

McNamara v Cosmic Realty Partners LLC

2024 NY Slip Op 34310(U)

January 23, 2024

Supreme Court, New York County

Docket Number: Index No. 159041/2022

Judge: Arthur F. Engoron

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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. ARTHUR F. ENGORON PART 37

Justice

-----X

DOMINIC MCNAMARA,

Plaintiff,

- v -

COSMIC REALTY PARTNERS LLC, THE RINALDI GROUP, LLC,

Defendants.

-----X

COSMIC REALTY PARTNERS LLC, THE RINALDI GROUP, LLC,

Plaintiffs,

-against-

ROTAVELE ELEVATOR CONSTRUCTION INC.,

Defendant.

-----X

INDEX NO. 159041/2022
MOTION DATE 10/11/2023
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

Third-Party
Index No. 595730/2023

The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34

were read on this motion to AMEND PLEADINGS

Upon the foregoing documents, and for the reasons stated hereinbelow, defendants' motion, pursuant to CPLR 3025(b), to amend their answer is denied.

Background

On October 21, 2022, plaintiff, Dominic McNamara, pursuant to New York Labor Law, including §§ 200, 240 (1) and 241 (6), filed a summons and complaint against defendants, Cosmic Realty Partners LLC and The Rinaldi Group, LLC, seeking damages arising from an alleged accident that occurred on September 2, 2020 (the "Incident") at a property located at 250 Fifth Avenue, New York, New York. NYSCEF Doc. No. 1. Plaintiff alleges that, while working at said location, he was transporting elevator equipment materials on a dolly when some fell off and onto his left foot and right ankle.

On January 29, 2023, defendants filed an answer with general denials and nine affirmative defenses. NYSCEF Doc. No. 6.

On March 2, 2023, plaintiff provided defendants with a verified bill of particulars that did not include a Workers Compensation Board (“WCB”) authorization. NYSCEF Doc. No. 22. In that filing, plaintiff alleges that the Incident caused him to sustain injuries to, inter alia, his left ankle, right foot, lumbosacral spine, cervical spine, and thoracic spine. Id.

On July 14, 2023, pursuant to a supplemental request that defendants filed, plaintiff provided defendants with WCB authorization. NYSCEF Doc. No. 23. From that authorization, defendants became aware of a December 14, 2021 WCB Memorandum of a Board Panel Decision (the “WCLJ Decision”), which reversed a July 19, 2021 Workers’ Compensation Law Judge’s Notice of Decision, and “disallow[ed] and close[d] [plaintiff’s] claim for a work-related back injury” alleged to have arisen from the Incident. NYSCEF Doc. No. 24.

On October 11, 2023, defendants moved, pursuant to CPLR 3025(b), to amend their answer to assert an affirmative defense of collateral estoppel based on the WCLJ Decision. NYSCEF Doc. No. 19.

Defendants argue that there is no prejudice in the Court granting their motion, as the WCLJ Decision came from plaintiff’s own compensation file and a third-party defendant only recently appeared in the action. NYSCEF Doc. No. 20.

In opposition, plaintiff argues that the “Justice for Injured Workers Act,” enacted on December 30, 2022, and codified at New York’s Workers’ Compensation Law § 118-a, should be applied retroactively and, once applied, abrogates any WCB decision unless it pertains to determining if an employer/employee relationship existed. NYSCEF Doc. No. 27.

Discussion

Generally, leave to amend should be “granted in the absence of evidence of substantial prejudice or surprise or that the proposed amendments were palpably insufficient or patently devoid of merit.” JPMorgan Chase Bank, N.A. v Low Cost Bearings N.Y. Inc., 107 AD3d 643, 644 (1st Dept 2013) (internal citations and quotations omitted).

However, Workers’ Compensation Law § 118-a provides that “no finding or decision by the workers’ compensation board, judge or other arbiter shall be given collateral estoppel effect in any other action or proceeding arising out of the same occurrence, other than the determination of the existence of an employer employee relationship.”

As the Incident occurred and the WCLJ Decision was issued before § 118-a was enacted, the question before this Court is whether § 118-a is retroactive and applies in the instant action and, therefore, defendants are barred from asserting an affirmative defense of collateral estoppel.

When presented with a similar fact pattern in Pacheco v P.V.E. Co., LLC, 80 Misc 3d 1109, 1111 (Sup Ct, Kings County 2023), Justice Karen B. Rothenberg persuasively found that, although § 118-a has “no express directive as to whether [it] should be applied retroactively, it is clear that it is a remedial law” and, consequently, denied that case’s defendants’ motion for leave to amend and assert an affirmative defense of collateral estoppel. Specifically, the Pacheco Court found, citing In re Gleason (Michael Vee, Ltd.), 96 NY2d 117, 122 (2001), that § 118-a

was intended to be remedial based on: the § 118-a sponsor memorandum language, highlighting how “administrative hearings before a Worker's Compensation Law Judge sacrifice basic procedures and evidentiary rules of trials to swiftly decide the claims”; and on the urgency implied in the fact that § 118-a went into effect immediately. NYSCEF Doc. Nos. 31-33, see also Nellis v Cadman Assoc. LLC, 2023 NY Slip Op 23408 (Sup Ct, Kings County Nov. 16, 2023) (“The recent enactment of ... 118-a has vitiated the collateral estoppel effect of all WCB's determinations, subject to the narrow exception of the employment-relationship determinations.”).

This Court agrees that § 118-a was intended to be remedial and to apply retroactively and, therefore, defendants’ motion to amend to assert a collateral estoppel affirmative defense must be denied.

Conclusion

The motion of defendants, Cosmic Realty Partners LLC and The Rinaldi Group, LLC, to amend their answer to include an affirmative defense of collateral estoppel is hereby denied as futile, pursuant to New York Workers’ Compensation Law § 118-a.

JAN 23 2024

HON. ARTHUR F. ENGORON, J.S.C.

1/23/2024
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: