Santiago v Tristate Realty LLC
2021 NY Slip Op 32703(U)
December 17, 2021
Supreme Court, Kings County
Docket Number: Index No. 502976/19
Judge: Debra Silber

At an IAS Term, Part 9 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 17th day of December, 2021.

P R E S E N T:

HON. DEBRA SILBER,
Justice.

- X

LILLIAN SANTIAGO,
Plaintiff,

DECISION/ORDER

- against -

Index No. 502976/19
Motion Seq. # 2

TRISTATE REALTY LLC, TRISTATE REALTY HOLDINGS LLC. 106 WEST 83RD STREET LLC, BLUE SQUARE CONSTRUCTION LLC, ACACIA NETWORK HOUSING, INC., AND BRONX ADDICTION SERVICES INTEGRATED CONCEPTS SYSTEM, INC. A/K/A (BASICS),
Defendants.

- X

The following e-filed papers read herein:	NYSCEF Doc Nos.
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	17-28
Opposing Affidavits (Affirmations)	29-40, 42
Reply Affidavits (Affirmations)	43

Upon the foregoing papers, defendants Acacia Network Housing, Inc. (hereafter Acacia) and Bronx Addiction Services Integrated Concepts System, Inc. a/k/a (BASICS) (hereafter BASICS) move pre-answer (in motion sequence [mot. seq.] two) for an order, pursuant to CPLR 3211 (a) (1) and (a) (7), dismissing all of the claims asserted against them in the complaint. For the reasons which follow, the motion is granted.

Background

On February 11, 2019, plaintiff Lillian Santiago (Santiago) commenced this action against defendants Tristate Realty LLC, Tristate Realty Holdings LLC and 106 West 83rd Street LLC (collectively, the Tristate Defendants) by filing a summons and a complaint. The complaint alleges that on January 23, 2017, Santiago suffered personal injuries due to a hazardous premises condition when she fell on the interior stairs at the premises at 106 West 83rd Street in Manhattan. On or about January 23, 2020, Santiago commenced a second, nearly identical, action in this court against Acacia and BASICS, as well as against defendant Blue Square Construction, which essentially asserted the same allegations as the this, the first, complaint. On October 27, 2020, the Tristate Defendants moved to consolidate the second action into this action, which relief was granted by a January 21, 2021 decision and order.

Acacia and BASICS' Instant Dismissal Motion

On June 21, 2021, Acacia and BASICS filed a pre-answer motion for an order, pursuant to CPLR 3211 (a) (1) and (a) (7), dismissing all of the claims asserted against them in the complaint. Acacia and BASICS argue that Santiago has failed to state a cause of action against either of them, and that their documentary evidence demonstrates that the Workers' Compensation Law bars Santiago's personal injury claims.

Acacia and BASICS assert that an injured employee's eligibility to collect Workers' Compensation benefits is the employee's exclusive remedy against the employer for work-related injuries, as a matter of law. Acacia and BASICS further claim that the Workers' Compensation Law bars employees from seeking damages from entities that are either their

employer, their special employer, or an "alter ego" of their general employer. Acacia and BASICS assert that they qualify as plaintiff's employer and its alter ego. Their counsel avers that when one entity controls another, or when the two entities operate as a single integrated entity, including where two entities share the same Workers' Compensation insurance policy for employees, they are considered alter egos.

Acacia and BASICS contend that the plaintiff's incident occurred while Santiago was performing tasks within the scope of her employment. Acacia and BASICS submit copies of Santiago's W-2 forms reflecting that Acacia was her employer at the time of the incident. Acacia and BASICS also submit evidence that Santiago was awarded benefits from the Workers' Compensation Board in a May 10, 2017 decision which identifies the insured as BASICS. Acacia and BASICS also submit a copy of an insurance policy declaration reflecting that BASICS and Acacia were both covered by the same Workers' Compensation policy under which Santiago received her benefits. Acacia and BASICS submit an affidavit from Jose Rodriguez (Rodriguez), Acacia's Chief Legal Officer, in support of their dismissal motion.

Acacia and BASICS argue that since Santiago was employed by Acacia, as demonstrated by her W-2 forms, and since BASICS was responsible for Acacia's finances and operations, including procuring and maintaining its Workers' Compensation insurance as well as handling employee's Workers' Compensation claims, these two entities were alter egos of each other within the meaning of the Workers' Compensation Law. Acacia and BASICS also argue that as Santiago has already received Workers' Compensation insurance benefits for the incident, that her receipt of such benefits is her exclusive remedy,

barring this suit. Alternatively, Acacia and BASICS claim that Santiago was a "special employee" of BASICS in addition to being a general employee of Acacia.

Santiago's Opposition

Santiago, in opposition, asserts that a question of fact exists as to whether Acacia or BASICS was Santiago's employer at the time of the incident, although she acknowledges that her pay stubs reflect that Acacia was her employer and that the New York State Workers' Compensation Board identified BASICS as the insured in connection with her Workers' Compensation claims. Santiago contends that Acacia and BASICS have failed to establish that they are alter egos of each other because they did not submit evidence that they exercised day-to-day control over each other's operations. Santiago also asserts that depositions have yet to be conducted and that dismissal would be premature before she has the opportunity to depose witnesses with knowledge of the relationship between Acacia and BASICS.

Santiago further notes that Acacia and BASICS are both New York not-for-profit corporations, but were formed twenty years apart and for different purposes, and argues that the distinction between separate corporate entities should not be ignored. Santiago asserts that Acacia and BASICS have not demonstrated that they control one another or that they operate as a single integrated entity. Santiago also argues that the mere fact that two entities are covered by the same Workers' Compensation insurance policy does not conclusively establish that they are alter egos. Santiago asserts that additional facts, such as whether one of the two entities is a subsidiary of the other or there exists common

control, must be revealed before this court determines that there is an alter ego relationship between them.

The Tristate Defendants' Opposition

The Tristate Defendants, in opposition, similarly contend that questions of fact exist as to whether Acacia or BASICS was Santiago's employer at the time of the incident and whether they are alter egos. The Tristate Defendants, like Santiago, assert that there is no proof that Acacia and BASICS exercised control over each other's daily operations, which is necessary for alter ego status. The Tristate Defendants also contend that the record indicates that *both* Acacia and BASICS employed Santiago, since the Workers' Compensation Board's records indicate that BASICS was Santiago's employer, but Santiago's W-2 forms reflect that she was employed by Acacia.

The Tristate Defendants also argue that Acacia and BASICS' dismissal motion is premature and assert that the only testimonial evidence submitted in support of the dismissal motion is Rodriguez's "self-serving" affidavit which asserts that the two entities are alter egos. The Tristate Defendants argue that the facts asserted in Rodriguez's affidavit are solely within the knowledge of Acacia and/or BASICS, and thus, depositions are necessary to obtain information about their day-to-day operations. The Tristate Defendants also argue that the fact that Acacia and BASICS are covered by the same Workers' Compensation insurance policy does not conclusively establish their alter ego status.

Acacia and BASICS' Reply

Acacia and BASICS, in reply, argue that additional discovery is unnecessary because the documentary evidence they submitted utterly refutes Santiago's allegations. Acacia and BASICS contend that Santiago has essentially admitted that Acacia is her employer and there is no dispute that the Workers' Compensation insurance carrier for both Acacia and BASICS' paid Santiago's benefits. They assert that Santiago's reference to their incorporation dates is misplaced, since there is no legal requirement that alter egos be formed at the same time. Acacia and BASICS also assert that Acacia is actually a subsidiary of Acacia Network, Inc., a non-party, which was created to provide temporary shelter, housing, and ancillary social services to the homeless in New York City, and that BASICS was created to handle the finances for both of those entities. Acacia and BASICS claim that the fact that they were both insureds on the same Workers' Compensation policy is sufficient to find that they are alter egos for purposes of the Workers' Compensation Law.

Discussion

In considering a motion to dismiss, the complaint must be viewed in the light most favorable to plaintiff (*Arrington v New York Times Co.*, 55 NY2d 433, 442 [1982]). However, a complaint containing factual claims that are flatly contradicted by documentary evidence should be dismissed (*Well v Rambam,* 300 AD2d 580, 581 [2002]; *Kenneth R. v Roman Catholic Diocese of Brooklyn,* 229 AD2d 159, 162 [1997], *cert denied* 522 US 967 [1997]). To properly support a motion for dismissal pursuant to CPLR 3211 (a) (1), the contents of the proffered documentary evidence must be "essentially undeniable"

(*Fontanetta v John Doe 1*, 73 AD3d 78, 85-85 [2010], citing Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C3211:10, at 21-22). Examples of such "essentially undeniable" documentary evidence include judicial records, mortgages, deeds, contracts, written agreements and notes (*Fontanetta*, 73 AD3d at 84-85). "In sum, to be considered 'documentary,' evidence must be unambiguous and of undisputed authenticity" (*Fontanetta*, 73 AD3d at 86, citing Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C3211:10, at 21-22).

In considering a motion to dismiss pursuant to CPLR 3211 (a) (7) for failing to state a cause of action "the pleadings must be liberally construed" and "[t]he sole criterion is whether from [the complaint's] four corners, factual allegations are discerned which taken together manifest any cause of action cognizable at law" (*Gershon v Goldberg*, 30 AD3d 372, 373 [2006], quoting *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]; *see also Dinerman v Jewish Bd. of Family & Children's Servs., Inc.*, 55 AD3d 530, 531 [2008]; *Morone v Morone*, 50 NY2d 481, 484 [1980]; *219 Broadway Corp. v Alexander's, Inc.*, 46 NY2d 506, 509 [1979]).

In addition to the pleadings, the court may consider other evidentiary material submitted by the movant to establish conclusively that no viable cause of action exists (*Simmons v Edelstein*, 32 AD3d 464, 465 [2006]; *Rovello v Orofino Realty Co.*, 40 NY2d 633, 636 [1976]). A court considering a motion to dismiss must both accept as true the allegations in the complaint and afford the plaintiff the benefit of every possible favorable inference (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]; *see also Great Eagle Intl. Trade, Ltd. v Corporate Funding Partners, LLC*, 104 AD3d 731 [2d Dept 2013]). However,

allegations in the complaint that either consist of bare legal conclusions or contain factual claims flatly contradicted by the record are not entitled to favorable inferences (*see e.g.*, *Garber v Board of Trustees of State Univ. of N.Y.*, 38 AD3d 833, 834 [2007]; *see also Maas v Cornell Univ.*, 94 NY2d 87, 91 [1999]; *Doria v Masucci*, 230 AD2d 764 [1996], *lv denied* 89 NY2d 811 [1997]).

Workers' Compensation Law § 10 provides, in relevant part:

> "1. Every employer subject to this chapter shall in accordance with this chapter, except as otherwise provided in section twenty-five-a hereof, secure compensation to his employees and pay or provide compensation for their disability or death from injury arising out of and in the course of the employment without regard to fault as a cause of the injury . . ."

Workers' Compensation Law § 11 provides, in applicable part:

> "The liability of an employer prescribed by the last preceding section 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 that if an employer fails to secure the payment of compensation for his or her injured employees and their dependents as provided in section fifty of this chapter, an injured employee, or his or her legal representative in case of death results from the injury, may, at his or her option, elect to claim compensation under this chapter, or to maintain an action in the courts for damages on account of such injury; and in such an action it shall not be necessary to plead or prove freedom from contributory negligence nor may the defendant plead as a defense that the injury was caused by the negligence of a fellow servant nor that the employee assumed the risk of his or her employment, nor that the injury was due to the contributory negligence of the employee."

Lastly, Workers' Compensation Law § 29 (6) provides that "[t]he right to compensation or benefits under this chapter, shall be the exclusive remedy to an employee."

Under the Workers' Compensation Law, "an employee who is entitled to receive compensation benefits may not sue his or her employer in an action at law for the injuries sustained" (*Pena v Automatic Data Processing, Inc.*, 73 AD3d 724, 724 [2010]). Furthermore, "the receipt of workers' compensation benefits is the exclusive remedy that a worker may obtain against an employer for losses suffered as a result of an injury sustained in the course of employment" (*Siklas v Cyclone Realty, LLC*, 78 AD3d 144, 150 [2010], citing *Reich v Manhattan Boiler & Equip. Corp.*, 91 NY2d 772, 779 [1998]; *Hofweber v Soros*, 57 AD3d 848, 849 [2008] *lv denied* 13 NY3d 703 [2009]; *Pereira v St. Joseph's Cemetery*, 54 AD3d 835, 836 [2008]).

Here, Acacia and BASICS have submitted Santiago's paystubs to prove that she received wages from Acacia. It is also undeniable that, under the determination of the Workers' Compensation Board, Santiago received Workers' Compensation benefits under a policy that names both Acacia and BASICS as insureds. Because it is undisputed that Santiago received benefits awarded by the Workers' Compensation Board for her injuries, any action against Acacia, her employer, is barred, and subject to dismissal.

Importantly, "[t]hese exclusivity provisions also have been applied to shield from suit persons or entities other than the injured plaintiff's direct employer" (*Pena*, 73 AD3d at 724, citing *Fung v Japan Airlines Co., Ltd.*, 9 NY3d 351, 358-359 [2007]; *Thompson v Grumman Aerospace Corp.*, 78 NY2d 553, 557 [1991]). A general employee of one

employer may also be a special employee of another employer (*Thompson*, 78 NY2d at 557; *see also Spencer v Crothall Healthcare, Inc.*, 38 AD3d 527, 528 [2007]). "A person may be deemed to have more than one employer for purposes of the Workers' Compensation Law, a general employer and a special employer" (*Schramm v Cold Spring Harbor Lab.*, 17 AD3d 661, 662 [2005]). "A special employee is 'one who is transferred for a limited time of whatever duration to the service of another'" (*Fung v Japan Airlines Co, LTD.*, 9 NY3d 351, 364 [2007], quoting *Thompson,* 78 NY2d at 557). The action against a special employer is barred, "regardless of the general employer's responsibility to pay the employee's wages and maintain workers' compensation and other benefits" (*Gonzalez v Ari Fleet, Lt*, 25 Misc 3d 1235[A], 2009 NY Slip Op 52418[U] [Sup Ct, Queens County 2009], *affd* 83 AD3d 891 [2011], citing *Thompson,* 78 NY2d at 557; *Jaynes v County of Chemung*, 271 AD2d 928, 930 [2000], *lv denied* 95 NY2d 762 [2000]). Furthermore, the receipt of Workers' Compensation benefits from a general employer precludes an employee from commencing a negligence action against a special employer (*see e.g.*, *Hofweber v Soros*, 57 AD3d 848, 849 [2008]; *Croche v Wyckoff Park Assoc*., 274 AD2d 542 [2000]). Lastly, an action against a defendant company is barred if the defendant "establish[es] itself as the alter ego of a plaintiff's employer by demonstrating that one of the entities controls the other or that the two operate as a single integrated entity" (*Samuel v Fourth Avenue Assocs., LLC,* 75 AD3d 594, 595 [2010]).

"Although a person's status as a special employee is generally a question of fact, it may be determined as a matter of law 'where the particular undisputed critical facts compel that conclusion and present no triable issue of fact'" (*Degale-Selier v Preferred Mgt. &*

Leasing Corp., 57 AD3d 825, 826 [2008], quoting Thompson, 78 NY2d at 557; *see e.g. Ortega v Noxxen Realty Corp.*, 26 AD3d 361, 362 [2006] [holding that "(t)he evidentiary proof submitted by Noxxen was sufficient to make out its prima facie case by showing, inter alia, that it was the alter ego of Gaseteria, the plaintiff's employer, that the plaintiff was engaged in the work of Gaseteria when he was injured, and that he collected workers' compensation benefits for those injuries under Gaseteria's workers' compensation policy"]; *see also Fajardo v Mainco El. & Elec. Corp.*, 143 AD3d 759, 763-764 [2016] [holding that "(t)he evidence submitted indicated that Bronx Center Management, Inc., was nothing more than a payroll company, established to pay employee salaries and maintain Workers' Compensation, and was the plaintiff's general employer (and) Bronx Center demonstrated, prima facie, that it was the plaintiff's special employer"]).

Here, the documentary evidence submitted by Acacia and BASICS conclusively establishes that Santiago was employed by Acacia at the time of the incident, which paid her salary (as reflected in Santiago's W-2 forms), and that Santiago was the special employee of BASICS, which maintained a Workers' Compensation policy for Acacia and provided Santiago with Workers' Compensation benefits.[1] Based on these critical undisputed facts, Acacia and BASICS have established that dismissal of the complaint is warranted under the Workers' Compensation Law, as a matter of law, and Santiago has failed to raise any triable issues of fact to preclude dismissal.

[1] The court's decision is based on the irrefutable documentary evidence submitted by the movants (the W-2 forms and the decision of the Workers' Compensation Board).

Accordingly, it is hereby

ORDERED that Acacia and BASICS' motion (mot. seq. two) to dismiss all of the claims asserted against them in the complaint is granted, and the complaint is hereby dismissed as against Acacia and BASICS. There were no cross claims asserted against either of them.

This constitutes the decision and order of the court.

E N T E R,

Hon. Debra Silber, J.S.C.