

Mora v Congregation Rodephet

2025 NY Slip Op 33781(U)

October 1, 2025

Supreme Court, New York County

Docket Number: Index No. 150600/2024

Judge: Leslie A. Stroth

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH PART 12M

Justice

-----X

OSCAR LEONARDO SANCHEZ MORA,
Plaintiff,

- v -

CONGREGATION RODEPHET, RODEPH SHOLOM
SCHOOL,
Defendant.

INDEX NO. 150600/2024

09/12/2025,
08/30/2025,
09/12/2025,
09/12/2025

MOTION DATE

MOTION SEQ. NO. 003 004 005

DECISION + ORDER ON
MOTION

-----X

CONGREGATION RODEPHET, RODEPH SHOLOM SCHOOL
Plaintiff,

Third-Party
Index No. 595464/2024

-against-

EUROSTRUCT, INC.

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 003) 69, 70, 71, 72, 73,
74, 75, 76, 77, 78, 79, 80

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 004) 81, 82, 83, 84, 85,
86, 87

were read on this motion to/for ATTORNEY -
DISQUALIFY/RELIEVE/SUBSTITUTE/WITHDRAW

The following e-filed documents, listed by NYSCEF document number (Motion 005) 90, 91, 92, 93, 94,
95, 96, 97

were read on this motion to/for AMEND CAPTION/PLEADINGS

The following e-filed documents, listed by NYSCEF document number (Motion 005) 90, 91, 92, 93, 94,
95, 96, 97

were read on this motion to/for JUDGMENT - SUMMARY

FACTUAL BACKGROUND

Plaintiff Oscar Leonardo Sanchez Mora commenced this action on January 24, 2024, by summons and verified complaint, alleging negligence and violations of Labor Law §§ 200, 240(1), and 241(6) against Defendants Congregation Rodeph Sholom i/s/h/a Congregation Rodephet and Rodeph Sholom School, arising from an alleged accident on October 4, 2023 at 167 West 78th Street, New York, NY. Plaintiff alleged that, while employed as a construction laborer, he fell from a ladder and sustained serious injuries.

Defendants denied liability and impleaded Eurostruct, Inc. for indemnification, contribution, and breach of contract, based on a July 27, 2023 agreement under which Eurostruct was retained to perform renovations at the Rodeph Sholom School located at 170 West 79th Street.

Subsequently, the Workers' Compensation Board ("WCB") determined that Plaintiff was not employed by Eurostruct on October 4, 2023, having been terminated on September 26, 2023, and therefore was not working at the premises at the time of the alleged accident. Eurostruct's superintendent, Martidi Sorto, confirmed that Plaintiff had been laid off prior to the alleged incident.

In Motion Sequence 003, Defendants Congregation Rodeph Sholom and Rodeph Sholom School move pursuant to CPLR 3212 for summary judgment dismissing the Complaint. In Motion Sequence 004, Plaintiff's counsel, Bogoraz Law Group, moves pursuant to CPLR 321(b)(2) to be relieved as counsel and for a 90-day stay to allow Plaintiff to retain new counsel. In Motion Sequence 005, Eurostruct moves pursuant to CPLR 3025(b) for leave to amend its Answer to assert collateral estoppel, and upon amendment, for summary judgment.

LEGAL STANDARD

The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 323 [1986]). Once a party has submitted competent proof demonstrating that there is no substance to its opponent's claims and no disputed issues of fact, the opponent, in turn, is required to "lay bare [its] proof and come forward with some admissible proof that would require a trial of the material questions of fact on which [its] claims rest" (*Ferber v Sterndent Corp.*, 51 NY2d 782, 783 [1980]). The party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted (*See Dauman Displays, Inc. v Masturzo*, 168 AD2d 204, [1st Dept 1990]).

CPLR 321 (b) (2) provides: "[a]n attorney of record may withdraw or be changed by order of the court in which the action is pending, upon motion on such notice to the client of the withdrawing attorney, to the attorneys of all other parties in the action or, if a party appears without an attorney, to the party, and to any other person, as the court may direct."

An attorney may move to be relieved as counsel if the attorney deems it necessary to end the attorney-client relationship without the clients consent. (*Farage v Ehrenberg*, 124 AD3d 159 [2nd Dept 2014]). "The decision to grant or deny permission for counsel to withdraw lies within the discretion of the trial court, and the court's decision should not be overturned absent a showing of an improvident exercise of discretion" (*Applebaum v. Einstein*, 163 AD3d 905, 907 [1st Dept 2018]). Additionally, an attorney may withdraw from representing a client if the client "fails to cooperate in the representation or otherwise renders the representation unreasonably difficult for the lawyer to carry out employment effectively." (*Aragona v Shaibani*, 138 AD3d

649, 650 [2d Dept 2016] *quoting* Rules of Professional Conduct [22 NYCRR 1200.0] rule 1.16[c][7]).

Pursuant to CPLR 3025(b), “A party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just.” “In general, motions for leave to amend a pleading should be granted unless the proposed amendment is palpably insufficient or patently devoid of merit, or where the delay in seeking the amendment would cause prejudice or surprise” (*Corwise v. Lefrak Org.*, 93 A.D.3d 754 [2nd Dept 2012]).

In *MBIA Ins.*, the Court held that “on a motion for leave to amend, [a party] need not establish the merit of its proposed new allegations, but simply show that the proffered amendment is not palpably insufficient or clearly devoid of merit” (*MBIA Ins. Corp. v. Greystone & Co.*, 74 A.D.3d 499 [1st Dept 2010]; *see also Cruz v. Brown*, 129 A.D.3d 455 [1st Dept 2015]).

DISCUSSION

Motion to Withdraw as Counsel (Motion Sequence 004)

Plaintiff has been represented by the Bogoraz Law Group, P.C. Counsel now moves to withdraw as attorney of record pursuant to CPLR 321(b)(2). In support, counsel affirms that Plaintiff has failed to maintain communication and cooperation in the prosecution of the case despite repeated attempts by mail, phone, and email. Counsel states that Plaintiff’s conduct has rendered continued representation unreasonably difficult.

The Notice of Motion was properly served by mail on Plaintiff at his residence, and served via NYSCEF on all other parties. No opposition has been filed to the motion to withdraw.

The Court finds that counsel has established good cause for withdrawal. Sustained non-responsiveness and failure to cooperate constitute grounds for withdrawal, as they undermine counsel's ability to represent the client effectively (*Farage*, 124 AD3d 159; *Applebaum*, 163 AD3d 905).

Accordingly, the motion is granted. As discussed *infra*, the Court also grants summary judgment disposing of this case, as such, counsel's request for a 90-day stay is denied as moot.

Eurostruct's Motion to Amend its Pleadings (Motion Sequence 005)

Eurostruct first seeks leave to amend its Answer to add the affirmative defense of collateral estoppel under CPLR 3025(b). The court finds that Eurostruct's proposed amendment is neither palpably insufficient nor prejudicial. To the contrary, it is grounded in documentary evidence: the WCB Panel Decision, a final administrative adjudication, and the Sorto affirmation corroborating Plaintiff's termination prior to the alleged accident. This proposed defense, if credited, is case-dispositive, as discussed *infra*.

Far from being "patently devoid of merit," it presents a complete bar to Plaintiff's claims. Nor is there any unfair delay. The WCB decision was issued March 17, 2025; Eurostruct moved promptly thereafter, filing its motion on June 23, 2025. Here, the question of Plaintiff's employment status has been the fulcrum of the case from the outset. Plaintiff has alleged throughout that he was working at the site on October 4, 2023, while both Eurostruct and Defendants have disputed that fact. Because Plaintiff has litigated this very issue from the start, the amendment creates no element of surprise.

Finally, prejudice requires more than the mere exposure to an adverse claim or defense; it requires a showing that the non-moving party has been hindered in preparing its case or prevented from taking steps to meet the new issue (*see Loomis v Civetta Corinno Const. Corp.*,

54 NY2d 18, 23 [1981]). Plaintiff makes no such showing. The amendment raises no new factual ground but instead rests on existing facts decided in a related proceeding, of which Plaintiff was a party.

