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

PRESENT: HON. MANUEL J. MENDEZ PART 13
Justice

CHRIS JACKSON and DARLENE JACKSON,

Plaintiff,

-against-

SLG 1185 SIXTH A LLC,

Defendant.

158083/15

INDEX NO. ~~158083/15~~
MOTION DATE 08-17-2016
MOTION SEQ. NO. 001
MOTION CAL. NO.

The following papers, numbered 1 to 10 were read on this motion to/for Summary Judgment:

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1 - 5
Answering Affidavits — Exhibits _____cross motion _____	6 - 7
Replying Affidavits _____	8 - 10

Cross-Motion: Yes X No

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Upon a reading of the foregoing cited papers, it is Ordered that defendant's motion for summary judgment, dismissing the complaint pursuant to New York Worker's Compensation Law §§ 10, 11 and 29[6], is granted and this action is dismissed.

On November 29, 2014, at approximately 9:30a.m.,Chris Jackson alleges he sustained injuries while performing work for his employer, SL Green Management LLC, in a building located at 1185 Avenue of the Americas, New York, New York.

Defendant seeks summary judgment arguing that it is a member of SL Green Realty Corp.,together with plaintiff's employer, SL Green Management LLC, and that the receipt of Worker's Compensation benefits bars plaintiffs' claims pursuant to Workers Compensation Law §§11 and 29 [6].

In order to prevail on a motion for summary judgment pursuant to CPLR §3212, the proponent must make a prima facie showing of entitlement to judgment as a matter of law, through admissible evidence, eliminating all material issues of fact (Klein v. City of New York, 89 N.Y. 2d 833, 675 N.E. 2d 548, 652 N.Y.S. 2d 723 [1996] and Alvarez v. Prospect Hospital, 68 N.Y. 2d 320, 501 N.E. 2d 572, 508 N.Y.S. 2d 923 [1986]). Once the moving party has satisfied these standards, the burden shifts to the opponent to produce contrary evidence in admissible form, sufficient to require a trial of material factual issues (Amatulli v. Delhi Constr. Corp., 77 N.Y. 2d 525, 571 N.E. 2d 645, 569 N.Y.S. 2d 337 [1999]).

It is defendant's contention that it is one of the owner entities, that employed plaintiff. Defendant claims that together with SL Green, the SL Green Operating Partnership, SLG Management, and Reckson Operating Partnership, L.P. ("ROP"), the owner entities, are inter-related but distinct legal entities with a common management that function under a consolidated budget and present themselves to the public as a single integrated organization "SL Green Realty Corp.," for leasing, employment and management purposes. Defendant argues that it is listed on the insurance policy as an insured entity and that plaintiff accepted approximately $58,000.00 in Worker's Compensation benefits rendering this action barred pursuant to Workers Compensation Law §§11 and 29 [6].

New York Workers Compensation Law §11 limits employer liability to an injured employee, and New York Workers Compensation Law §29[6], provides that the benefits are the "exclusive remedy to an employee."

A general employee of an employer can also be a special employee of another entity "notwithstanding the general employer's responsibility for payment of wages and for

maintaining workers compensation and other employee benefits." (Ramnarine v. Memorial Ctr. for Cancer & Allied Diseases, 281 A.D. 2d 218, 722 N.Y.S. 2d 493 [1st Dept., 2001]). Defendant by providing proof that it has no employees and, "while two entities have separate certificates of incorporation, they share a president and director of finance, financial management, administrative headquarters, an insurance policy and a common purpose," can establish that they each are a part of a single integrated entity barring claims under Workers Compensation Law §11(Carty v. East 175th Street Housing Development Fund Corp., 83 A.D. 3d 529, 921 N.Y.S. 2d 237 [1st Dept. 2011] and Paulino v. Lifecare Transport, 57 A.D. 3d 319, 869 N.Y.S. 2d 439 [1st Dept., 2008]).

In support of its position, defendant provides the affidavit of Elizabeth Majkowski, senior vice president of operations for SL Green Realty Corp. (Mot. Exh. 1). Ms. Majkowski states that SL Green Realty Corp. is a parent corporation, and the defendant has no employees, relying on SLG Management LLC's employees and affiliates to perform any necessary services (Mot. Exh. 1). Defendant provides the 2015 Annual Report for SL Green Realty Corp. that incorporates the SL Green Operating Partnership, L.P. and SL Green Management as subsidiaries (Mot. Exh. A. & A-1). Defendant also provides copies of SL Green Realty Corp.'s liability insurance policy which includes the defendant as a named insured (Mot. Exhs. C & C-1 Form 80-02-2373, pg. 6). Defendant provides the Worker's Compensation policy for SL Green Management LLC that includes the 1185 Avenue of the Americas Address (Mot. Exh. D, page 4 cont.). Defendant has established a prima facie basis to obtain summary judgment.

Plaintiffs in opposition to the motion provides the affirmation of their attorney. They argue that Chris Jackson's employer of record is SL Green Management LLC, that he did not receive any employee manuals from the defendant. Plaintiff argues that defendant as the entity with sole title to the property is not his employer and that the workers compensation policy does not specifically name plaintiff as an insured.

Hearsay evidence may be considered in opposition to a motion for summary judgment, as long as it is not the only evidence submitted (Fountain v. Ferrara, 2014 N.Y. Slip Op. 03947 [1st Dept. 2014], citing to O'Halloran v. City of New York, 78 A.D. 3d 536, 911 N.Y.S. 2d 333 [1st Dept., 2010]). The affirmation of an attorney having no personal knowledge of the facts is hearsay, which is insufficient to defeat summary judgment (Berrios v. 735 Avenue of the Americas, 82 A.D. 3d 552, 919 N.Y.S. 2d 16 [1st Dept., 2011]).

Plaintiffs rely on hearsay evidence and have not raised any issues of fact for purposes of denying defendant's motion. Alternatively, plaintiffs argue that discovery is needed and the motion should be denied as premature.

Pursuant to CPLR §3212[f], summary judgment may be denied if there are facts essential to opposition in existence that cannot be stated. Summary judgment cannot be avoided by a claim that discovery is needed unless an evidentiary basis is provided establishing that the discovery sought will produce relevant evidence (Miller-Francis v. Smith-Jackson, 113 A.D. 3d 28, 976 N.Y.S. 2d 34 [1st Dept., 2013] and Execu/Search Group, Inc. v. Scardina, 70 A.D. 3d 451, 895 N.Y.S. 2d 41 [1st Dept., 2010]).

Plaintiffs have not stated an evidentiary basis to deny summary judgment pending discovery.

Accordingly, it is ORDERED that defendant's motion for summary judgment, dismissing the complaint pursuant to New York Worker's Compensation Law §§ 10, 11 and 29[6], is granted and this case is dismissed, and it is further,

ORDERED that the Clerk is directed to enter judgment accordingly.

ENTER:

MANUEL J. MENDEZ
J.S.C.

MANUEL J. MENDEZ,
J.S.C.

Dated: September 20, 2016

Check one: X FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE