

Soto v DPC N.Y., Inc.

2025 NY Slip Op 35092(U)

December 30, 2025

Supreme Court, New York County

Docket Number: Index No. 654428/2019

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

PEDRO SOTO, ROBERT GANGONE,

Plaintiffs,

- v -

DPC NEW YORK, INC., THOMAS PEPE, CHRIS PEPE,
JOSE JUAN MUNOZ

Defendants.

-----X

INDEX NO. 654428/2019

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44

were read on this motion to/for STRIKE.

Plaintiffs’ motion to strike the answer of defendants Thomas and Chris Pepe (the “Pepe Defendants”) based on discovery deficiencies is decided as describe below. The cross-motion by defendant Chris Pepe for summary judgment dismissing the complaint against him is denied.

Background

Plaintiffs contend that they worked as construction workers for the corporate defendant, DPC New York, and allege that they were paid exclusively in cash without receiving any of the statutorily required wage notices or pay stubs. They also claim they worked sometimes six or seven days a week and were not paid the required overtime wages. Plaintiffs bring various causes of action under the New York Labor Law based on these purported failures. They observe that the Pepe Defendants and defendant Munoz were co-owners of DPC and were plaintiffs’ supervisors.

In this motion, plaintiffs seek to strike the Pepe Defendants’ answer on the ground that they have refused to provide responses to outstanding discovery demands.

The Pepe Defendants cross-move for summary judgment as to defendant Chris Pepe on the ground that he was not a responsible party under the Labor Law. They emphasize that he was not a shareholder or a person who controlled hiring, firing or wage rates for plaintiffs. The Pepe Defendants attach a K-1 statement which they claim shows that Thomas Pepe was the sole shareholder of DPC. With respect to discovery, the Pepe Defendants claim that the COVID-19 pandemic prevented them from meaningfully participating in discovery.

Defendant Thomas Pepe submits an affidavit in which he contends that plaintiffs worked for another entity called Diaval Construction, and that DPC was never their employer. He claims Chris Pepe (his son) was the Vice-President for Sales for DPC.

In reply and in opposition to the cross-motion, plaintiffs observe that defendants informed them that defendant DPC is in receivership and so plaintiffs have decided not to pursue claims against this defendant. They complain that defendants provided no discovery and now, suddenly, want summary judgment based on self-serving contentions.

Discussion

Before addressing the motions, the Court must acknowledge the elephant in the room: that these applications have been pending for more than five years. Although this case was only transferred to this part in recent days, this Court, nevertheless, profusely apologizes for the inexcusable delay in the issuance of this decision. Counsel for plaintiffs even sent an appropriate letter inquiring about the motion (NYSCEF Doc. No. 44) in August 2023 that was, for some unknown reason, ignored.

Discovery

The Pepe Defendants appear to acknowledge that they have to participate in discovery and so the Court grants the motion to the extent that they must respond to plaintiffs' outstanding

discovery demands. While the COVID-19 pandemic has thankfully receded, at its height, it was certainly a justification to delay responding to discovery particularly where access to files and people was necessarily limited.

The Pepe Defendants must respond to outstanding discovery on or before January 15, 2026.

Cross-Motion For Summary Judgment

The Court denies the cross-motion to dismiss the claims against defendant Chris Pepe. Courts, in assessing whether or not a person constitutes an employer under the Labor Law, utilize the “economic reality test” (*Yu v Mask Pot, Inc.*, 241 AD3d 726, 728 241 NYS3d 323 [2d Dept 2025]). This test includes consideration of various factors, such as the ability to supervise and control conditions of employment (*id.*). It is axiomatic that such an analysis requires a fact intensive assessment. At this stage, before discovery has begun in earnest¹ and before depositions have occurred, it is simply premature to grant summary judgment. The complaint includes numerous allegations about Chris Pepe’s role in controlling the work of plaintiffs.

The Court cannot grant summary judgment where there are many unanswered questions about this case, including the Pepe Defendants’ assertion that plaintiffs never even worked for DPC and that they, instead, worked for a completely separate entity that occasionally worked with DPC. It may be that discovery reveals that Chris Pepe was, in fact, not an employer under the Labor Law. But the Court cannot make that determination based solely on self-serving affidavits and a K-1 statement.

Accordingly, it is hereby

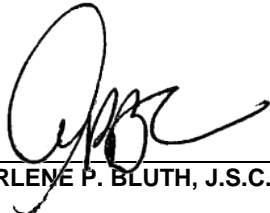
¹ The Court has no idea what has happened in the last five years—it may be that paper discovery is completed.

ORDERED that plaintiffs’ motion is granted only to the extent that defendants must respond to plaintiffs’ discovery demands on or before January 15, 2026; and it is further

ORDERED that the cross-motion for summary judgment with respect to defendant Chris Pepe is denied as premature.

The Court will schedule a discovery conference for February 24, 2026 at 10 a.m. The parties shall upload an update on NYSCEF about the status of discovery by February 17, 2026. This update may include a proposed discovery stipulation or letters explaining discovery disagreements. Based on the parties’ submissions, the Court will assess whether an in-person appearance is required. If nothing is uploaded, the Court may adjourn the conference, order a note of issue be filed or require a personal appearance (so please upload something).

12/30/2025
DATE


ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: