

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D16594
C/cb

_____AD3d_____

Argued - September 28, 2007

REINALDO E. RIVERA, J.P.
JOSEPH COVELLO
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON, JJ.

2006-05126

DECISION & ORDER

Lloyd Roberson, appellant, v Moveway Transfer and Storage, respondent, et al., defendants.

(Index No. 34957/02)

Simon Lesser, P.C., New York, N.Y. (Leonard F. Lesser of counsel), for appellant.

DeCicco, Gibbons & McNamara, P.C., New York, N.Y. (Daniel J. McNamara and Ioana Gheorghiu of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals, as limited by his brief, from so much of an order of the Supreme Court, Kings County (Partnow, J.), dated April 25, 2006, as granted that branch of the motion of the defendant Moveway Transfer and Storage which was for summary judgment dismissing the complaint insofar as asserted against it.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The plaintiff was placed in the temporary employ of the defendant Moveway Transfer and Storage (hereinafter Moveway) by his general employer, a temporary staffing service, which paid him and maintained Workers' Compensation coverage for him. During the course of his temporary employment, the plaintiff was injured. In the order appealed from, the Supreme Court granted Moveway's motion, inter alia, for summary judgment dismissing the complaint insofar as asserted against it, concluding that the plaintiff was Moveway's special employee. We affirm the order insofar as appealed from.

Moveway unequivocally established its prima facie entitlement to summary judgment by demonstrating that on the day the plaintiff was injured "[Moveway] 'exclusively controlled and

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directed the manner, details, and ultimate result of the plaintiff's work” (Bailey v Montefiore Med. Ctr., 12 AD3d 545, 546, quoting Causewell v Barnes & Noble Book Stores, 238 AD2d 536; Ugijanin v 2 West 45 Street, _____AD3d_____ [2d Dept, Sept. 11, 2007]; see Thompson v Grumman Aerospace Corp., 78 NY2d 553, 558; Niranjan v Airweld, Inc., 302 AD2d 572). In opposition, the plaintiff failed to raise a triable issue of fact. Under such circumstances, the Supreme Court correctly concluded that the plaintiff was a special employee of Moveway as a matter of law and properly dismissed the complaint on the ground that it is barred by Workers' Compensation Law §§ 11 and 29(6) (see Thompson v Grumman Aerospace Corp., 78 NY2d at 558, 560).

RIVERA, J.P., COVELLO, ANGIOLILLO and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court