

Tropea v Tishman Interiors Corp.

2018 NY Slip Op 32836(U)

September 10, 2018

Supreme Court, Bronx County

Docket Number: 301679/2014

Judge: Lucindo Suarez

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 19

JOSEPH V. TROPEA,

Plaintiff,

- against -

Index No.: 301679/2014

TISHMAN INTERIORS CORPORATION, AECOM,
AECOM TECHNOLOGY CORPORATION, MACK-
CALI REALTY CORPORATION, M-C 125 BROAD C
LLC., USIS SYSTEMS, INC. AND CBRE GROUP, INC.,

Defendants.

DECISION AND ORDER

AECOM TECHNOLOGY CORPORATION, MACK-CALI
REALTY CORPORATION, and
M-C 125 BROAD C LLC.,

Third-Party Plaintiffs,

- against -

Third-Party Plaintiffs
Index No.: 84082/2014

USIS ELECTRIC, INC and
HARLEYSVILLE INSURANCE COMPANY,

Third-Party Defendants.

USIS SYSTEMS, INC.,

Second Third-Party Plaintiff,

- against -

Second Third-Party Plaintiff
Index No.: 301679/2017

USIS ELECTRIC, INC.,

Second Third-Party Defendant.

AECOM TECHNOLOGY CORPORATION and
M-C 125 BROAD C LLC.,

Third Third-Party Plaintiffs,

Third Third-Party Plaintiffs
Index No.: 301679/2014

- against -

USIS ELECTRIC, INC.,

Third Third-Party Defendant.

PRESENT: Hon. Lucindo Suarez

The issue in these motions to renew and dismiss is whether Third Third-Party Defendant, USIS Electric, Inc., (“Electric”)¹ is entitled to a dismissal of the Third-Third Party Plaintiffs’ Complaint based on the defenses of collateral estoppel and *res judicata*, and whether Third-Party Plaintiffs, AECOM Technology Corporation and M-C 125 Broad C LLC., (“AECOM”) raised new material facts not contained in AECOM’s prior cross motion for summary judgment, which would have changed this court’s prior decision and order rendered November 1, 2017, dismissing the Third-Party Complaint against Electric.

AECOM’s application to renew is unavailing as AECOM did not raise new material facts that would have altered this court’s prior decision and order rendered November 1, 2017, nor does AECOM possess a reasonable justification for its failure to present such facts on their prior cross-motion for summary judgment.

CPLR §2221(e)(2)(3) provides: “a motion for leave to renew shall be based upon new facts not offered on the prior motion that would change the prior determination ... and shall contain reasonable justification for the failure to present such facts on the prior motion.” *American*

¹ Electric was Plaintiff’s employer at the time of the alleged accident.

Audio Serv. Bur. Inc. v. AT & T Corp., 33 A.D.3d 473, 823 N.Y.S.2d 25 (1st Dep't 2006). *Res judicata* is founded upon the belief that "it is for the interest of the community that a limit should be prescribed to litigation, and that the same cause of action ought not to be brought twice to a final determination." *Ryan v. New York Tel. Co.*, 62 N.Y.2d 494, 467 N.E.2d 487 (1984).

The doctrine of collateral estoppel, a narrower species of *res judicata*, precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party or those in privity. *Buechel v. Bain*, 275 A.D.2d 65 713 N.Y.S.2d 332 (1st Dep't 2000).

On November 1, 2017, this court dismissed AECOM's Third-Party Complaint against Electric pursuant to Worker's Compensation Law §11 as Plaintiff did not suffer a grave injury², and AECOM was improperly attempting to assert claims for indemnification and breach of contract based on a master subcontractor agreement to which it was not a signatory of.

Therefore, AECOM failed to raise any new material facts to warrant a departure from this court's previous decision and order as there was a prior final determination as to AECOM's claims for indemnification and breach of contract, which are now the identical claims asserted in AECOM's Third Third-Party Complaint.

Accordingly, it is

ORDERED, that AECOM's motion (Motion Seq. # 7) seeking leave to renew is denied; and it is further

ORDERED, Electric's motion (Motion Seq. # 8) seeking a dismissal of the Third Third-Party Plaintiffs' Complaint is granted; and it is further

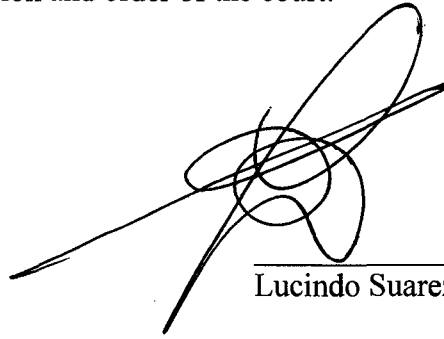
ORDERED, that the Clerk of the Court is directed to enter judgment dismissing the Third

² AECOM does not contend in its moving papers that Plaintiff suffered a grave injury.

Third-Party Plaintiffs' Complaint against Third Third-Party Defendant, USIS Electric, Inc.

This constitutes the decision and order of the court.

Dated: September 10, 2018

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the left.

LUCINDO SUAREZ, J.S.C.

Lucindo Suarez, J.S.C.