SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH **PART** 12M
Justice

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ENRIQUE CATALAN AGUILAR,

Plaintiff,

- v -

YEE TAI ENTERPRISES CORP., 126 LESSEE LLC,MEL MANAGEMENT CORP., STROH ENGINEERING SERVICES, P.C.,SAFE RISE LLC,

Defendant.

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INDEX NO. 162256/2023

MOTION DATE N/A

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63

were read on this motion to/for DISMISS.

Plaintiff Enrique Catalan Aguilar, Administrator of the Estate of Galindo Moreno Villegas (hereinafter "Plaintiff"), commenced this action against defendants Yee Tai Enterprises Corp., 126 Lessee LLC, Mel Management Corp. d/b/a Stellar Management, Stroh Engineering Services, P.C., and Safe Rise LLC seeking compensation for negligence; violation of Labor Law §§ 200, 240(1), and 241(6); and wrongful death, all arising out of an incident that occurred in a building demolition at 126 Lafayette Street, New York, NY on March 7, 2023. Thereafter, on February 16, 2024, defendants Yee Tai Enterprises Corp. and Mel Management Corp. d/b/a Stellar Management filed a Verified Answer.

Defendant Stroh Engineering Services, P.C. (hereinafter "Stroh") moves here, pursuant to CPLR §3211(a)(1) and CPLR §3211(a)(7), to dismiss Plaintiff's complaints against Stroh and defendants Yee Tai Enterprises Corp., 126 Lessee LLC, Mel Management Corp. d/b/a Stellar Management's crossclaims against Stroh based on refutation by documentary evidence and failure to state a claim (Motion Sequence #003). In opposition, Yee Tai Enterprises Corp., 126

Lessee LLC, Mel Management Corp. d/b/a Stellar Management assert that where discovery pertinent to a motion to dismiss remains outstanding, the motion is premature. Plaintiff's opposition claims that all elements of the causes of actions are satisfied if the complaint's allegations are accepted as true, and that Stroh's documentary evidence does not refute Plaintiff's claims.

Pursuant to CPLR 3211 (a)(1) "dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law." (*Leon v Martinez*, 84 NY2d 83, 88 [1994])

Pursuant to CPLR 3211 (a)(7), a party may move to dismiss a claim on the ground that the pleading fails to state a cause of action. Upon such a motion, the Court must accept the facts alleged as true and determine simply whether plaintiff's facts fit within any cognizable legal theory. See CPLR 3026; *Morone v Morone*, 50 NY2d 481 (1980). The complaint shall be liberally construed, and the allegations are given the benefit of every possible favorable inference. (See *Leon v Martinez*, 84 NY2d 83, 87 (1994)).

Stroh argues first that the other defendants' crossclaim for contractual indemnification against it fail to satisfy the pleading standard because there is no contract between Stroh and another defendant that would obligate Stroh to indemnify them. The only contract here is the one between Stroh and 126 Lessee, and this contract makes no mention of insurance, defense, or indemnification. There are no contracts at all between Stroh and the other crossclaiming defendants, and thus all of these crossclaims for contractual indemnity must be dismissed.

Stroh also moves for dismissal of the crossclaims seeking common law contribution against it. Stroth argues that the crossclaim for contribution is conclusory, as it fails to allege any act or introduce any facts showing negligence on Stroh's part. This requires showing that Stroh

breached a duty either to the plaintiff or to the other defendants. Stroh's only responsibility here was to provide demolition plans and it owed no duty to the plaintiff. Lastly here, Stroh cites *Bd. of Mgrs. of the A Bldg. Condominium v 13th & 14th St. Realty LLC*, 137 AD3d 505 (1st Dept 2016), for the proposition that contribution claims are not permitted when based on a complaint that seeks only economic loss from breach of contract.

In response, Yee Tai Enterprises Corp., 126 Lessee LLC, Mel Management Corp. d/b/a Stellar Management argue that summary judgment or pre-answer dismissal are premature here because facts pertinent to the motion remain outstanding and in the exclusive knowledge of the movant, and discovery has not yet occurred. These defendants cite, inter alia, *Nordlicht v. Simon*, 70 AD2d 511 (1st Dept. 1979). Where Stroh's own accident report acknowledges that the demolition was largely done according to its plan, there may be a question of fact as to whether the plan itself negligently caused the collapse.

Stroh points out in its own reply that it has moved here for dismissal rather than summary judgment. If Defendants' argument is allowed here, Stroh says, then it would be allowed in response to any pre-answer motion to dismiss, a presumably absurd result. Stroh also asserts that neither the complaint itself nor any crossclaims have alleged that Stroh's demolition plans were negligently drafted, and that no document places an obligation on Stroh to provide these defendants with insurance or indemnity.

The Court denies Stroh's motion to dismiss the crossclaims against it. *Nordlicht* does support the notion that summary judgment is premature under these circumstances. Although Stroh is correct in pointing out that this case is not directly on point here, as it involves summary judgment, and the instant motion is for CPLR 3211(a)(7) dismissal, this Court find that dismissal of these claims is nonetheless premature. Where discovery may reveal facts or documents

supporting claims against a party, dismissing that claim before discovery is premature. (*Gedula 26, LLC v Lightstone Acquisitions III, LLC*, 150 AD3d 583 [1st Dept 2017]). Stroh currently stands as the only engineer party to this case. Whether further engineer reports and appraisals assess Stroh's demolition plans as negligent in some capacity or as a potential cause or contributing factor in the accident may yet be revealed in discovery.

Stroh asserts it still cannot be liable for either contractual indemnification or common law contribution, as it owed no duty which it could have breached. The existence of a common-law duty in a negligence case is a threshold question of law for the court. (*Espinal v Melville Snow Contractors, Inc.*, 98 NY2d 136, 138 [2002]). In *Sheila C. v Povich*, 11 AD3d 120, 123 [1st Dept 2004], the First Department held that when determining the existence of a duty, courts must balance "reasonable expectations of parties and society generally, the proliferation of claims, the likelihood of unlimited or insurer-like liability, disproportionate risk and reparation allocation, and public policies affecting the expansion or limitation of new channels of liability" (quoting *Palka v Servicemaster Mgt. Services Corp.*, 83 NY2d 579, 586 [1994]). In *Blech v W. Park Presbyt. Church*, 97 AD3d 443, 444 [1st Dept 2012] a defendant responsible for pre-demolition planning and estimation was allowed to dismiss the negligence claim against it, but this was only after discovery was mostly complete, which is not the case here. Only when more facts are obtained can this court determine what duty, if any, Stroh owed here.

Viewing the crossclaims with the appropriate standard, they are neither refuted by Stroh's documentary evidence nor do they fail to fit into a cognizable legal theory. While the other defendants acknowledge that the specifics of Stroh's alleged carelessness, recklessness, or negligence remains yet to be ascertained, when given the benefit of every possible favorable inference these defendants successfully state a claim. Stroh points to the Proposal it entered into

with 126 Lessee (Exhibits 3 and 4), claiming this to be the only contract binding Stroh in this matter. However, the agreement does not preclude the existence of others, and as such it does not constitute documentary evidence sufficient to refute the crossclaims as a matter of law. Stroh's motion to dismiss these claims is therefore denied.

This Court now turns to Stroh's motion to dismiss Plaintiff's claims against it.

Stroh denies the duties Plaintiff alleges to maintain the work site in a safe condition and to provide safety equipment, asserting instead that the only duty Stroh had with respect to the work site was to provide demolition plans, undermining Plaintiff's claim of general negligence. There is also, Stroh claims, no evidence provided by Plaintiff of a breach or causation on Stroh's part.

Stroh employs a similar argument against Plaintiff's allegation that Stroh violated Labor Law §200. This section of the labor law codifies the common law duty of an owner, employer, or general contractor to supply workers a safe place to work. Stroh then cites to *Hutchinson v City of New York* for the proposition that an engineer not on site at the time of an accident and not exercising any supervision or control over the work cannot be held liable under §200 (18 AD3d 370, 371 [1st Dept 2005]). Per Exhibits 3 and 4, Stroh not only did not actually exercise any supervision or control over the work, but it also did not even have any right to control the work, whether contractual or otherwise.

Stroh cites to *Hutchinson,* again in arguing that the Labor Law §240(1) claim against it should be dismissed, asserting that engineers owe no liability if they had no authority to supervise or control the project. (Id.). In that case, even a contractual duty to inspect was held to not rise to the level to create liability under §240(1), which imposes liability over the failure to

provide safety equipment. Under this logic, Stroh's duty to inspect the site does not rise to the level of §240(1) liability.

Labor Law §241(6) creates liability as a result of an owner's or general contractor's violation of the Industrial Code. Plaintiff's claim here fails, according to Stroh, because Plaintiff does not allege a specific part of the Industrial Code that has been violated; Stroh is not an owner or general contractor; Stroh had no duty to inspect the worksite, and inspection alone wouldn't have established liability. Stroh further argues that it could not have violated §241(6), because its involvement was limited to drawing up demolition plans, which does not implicate the Industrial Code.

Lastly, Stroh asks to dismiss the wrongful death claim against it. Stroh here relies on *Ramos v Shumavon*, 21 AD2d 4, [1st Dept 1964], affd, 15 NY2d 610 [1964], for the proposition that an affirmative duty to ensure workers' safety depends on the existence of specific contractual language. Stroh alleges that the wrongful death claim is conclusory, refuted by documentary evidence, and vague.

Plaintiff asserts that it has effectively pleaded all elements of a claim against Stroh and arguing that Stroh's documentary evidence does not refute Plaintiff's claims. Plaintiff points out that the contract Stroh cites is silent as to Stroh's supervision and control over the work, as well as the fact that the agreement required Stroh to create a site safety plan. Plaintiff also takes issue with Stroh relying on an affidavit as documentary evidence to refute Plaintiff's claims as a matter of law, as an affidavit can easily be controverted by another affidavit and is thus not sufficient for the purposes of CPLR §3211(a)(1).

Turning finally to the crossclaims, Plaintiff has successfully pleaded a prima facie claim of negligence against Stroh, alleging a duty, a breach of said duty, causation, and injury. For the

same reasons, the Labor Law §200 claim, as a codification of common law duty of care, applies as well. On the wrongful death claim, Stroh prematurely claims a lack of specific contractual language rendering it liable, as discovery in this case may produce more, and at this stage Plaintiff is afforded every possible factual inference in its favor. Such inferences also cover the claims under Labor Law §§ 240(1) and 241(6), as there are issues of fact as to both: whether Stroh had a duty to provide safety equipment and whether its involvement in the demolition implicated the Industrial Code are factual questions that will require discovery to answer. Stroh's motion to dismiss these claims is therefore denied.

Accordingly, it is hereby

ORDERED, that motion #003 by Stroh to dismiss the claims and the crossclaims against it is denied in its entirety.

10/7/2025
DATE

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

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED	X	DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE