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| <b>Ramos v Astar Props. LLC</b>  |
| 2021 NY Slip Op 31760(U)   |
| May 25, 2021   |
| Supreme Court, New York County   |
| Docket Number: 153729/2016   |
| Judge: Phillip Hom   |
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. PHILLIP HOM **PART** **IAS MOTION 2**

*Justice*

-----X

PEDRO RAMOS,

Plaintiff,

- v -

ASTAR PROPERTIES LLC,

Defendant.

-----X

ASTAR PROPERTIES LLC

Plaintiff,

-against-

HALSTEAD MANAGEMENT COMPANY, LLC, ROLAND  
PHILLIPS

Defendant.

-----X

**INDEX NO.** 153729/2016  
**MOTION DATE** March 23, 2021  
**MOTION SEQ. NO.** 002

**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 595636/2018

The following e-filed documents, listed by NYSCEF document number (Motion 002) 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53

were read on this motion to/for DISMISS.

Third-Party Defendants Halstead Management Company, LLC and Roland Phillips move to dismiss the Third Party Complaint under CPLR §§3211(a)(1) and (7). Upon the foregoing documents, it is ORDERED that the motion is granted and the Third-Party Complaint is dismissed, with prejudice.

*Background*

Plaintiff Pedro Ramos (“Ramos”) was employed as a handyman for Sutton Place Condominium (the “Condo”). Ramos’ supervisor, Defendant Roland Phillips (“Phillips”) was

also an employee of the Condo and worked under the supervision of Third-Party Defendant Halstead Management Company LLC (“Halstead”). Ramos incorrectly testified at his deposition that he was an employee of Halstead (NYSCEF Doc No 45; Ramos EBT transcript p. 13 lines 12-13). Ramos described his duties as “I make repairs around the buildings; I assist tenants with basic problems, basic plumbing...I’ve done snake drains” (*id* p. 10 lines 22-23 and p. 11 line 24). On October 3, 2015, he was using a drain snake to clear a clog in Apartment 3E when an explosive liquid came out of the drain and splashed his eyes, face neck and arms (*id* pp 35-40). It is uncontroverted that after this incident, Ramos filed a Worker’s Compensation claim and received Worker’s Compensation benefits (*id* pp 51-52).

Ramos sued Astar Property LLC, the owner of Apartment 3E and its members Shabbir Adib and Ruby Adib. By Short Form Order and a So-Ordered Stipulation dated November 19, 2019 under Motion Seq. No. 1, Hon. Kathryn Freed (Ret.), discontinued all claims and cross claims against Shabbir Adib and Ruby Adib with prejudice (NYSCEF Doc. No.37). Defendants began a third-party action against Halstead, the managing agent of the Condo and Phillips on September 11, 2018 (NYSCEF Doc. No. 18). The Third-Party Defendants Halstead and Phillips move to dismiss the third-party action under CPLR §3211(a) (1) and (7) based on the exclusive remedy provisions of the Worker’s Compensation Act and further seek a stay of disclosure under CPLR §§3103 and 3214(b).

*Motion to Dismiss a Complaint under CPLR §3211(a)(1) and (7)*

When a party moves to dismiss a complaint under CPLR §3211(a)(7), the standard is whether the pleading states a cause of action, not whether the proponent of the pleading has a cause of action (*African Diaspora Mar. Corp. v Golden Gate Yacht Club*, 109 AD3d 204 [1<sup>st</sup>

Dept 2013]). Although bare legal conclusions are not presumed to be true on a motion to dismiss under CPLR §3211(a)(7), the court must accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*511 W. 232<sup>nd</sup> Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144 [2002]).

Whether a plaintiff can ultimately establish its allegations is not taken into consideration in determining a motion to dismiss (*Philips S. Beach, LLC v ZC Specialty Ins. Co.*, 55 AD3d 493 [1<sup>st</sup> Dept 2008]; *African Diaspora Mar. Corp. v Golden Gate Yacht Club*, *supra* at 211). On a motion to dismiss the complaint, “the pleading is to be afforded liberal construction” (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). However, CPLR §3211(a)(1) warrants dismissal of a cause of action where the court finds that the documentary evidence presented conclusively establishes a defense to the asserted claims as a matter of law (*150 Broadway N.Y. Assocs. L.P. v Bodner*, 14 AD3d 1, 5 [1<sup>st</sup> Dept 2004]).

#### *Worker’s Compensation Law*

Workers’ Compensation Law §11 provides in relevant part, “[t]he liability of an employer prescribed by the [Workers Compensation Law] shall be exclusive and in place of any other liability whatsoever, to such employee, his or her personal representatives, spouse, parents, dependents, distributees, or any person otherwise entitled to recover damages, contribution or indemnity, at common law or otherwise, on account of such injury or death or liability arising therefrom [except for certain limited circumstances].” It further provides “an employer shall not be liable for contribution or indemnity to any third person based upon liability for injuries sustained by an employee acting within the scope of his or her employment for such employer

unless such third person proves through competent medical evidence that such employee has sustained a ‘grave injury.’” Ramos did not allege a grave injury.

It is well settled that an employee could have more than one employer for statutory purposes and consequently when Ramos elected to receive Workers’ Compensation benefits from his general employer, the Condo, his special employer, Halstead, “is also shielded from any actions at law commenced by the employee based on the exclusivity provisions of the Worker’s Compensation Law” (*Lyons v Maxwell-Kates, Inc.*, 2017 N.Y. Misc. LEXIS 1662 [Sup. Ct. NY Co. 2017] citing *Thompson v Grumman Aerospace Corp.*, 78 NY2d 553 [1991]).

Third-Party Defendants submit an affidavit from Stuart Shapiro, the Account Executive of Halstead stating that on December 26, 2001, the Condo entered into a management agreement with Heron Ltd and in 2004, Heron sold certain assets, including the right to manage the Condo to Halstead (NYSCEF Nos. 49 and 50). Halstead’s authority was established in the management agreement which reads in relevant part: “the Owner hereby appoints the Agent [Halstead by assuming Heron’s rights and obligations under the agreement] and the Agent hereby accepts appointment . . . as the exclusive managing agent of the 74 residential units” (NYSCEF No. 49 p. 1).

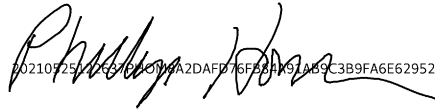
When an agent is acting according to the principal’s authority, the agent has such principal’s immunities that are not personal to the principal (*Schoeffer v United Parcel Service of New York*, 277 AD 569 [1<sup>st</sup> Dept 1950]). The Court dismisses the Third-Party Complaint because Ramos applied for and received Workers’ Compensation benefits as an employee of the Condo, which was his exclusive remedy and the Third-Party Plaintiff’s complaint is barred as a matter of law.

*Discovery*

Discovery shall proceed in the first-party action and parties shall appear for a Microsoft Teams Status Conference on June 4, 2021. An invitation shall be sent to all parties under separate cover.

*Conclusion*

For the reasons stated, the Third-Party Complaint is dismissed as barred under the exclusive remedy provisions of Workers' Compensation Law §11.

  
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| <u>5/25/2021</u><br>DATE |   | <u>PHILLIP HOM, J.S.C.</u>  |
| CHECK ONE:               | <input type="checkbox"/> CASE DISPOSED                                      | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION                         |
|                          | <input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED | <input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER           |
| APPLICATION:             | <input type="checkbox"/> SETTLE ORDER                                       | <input type="checkbox"/> SUBMIT ORDER   |
| CHECK IF APPROPRIATE:    | <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN                         | <input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE |