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publication in the New York Reports.

No. 232

Edward Beazer,
Respondent,

v.

New York City Health and
Hospitals Corporation, et al.,
Defendants,
Beys Contracting, Inc.,
Appellant.

Joel M. Simon, for appellant.
Steven J. Horowitz, for respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed,
with costs, and the certified question answered in the
affirmative.

Plaintiff Edward Beazer sliced his left thumb while
using an unguarded angle grinder to cut a piece of exposed hollow

steel tube out of a concrete floor at a construction site at Bellevue Hospital in New York City. At the time, plaintiff was employed by Turner Construction Company, the construction manager for the Bellevue project pursuant to a contract with the New York State Dormitory Authority (DASNY), the owner of the premises. Defendant Beys Contracting, Inc. was working on the project under a separate contract with DASNY.

Plaintiff subsequently sued New York City, the New York City Health and Hospitals Corporation (HHC) and Beys for damages, asserting causes of action for violations of Labor Law §§ 200 and 241 (6), and for common law negligence. Supreme Court dismissed the complaint and all cross claims against the City and HHC on the ground that the State of New York owned Bellevue; and granted Beys summary judgment dismissing plaintiff's Labor Law claims (2009 NY Misc LEXIS 5839 [NY County 2009]). As for plaintiff's common law negligence cause of action, Supreme Court denied Beys's motion on the ground there were material disputed issues of fact. The Appellate Division agreed, with two Justices dissenting (76 AD3d 405 [1st Dept 2010]). Beys appeals to us by permission of the Appellate Division.

We affirm. There are unresolved factual issues bearing on whether Beys owed any duty to plaintiff with respect to the condition of the grinder. There is conflicting evidence as to whether the grinder was owned by Beys or Turner, and as to the circumstances under which plaintiff came to possess the grinder.

* * * * *

Order affirmed, with costs, and certified question answered in the affirmative, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided December 15, 2011