendants’ motion to dismiss is also denied.

Capacity to Sue

In seeking to dismiss the instant action pursuant to CPLR 3211(a)(3), Defendants must support their assertion that Plaintiff lacked the legal capacity to bring this action. As previously stated, this Court finds that Plaintiff’s Chapter 7 Bankruptcy Trustee properly brought this action and is not barred by the doctrine of judicial estoppel. Thus, this branch of Defendants’ motion is denied. Accordingly, it is

ORDERED, that Defendants SCHINDLER ELEVATOR CORPORATION’s and

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FREIGHT TECH, LLC's motions to dismiss are **DENIED in their entirety**. It is further

ORDERED, all applications not specifically addressed herein are denied.

This constitutes the decision and Order of this Court.

R V Barry
HON. RUPERT V. BARRY, J.S.C.

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