

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

D32206
O/prt

_____AD3d_____

Argued - May 12, 2011

REINALDO E. RIVERA, J.P.
RUTH C. BALKIN
PLUMMER E. LOTT
LEONARD B. AUSTIN, JJ.

2010-11339

DECISION & ORDER

Robert Navallo, et al., respondents, v R.P. Brennan
General Contractors, etc., appellant.

(Index No. 103882/08)

Edward Garfinkel, Brooklyn, N.Y. (Fiedelman & McGaw [Ross P. Masler], of counsel), for appellant.

Coiro, Wardi, Chinitz & Silverstein, New York, N.Y. (Michael A. Chinitz of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the defendant appeals, as limited by its brief, from so much of an order of the Supreme Court, Richmond County (McMahon, J.), dated September 23, 2010, as denied its motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and the defendant's motion for summary judgment dismissing the complaint is granted.

The plaintiff Robert Navallo (hereinafter the plaintiff), an operating engineer, allegedly was injured during the renovation of the Plaza Hotel in Manhattan. The defendant, the general contractor and construction manager for the project, required the use of temporary heaters during the renovation, but did not have an agreement with the union representing the operating engineers who oversaw the use of the heaters. Accordingly, the defendant contacted the nonparty Forest Builders Supply (hereinafter Forest), one of its suppliers, to hire operating engineers, including the plaintiff, to oversee the heaters on a temporary basis. According to the deposition testimony of the defendant's representative, the defendant would reimburse Forest "dollar-for-dollar" with respect to

August 23, 2011

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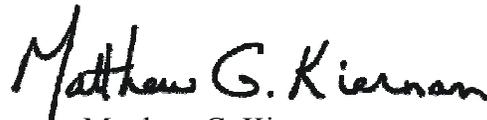
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the wages paid to the operating engineers hired by Forest.

The Supreme Court should have granted the defendant's motion for summary judgment dismissing the complaint on the ground that the action was barred by the Workers' Compensation Law, because the plaintiff was its special employee (*see* Workers' Compensation Law §§ 11, 29[6]; *Thompson v Grumman Aerospace Corp.*, 78 NY2d 553, 557-558). The defendant established its prima facie entitlement to judgment as a matter of law. The deposition testimony submitted by the defendant established, prima facie, that, to the extent that any entity controlled and directed the manner, details, and ultimate result of the plaintiff's work, it was the defendant. The defendant also was responsible for the furnishing of equipment, had the authority to direct Forest to fire the plaintiff, and the work being performed was in furtherance of the defendant's business (*see Gaynor v Cassone Leasing, Inc.*, 79 AD3d 967, 968-969; *Balamos v Elmhurst Realty Co. I, LLC*, 56 AD3d 705, 706; *Graziano v 110 Sand Co.*, 50 AD3d 635, 636; *Roberson v Moveway Transfer & Stor.*, 44 AD3d 839, 840; *Navarrete v A & V Pasta Prods., Inc.*, 32 AD3d 1003, 1005). In opposition, the plaintiffs failed to raise a triable issue of fact.

RIVERA, J.P., BALKIN, LOTT and AUSTIN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court