

Mendez v Tishman Interiors Corp. of N.Y.

2025 NY Slip Op 32500(U)

July 3, 2025

Supreme Court, Kings County

Docket Number: Index No. 505809/2016

Judge: Devin P. Cohen

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**Supreme Court of the State of New York
County of Kings**

Index Number 505809/2016
Seqs. 018

Part LL1M

DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

MANUEL MENDEZ AND MARIA ROJAS,

Plaintiff,

against

TISHMAN INTERIORS CORPORATION OF NEW YORK AND
COMMET 380 INC.,

Defendants.

TISHMAN INTERIORS CORPORATION OF NEW YORK AND
COMMET 380 INC.,

Third-Party Plaintiffs,

against

ALL STATE INTERIOR DEMOLITION INC.,

Third-Party Defendants.

TISHMAN INTERIORS CORPORATION OF NEW YORK AND
COMMET 380 INC.,

Second Third-Party Plaintiffs,

against

UNITED INTERIOR RENOVATIONS LLC,

Second Third-Party Defendants.

UNITED INTERIOR RENOVATIONS LLC,

Third Third-Party Plaintiffs,

against

PAL ENVIRONMENTAL SERVICES INC. AND PRISTINE

Papers Numbered	
Notice of Motion and Affidavits Annexed	<u>1</u>
Order to Show Cause and Affidavits Annexed.	<u> </u>
Answering Affidavits	<u>2-3</u>
Replying Affidavits	<u>4-5</u>
Exhibits	<u>Var.</u>
Other	<u> </u>

SERVICES INC.,

Third Third-Party Defendants.

ALL STATE INTERIOR DEMOLITION INC.,

Fourth Third-Party Plaintiffs,

against

PAL ENVIRONMENTAL SERVICES INC., PRISTINE SERVICES INC., AND UNITED INTERIOR RENOVATIONS LLC,

Fourth Third-Party Defendants.

Upon the foregoing papers, third third-party defendant/fourth third-party defendant Pristine Services Inc. (Pristine)'s motion to re-argue (Seq. 018) is decided as follows:

Procedural Posture and Factual Introduction

Plaintiff commenced this action to recover for damages he claims to have sustained on July 8, 2015, while working on a demolitions operation at 380 Madison Avenue, New York, NY. The following is undisputed: Commet 380 Inc. (Commet) was the owner of the premises and retained Tishman Interiors Corporation (Tishman) was the general contractor. Tishman sub-contracted All State Interior Demolition (All State) to perform demolition work on March 12, 2015. All State entered into a purchase order with United Interior Renovations LLC (United) for labor and equipment for the work being performed at the premises. The plaintiff was employed by United. All State also sub-contracted Pristine; the substance of that sub-contract is in dispute and is discussed below. Finally, Tishman sub-contracted PAL Environmental Services Inc. (PAL) to perform asbestos abatement at the site.

On February 24, 2025, the court issued an order, *inter alia*, denying Pristine's motion to dismiss. Now, Pristine moves to re-argue its prior motion (Seq. 014). For the sake of brevity, the factual recitation from the prior decision is adopted here, and specific portions of the record will be cited below as necessary.

Analysis

As an initial matter, Pristine does not seek re-argument of the portion of the original order which denied summary judgment and, notably, Pristine omits mention of its original request for summary judgment from the instant motion despite devoting considerable space to these arguments in the underlying papers (Sequence 014 affirmation in support at ¶¶ 2 [b], 83–117). Instead, Pristine argues that the court improperly denied its motion to dismiss pursuant to CPLR 3211 (a) (1) and (a) (7).

The court addressed the merits of Pristine's motion to dismiss in the underlying decision, holding that:

Although Pristine contends that it was merely a pay master, there is testimony that it directed the laborers who were operating the Brokk machine and there is a signed rider indicating that Pristine had robust responsibilities at the site. To the extent Pristine argues for dismissal under CPLR 3211 (a) (1), there are two purported contracts with conflicting terms in the record. Documents relied upon in a motion to dismiss must be unambiguous and support dismissal (*Burgos v New York Presb. Hosp.*, 155 AD3d 598 [2d Dept 2017]). Therefore, Pristine's motion is denied both as untimely and on the merits. (Prior order at 9.)

Pristine argues that Frank Rullo did not testify that Pristine was operating the Brokk machine. However, Mr. Rullo testified to precisely that fact (Rullo EBT at 74, 77, 82). Pristine also contends that Albert Sala's testimony that Pristine operated the Brokk machine was simply incorrect (Pristine aff. in supp. at ¶ 33). These arguments are improper on a CPLR 3211 motion.

Documents that cannot establish facts without explanation, and certainly documents that are directly disputed by sworn testimony, are not sufficient to support dismissal under CPLR

3211 (a) (1) (*Sokol v Leader*, 74 AD3d 1180, 1182 [2d Dept 2010]; see also *Berger v Temple Beth-El of Great Neck*, 303 AD2d 346 [2d Dept 2003]). As noted in the prior decision, the documents Pristine seeks to rely upon are not unambiguous. Furthermore, the allegations in the complaint, if true, state a cause of action against Pristine, and there is at least some evidence in the record which contradicts Pristine's claim that these are "no facts at all"—therefore, Pristine has not demonstrated its entitlement to dismissal pursuant to CPLR 3211 (a) (7) (*Board of Educ. Of City School Dist. Of City of New Rochelle v County of Westchester*, 282 AD2d 561 [2d Dept 2001]).

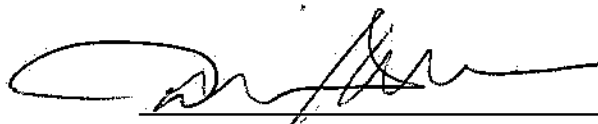
"[A] motion for leave to reargue is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided" (*Jaspar Holdings, LLC v Gotham Trading Partners # 1, LLC*, 186 AD3d 582, 584 [2d Dept 2020]). Pristine has not demonstrated the court misapprehended the law or overlooked any facts on the prior motion; therefore, its motion to re-argue is denied.

Conclusion

Pristine's motion to re-argue (Seq. 018) is denied.

This constitutes the decision of the court.

July 3, 2025
DATE



DEVIN P. COHEN
Justice of the Supreme Court