

Engerman v ABM Bldg. Value Inc.

2025 NY Slip Op 34223(U)

April 21, 2025

Supreme Court, Queens County

Docket Number: Index No. 708208/2020

Judge: Leonard Livote

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

NEW YORK STATE SUPREME COURT - QUEENS COUNTY



Present: Honorable Leonard Livote
Supreme Court Justice

IA Part 33

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GLORIA ENGERMAN and
ALPHONSO ENGERMAN,

Index No: 708208/2020

Plaintiffs,

Motion Sequence:

-against-

008

ABM BUILDING VALUE INC.,

Motion Date:

Defendant.

08/13/2024

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The following papers numbered below read on this motion by Smith, Sovik, Kendrick & Sugnet, P.C., on behalf of the Proposed Intervenor-Plaintiff, THE HARTFORD ACCIDENT AND INDEMNITY COMPANY (“Intervenor”) seeking an order An Order (a) granting permission for Proposed Intervenor-Plaintiff to intervene in the above-entitled action pursuant to CPLR § 1012 and § 1013; and (b) directing that the Proposed Intervenor-Plaintiff be added as party Plaintiff to the pending action, directing the Clerk of the Court to enter the Proposed Intervenor-Plaintiff Complaint-in-Intervention, permitting the Proposed Intervenor-Plaintiff’s Complaint to be deemed served with this Motion and providing defendants thirty (30) days from the date of the Court’s Order to respond to the Intervening Complaint, and allowing the Proposed Intervenor-Plaintiff to proceed on its claims stated therein; and (c) granting such other and further relief as the Court may deem just and proper.

	<u>PAPERS NUMBERED</u>
Notice of Motion, Affirmation, Affidavits and Exhibits	69 - 78
Answering Affirmations, Affidavits And Exhibits	79 - 83
Reply Affirmations, Affidavits, and Exhibits	84

Upon the foregoing papers, the motion is determined as follows.

The within action is a personal injury action arising out of a work-related accident in 2013 in which GLORIA ENGERMAN (“Plaintiff”) experienced a slip-and-fall. Plaintiff’s employer, Remington Advertising Agency Inc., (“Remington”) retained Workers’ Compensation insurance through Intervenor. After the Plaintiff’s accident, she filed for and received workers’ compensation benefits that were paid by Intervenor. Plaintiff commenced the within action against ABM BUILDING VALUE INC. (“Defendant”) seeking to recover damages.

This Court previously granted Plaintiff’s prior counsel’s motion to withdraw as counsel via an order dated February 8, 2024 (NYSCEF Doc. No. 63).

Intervenor avers as follows. Intervenor paid out workers’ compensation benefits to Plaintiff. After Plaintiff’s counsel’s withdrawal, the proceedings were stayed for 30 days and, thereafter, Defendant served a 90-Day Notice on the Plaintiff filed on April 1, 2024. In anticipation of the Plaintiff’s failure to comply with said 90-Day Notice, Intervenor now moves to intervene and independently prosecute this action as a valid lienholder. Intervenor’s lien remains in full force and should be unaffected by counsel’s withdrawal or the plaintiffs’ failure to comply with the 90 Day Notice. Intervenor’s right of recovery would be foreclosed if the requested relief is denied because the statute of limitations for Intervenor to initiate a separate subrogation action has long since run.

Defendant opposes the instant motion and avers as follows. Intervenor insured Plaintiff, and a carrier for collateral source is not permitted to intervene in this matter due to a conflict of interest. There is nothing stopping the plaintiff from retaining new counsel to pursue her claims, or to pursue them on a pro se basis.

In their reply, Intervenor avers as follows. Intervenor never insured any of the parties to this action, including the Plaintiff. Intervenor had a contractual relationship with Plaintiff’s employer, Remington, via a workers’ compensation insurance policy that Intervenor issued to Remington. Intervenor’s contractual obligation to Remington to pay benefits to Plaintiff for the claim she made against Remington. Intervenor now seeks to be subrogated for its insured, Remington. Plaintiff and Intervenor both seek to hold the allegedly Defendant responsible for the accident. Intervenor’s proposed claims against Defendant overlap with those of Plaintiff’s.

The unrepresented Plaintiff did not oppose the instant motion.

Under CPLR § 1013, an intervenor is allowed to participate in litigation when the claim of the intervenor involves a common question or fact and when intervention will neither unduly delay the litigation nor prejudice the substantial rights of any party.

Under CPLR § 1012(a)(2), a party may properly intervene in an action by right. To properly intervene, a party may demonstrate being bound by a potential judgment where an intervenor's rights are at stake and the parties in the underlying litigation inadequately represent the intervenor's interest. Under CPLR § 1012(a)(3), an intervenor may also intervene by right when an action involves a claim for damages and the intervenor's claim to damages would be adversely affected by a judgment.

Where, during the course of employment, a plaintiff is injured by a defendant and the plaintiff's employer's workers compensation carrier (i.e.: proposed intervenor) pays a sum to and/or for the benefit of the plaintiff, and then plaintiff's counsel withdraws, said carrier may intervene as a party-plaintiff on the grounds that (a) it has a statutory lien which is no longer being adequately represented in the action, (b) where there are common questions of law and fact between plaintiff's and carrier's claims, and (c) where the intervenor indicates they would intervene only if plaintiff did not retain new counsel (*Ubillus-Tambini v Ischakov*, 77 Misc 3d 135[A], 2022 NY Slip Op 51265[U], [App Term 2022]).

Where, in a personal injury action involving a fall down an elevator shaft, the insurance policy limits the insurer's right to recovery from third parties to amounts paid to the insured through settlements or satisfied judgments which specifically identify the amounts paid for health care services, carrier's motion for leave to intervene pursuant to CPLR § 1012 and § 1013 is proper (*Humbach v Goldstein*, 229 AD2d 64, 65 [2d Dept 1997]). If the carrier-intervenor was allowed to stand in the place of the named plaintiff and the case were to result in a plaintiff's verdict, the court would be required to reduce the amount of the award pursuant to CPLR § 454 (*id.* at 65).

Here, although Intervenor's claim for damages, i.e.: the lien of its workers' compensation benefits paid to Plaintiff, arises out of the same fact pattern as Plaintiff's claims against Defendant, there is no indication that the Plaintiff would

not retain new counsel. Although Plaintiff here is unrepresented, the record does not establish that she does not want to proceed pro se. Accordingly, it is

ORDERED that Intervenor's motion is denied; and it is further

ORDERED that Defendant shall serve notice of entry of this order within thirty (30) days of the date of this order.

Any other and/or further relief requested and not addressed is denied. This constitutes the Order of the Court.

Dated: April 21, 2025



Leonard Livote, J.S.C.

