

Chiapparelli v Bridge Plaza Assoc., LLC
2024 NY Slip Op 35332(U)
March 11, 2024
Supreme Court, Queens County
Docket Number: Index No. 708012/2022
Judge: Cassandra A. Johnson
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NEW YORK SUPREME COURT - QUEENS COUNTY

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Upon the foregoing papers, it is ordered that the instant motion is determined as follows:

The instant personal injury action concerns damages arising from an accident to plaintiff, a construction employee working at the premises 34-02 Starr Avenue, Queens, New York, on May 10, 2019. Defendant, Bridge Plaza Associates, LLC (Bridge) was the owner of the property. In March 2022, plaintiff commenced an action against Bridge; Silvercup Studios, Inc. (Silvercup); and “ABC Corp.,” an “unknown hiree pursuant to a written contract,” for his injuries sustained, alleging violations of Labor Law §§ 200, 240 (1), and 241 (6). Thereafter, defendants, Bridge and Silvercup, commenced a third-party action, seeking damages for common law and contractual indemnification, against Random, and plaintiff amended his complaint to include Random as a first-party defendant. In September 2023, after the submission of this motion, the third-party action was discontinued by stipulation.

Random moves for dismissal of the action against it, pursuant to CPLR 3211 (a) (1), based on defenses founded on documentary evidence; and CPLR 3211 (a) (7), for failure to state a cause of action. Plaintiff opposes.

Random moves to dismiss this action against it by asserting that such action is “barred by the ... provisions of the New York Workers’ Compensation Law,” under which “an employee’s recovery of workers’ compensation benefits is his or her exclusive remedy against his or her employer ... for injuries sustained in the course of his or her employment” (*Calixte v City of New York*, 207 AD3d 431, 432 [2d Dept 2022]). Random claims that plaintiff was its employee at the time of the subject accident, or, if not a “general employee,” plaintiff was to be considered “[a] special employee ... described as one who is transferred for a limited time of whatever duration to the service of another” (*Thompson v Grumman Aerospace Corp.*, 78 NY2d 553, 557 [1991]; see *Dube v Cty. of Rockland*, 160 AD3d 807, 808 [2d Dept 2018]). The determination of a “special employment” is usually a question of fact, but such “status may be made as a matter of law where the particular, undisputed critical facts compel that conclusion and present no triable issue of fact” (*Rodriguez v 27-11 49th Ave. Realty LLC*, 222 AD3d 1013, 1014 [2d Dept 2023] quoting *Thompson v Grumman Aerospace Corp.*, at 557-558). Factors to consider in making such a determination include

the method of payment, the furnishing of equipment, the right to discharge, and, most significantly, who directs, controls, and supervises “the manner, details, and ultimate result of the employee’s work” (*James v Highland Rehabilitation & Nursing Ctr.*, 222 AD3d 736, 737 [2d Dept 2023]; quoting *Thompson v Grumman Aerospace Corp.*, at 558).

The branch of defendants’ motion seeking dismissal on the grounds of a defense based on documentary evidence, is denied. To be considered “documentary” within the meaning of CPLR 3211 (a) (1), such evidence must be of undisputed authenticity, unambiguous and undeniable (see *Qureshi v Vital Tranp., Inc.*, 173 AD3d 1076 [2d Dept 2019]; *Xu v Van Zwienen*, 212 AD3d 872 [2d Dept 2023]; *Greenstein v Danzy*, 210 AD3d 745 [2d Dept 2022]; *Giambrone v Arnone, Lowth, Wilson, Leibowitz, Adriano & Greco*, 197 AD3d 459 [2d Dept 2021]; *Anderson v Armento*, 139 AD3d 769 [2016]); must conclusively establish defenses to plaintiff’s claim as a matter of law (see *Greenberg v Spitzer*, 155 AD3d 27 [2d Dept 2017]; *Shofel v DaGrossa*, 133 AD3d 649 [2015]); and must undeniably support movant’s claims and/or utterly refute plaintiff’s factual allegations (see *Goshen v Mutual Life Ins. Co. of NY*, 98 NY2d 314, 326 [2002]; *Davis v Henry*, 212 AD3d 597 [2d Dept 2022]; *Bellevue Towers & Gardens, LLC v Atlantis Natl. Servs., Inc.*, 208 AD3d 1300 [2d Dept 2022]; *Bernard v Citibank, N.A.*, 195 AD3d 783 [2d Dept 2021]; *Gruber v Donaldson’s, Inc.*, 201 AD3d 887 [2d Dept 2019]). Further, such evidence must resolve all factual issues as a matter of law, and conclusively dispose of plaintiff’s claim (see *Rovello v Orofino Realty Co.*, 40 NY2d 633 [1996]; *Xu v Van Zwienen*, 212 AD3d 872; *Rovello v Orofino Realty Co.*, 40 NY2d 633 [1996]; *Pacella v RSA Consultants, Inc.*, 164 AD3d 806 [2d Dept 2018]; *Matter of Koegel*, 160 AD3d 11 [2d Dept 2018]; *Philips v Taco Bell Corp.*, 152 AD3d 806 [2017]; *Sciadone v Stepping Stones Associates, L.P.*, 148 AD3d 953, 954 [2017]). Here, the affidavits proffered by defendant lack the minimal documentation necessary to support the alleged legal conclusions articulated therein, and thus fail to meet the strict essentiality of “documentary evidence” as above-required.

A CPLR 3211 (a) (7) motion may be employed to dispose of an action in which the plaintiff has failed to state a claim cognizable at law, or an action in which plaintiff has identified a cognizable cause of action, but failed to assert a material allegation necessary to support the cause of action. Initially, the sole criterion to dismiss a complaint is whether the pleading, and the factual allegations contained within its four corners, fails to manifest any cause of action cognizable at law (see *Gaidon v. Guardian Life Ins. Co. of America*, 94 NY2d 330 [1999]; *Guggenheimer v Ginzburg*, 43 NY2d 268 [1977]; *Langley v Melville Fire District*, 2023 NY Slip Op. 00656 [2d Dept 2023]).

“When assessing the adequacy of a complaint in light of a CPLR 3211 (a) (7) motion to dismiss, the court must afford the pleadings a liberal construction, accept the allegations of the complaint as true and provide plaintiff ... ‘the benefit of every possible favorable

inference’ ” (*AG Capital Funding Partners, L.P. v State St. Bank & Trust Co.*, 5 NY3d 582, 591 [2005], quoting *Leon v Martinez*, 84 NY2d 83, 87 [1994]; see *J.P.Morgan Securities, Inc. v Vigilant Ins. Co.*, 21 NY3d 324 [2013]; *Webster v Sherman*, 165 AD3d 738 [2d Dept 2018]; *Murphy v Department of Educ. of the City of N. Y.*, 155 AD3d 637 [2d Dept 2017]), and “determine only whether the facts as alleged fit within any cognizable legal theory” (*Leon v Martinez*, 84 NY2d at 87-88; see *Polite v Marquis Marriot Hotel*, 195 AD3d 965 [2d Dept 2021]; *Kassapian v City of New York*, 155 AD3d 851 [2d Dept 2017]), and not whether plaintiffs can ultimately prove such facts (see *J.P.Morgan Securities, Inc. v Vigilant Ins. Co.*, 21 NY3d 324; *People ex rel. Cuomo v Coventry First LLC*, 13 NY3d 108 [2009]; *Odierna v RSK, LLC*, 171 AD3d 769 [2d Dept 2019]; *Ramirez v Donado Law Firm, P.C.*, 169 AD3d 940 [2d Dept 2019]; *Starr Indem. & Liab. Co. v Global Warranty Group, LLC*, 165 AD3d 1308 [2d Dept 2018]).