For the foregoing reasons, the Court grants Eurostruct leave to amend its Answer to assert collateral estoppel.

The Motions to Dismiss (Motion Sequences 003 and 005)

Having granted Eurostruct leave to amend, the Court turns to the summary judgment motions by both Eurostruct (Motion Sequence 005, upon amendment) and Defendants Congregation Rodeph Sholom and Rodeph Sholom School (Motion Sequence 003). Both motions rely on the doctrine of collateral estoppel arising from the Workers' Compensation Board's determination of March 17, 2025.

Collateral estoppel, or issue preclusion, "precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party or those in privity, whether or not the tribunals or causes of action are the same." (*Ryan v New York Tel. Co.*, 62 NY2d 494, 500 [1984]). "There must be an identity of issue which has necessarily been decided in the prior action and is decisive of the present action, and there must have been a full and fair opportunity to contest the decision now said to be controlling." (*Buechel v Bain*, 97 NY2d 295, 303-04 [2001])

As it relates to findings of administrative agencies, such as the WCB "not only must the identity of the issue decided in the prior action or proceeding have been the same, but also 'there must have been a full and fair opportunity to contest the decision now said to be controlling.'" (*ABN AMRO Bank, N.V. v MBIA Inc.*, 17 NY3d 208, 226 [2011] quoting *Gilberg v Barbieri*, 53 NY2d 285, 290 [1981]).

Here, the WCB Panel Decision squarely resolved a dispositive, identical issue at the heart of this action: whether Plaintiff was employed by Eurostruct and working at the jobsite on October 4, 2023. After reviewing Plaintiff's C-3 claim, contemporaneous emergency room records, and subsequent medical narratives, the Panel determined that Plaintiff was not employed by Eurostruct on that date and was not working at the subject premises. That finding was not collateral or incidental; it was essential to the denial of his workers' compensation claim, and it is decisive of the present action because Plaintiff's Labor Law and negligence claims depend entirely on his status as a covered worker engaged in work at the premises.

The Court further finds that Plaintiff had a full and fair opportunity to contest the issue before the WCB. Plaintiff filed his claim, presented medical documentation, and participated in the administrative process. The Panel issued a reasoned, written decision on the merits, and Plaintiff does not present any procedural irregularity or limitation that deprived him of a fair chance to litigate before the WCB.

Accordingly, the elements of collateral estoppel are satisfied. Plaintiff is precluded from relitigating his employment and work status on October 4, 2023, and without such status, his claims under Labor Law §§ 200, 240(1), and 241(6), as well as common-law negligence, cannot be sustained.

The court has considered the remaining arguments and finds such unavailing.

Accordingly; it is hereby

ORDERED that Motion Sequence 004 by Plaintiff's counsel, Bogoraz Law Group, P.C., seeking leave to withdraw as attorney of record for Plaintiff, is granted and Bogoraz Law Group, P.C. is relieved as counsel for Plaintiff; and the request for a 90-day stay is denied as moot in light of the disposition of this action; and it is further

ORDERED that Motion Sequence 005 by Third-Party Defendant Eurostruct, Inc., seeking leave to amend its Answer pursuant to CPLR 3025(b), is granted; Eurostruct, Inc. is granted leave to amend to assert the affirmative defense of collateral estoppel; and upon such amendment, Eurostruct, Inc.'s motion for summary judgment pursuant is granted in its entirety; and it is further

ORDERED that Motion Sequence 003 by Defendants Congregation Rodeph Sholom i/s/h/a Congregation Rodephet and Rodeph Sholom School, for summary judgment pursuant to CPLR 3212, is granted; the Verified Complaint is dismissed in its entirety with prejudice.


The foregoing constitutes the decision and order of the court.

10/1/2025
DATE

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED SETTLER ORDER SUBMIT ORDER OTHER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE


HON. LESLIE A. STROTH
J.S.C.