A CPLR 3211 (a) (7) motion to dismiss merely addresses the adequacy of a pleading, and does not reach the substantive merits of plaintiff’s cause of action (see *Kaplan v New York City Dep’t. of Health and Mental Hygiene*, 142 AD3d 1050 [2d Dept 2016]; *Lieberman v Green*, 139 AD3d 815 [2d Dept 2016]). Such a motion to dismiss must be denied “unless it has been shown that a material fact as claimed by the pleader to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it” (*Sokol v Leader*, 74 AD3d 1180, 1182 [2d Dept 2010] quoting *Guggenheimer v Ginzburg*, 43 NY2d at 275;]; see *Houtenbos v Fordune Assn., Inc.*, 200 AD3d 662 [2d Dept 2021]). In the case at bar, moving defendant has expressed, only, that plaintiff’s claim that Random is not plaintiff’s employer is incorrect, and not a fact. However, such statement is vigorously disputed by plaintiff.

“A court is, of course, permitted to consider evidentiary material submitted by a defendant in support of a motion to dismiss pursuant to CPLR 3211(a)(7)” (*Gugliotta v Wilson*, 168 AD3d 817, 818 [2d Dept 2019], quoting *Sokol v Leader*, 74 AD3d 1180, 1181 [2d Dept 2010]; see CPLR 3211 [c]; *Ravix v Oligario*, 170 AD3d 763 [2d Dept 2019]). When evidentiary submissions are considered on this type of motion, “and the motion has not been converted to one for summary judgment, the criterion is whether the plaintiff has a cause of action, not whether he or she has stated one, and, unless it has been shown that a material fact as claimed by the plaintiff to be one is not a fact at all, and unless it can be said that no significant dispute exists regarding it, dismissal should not eventuate” (*Belling v City of Long Beach*, 168 AD3d 900, 901 [2d Dept 2019]; see *Guggenheimer v Ginzburg*, 43 NY2d 268; *Reinman v Deutsche Bank Natl. Trust Co.*, 215 AD3d 704 [2d Dept 2023]; *J & JT Holding Corp v Deutsche Bank Nat. Trust Co.*, 173 AD3d 704 [2d Dept 2019]; *Cukoviq v Iftikhar*, 169 AD3d 766 [2d Dept 2019]). Here, movant has proffered no such proof.

As has been determined, Random has failed to proffer documentary evidence, in admissible form, that the “undisputed critical facts compel that conclusion” (*Rodriguez v 27-*

11 49th Ave. Realty LLC, at 1014), *i.e.*, that plaintiff is Random's general employee, or that he is a special employee of Random. As such, defendant's motion seeking to dismiss plaintiff's workers' compensation action against Random, pursuant to CPLR 3211 (a) (7), is denied.

Finally, the court declines to convert the instant motion to dismiss into a motion for summary judgment, pursuant to CPLR 3211 (c), as requested by movant. Such request has not been jointly made; Random has failed to lay bare its proof, so as to deliberately chart a summary judgment course herein; this case does not involve only questions of law, with no questions of fact to be determined; and there has been no adequate notice of an intent to so proceed by the court (*see Wilmington Trust Company v Yonkus*, – AD3d –, 2024 NY Slip Op. 00925 [2d Dept 2024]; *Angieri v Musso*, – AD3d –, 2024 NY Slip Op. 00887 [2d Dept 2024]; *Hendrickson v Philbor Motors, Inc.*, 102 AD3d 251 [2d Dept 2012]). Consequently, this branch of moving-defendant's motion is denied.

Random's remaining contentions and arguments either are without merit, or need not be addressed in light of the foregoing determinations.

Accordingly, the motion by defendant, Random Productions MY, LLC, seeking dismissal of the complaint, as against it, pursuant to CPLR 3211 (a) (1) and (7), and 3211 (c), is denied.

Dated: March 11, 2024



Hon. Cassandra A. Johnson, J.S.C.

