

Fargiano v WFP Tower D Co., L.P.

2024 NY Slip Op 34686(U)

January 25, 2024

Supreme Court, Kings County

Docket Number: Index No. 512302/2015

Judge: Aaron D. Maslow

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At an I.A.S. Trial Term, Part 2, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 320 Jay Street, Borough of Brooklyn, City and State of New York, on the 25th day of January, 2024.

P R E S E N T:
Hon. AARON D. MASLOW
Justice

-----X

ALPHONSE FARGIANO,

Plaintiff,

-against-

WFP TOWER D CO., L.P., and HOLT
CONSTRUCTION CORP.,

Defendants.

ORDER

Index No. 512302/2015
Motions Sequence Nos. 19, 22, 23, 24
and 25
Calendar Date: 1/25/2024
Calendar Nos. 2, 3, 4, 5 and 6

-----X

WFP TOWER D CO., L.P., and HOLT
CONSTRUCTION CORP.,

Third-Party Plaintiffs,

-against-

BURGESS STEEL ERECTORS OF NEW YORK, LLC,
SHELBOURNE CONSTRUCTION CORP. and ALLRAN
ELECTRIC OF NY, LLC,

Third-Party Defendants.

-----X

WFP TOWER D CO., L.P., and HOLT
CONSTRUCTION CORP.,

Second Third-Party Plaintiffs,

-against-

JOHN L. XETHALIS, M.D.,

Second Third-Party Defendants.

-----X

The following numbered papers were used on these motion:
NYSCEF Document Numbers 508-526, 576-591, 601-623, 624-642 and 643-680

Upon the foregoing papers, and having heard oral argument and a decision having been rendered on the record in open court,

It is hereby ORDERED as follows:

In this Labor Law action, Plaintiff Alphonse Fargiano ("Plaintiff") seeks to recover damages for personal injuries that he alleges to have sustained on November 28, 2014 when he was employed as a taper and plasterer by Third-Party Defendant Shelbourne Construction Corp. at a construction project located at 250 Vesey Street, New York, New York (see NYSCEF Doc No. 642, Statement of Material Facts ¶ 1). The scope of the construction project consisted of the interior renovation of eight floors in a 60-story building and Plaintiff's duties on the project included drywall, finish and taping (*id.*

¶ 2). At the time of the occurrence, Plaintiff alleges that he was walking in a hallway carrying a bucket of compound on his left shoulder looking straight ahead, while his partner was walking behind him pulling a Baker's scaffold (*id.* ¶ 9).

Plaintiff contends that the November 29, 2014 occurrence arose when his left foot stepped onto an unsecured metal plate that shifted or collapsed under his weight, causing him to trip and fall to the ground and to sustain personal injuries (*id.* ¶ 10). Plaintiff testified at his deposition that the hole that his left foot fell into was 6-8 inches deep (*id.*).

A review of the moving parties' motions returnable for oral argument on January 25, 2024 reveals that such motions consist of the following number of pages:

- (a) The motion filed on May 5, 2023 interposed by Third-Party Defendant Burgess Steel Erectors of New York, LLC pursuant to CPLR 3212 to dismiss the third-party action and all cross-claims against Third-Party Defendant Burgess Steel Erectors of New York, LLC, which was assigned motion sequence number 19 and calendar number 6, consists of 1,021 pages in the aggregate (*see* NYSCEF Doc Nos. 508-526);
- (b) The motion for summary judgment to dismiss Plaintiff's Complaint pursuant to CPLR 3212, filed on July 13, 2023 by Third-Party Defendant Allran Electric of NY, LLC, which was assigned motion sequence number 22 and calendar number 2, consists of 878 pages in the aggregate (*see* NYSCEF Doc Nos. 576-591);
- (c) The motion for summary judgment to dismiss Plaintiff's Complaint, as well as the Third-Party Plaintiffs' Complaints pursuant to CPLR 3212, filed on July 13, 2023 by Third-Party Defendant Shelbourne Construction Corp., which was assigned motion sequence number 23 and calendar number 5, consists of 1,247 pages in the aggregate (*see* NYSCEF Doc Nos. 601-623);
- (d) Plaintiff's motion for partial summary judgment as to liability pursuant to Labor Law 241 (6), filed on September 21, 2023, which was assigned motion sequence number 24 and calendar number 3, consists of 1,116 pages in the aggregate (*see* NYSCEF Doc Nos. 624-642); and
- (e) The motion for summary judgment to dismiss Plaintiff's Complaint pursuant to CPLR 3212, filed on September 21, 2023 by Defendants/Third-Party Plaintiffs/Second Third-Party Plaintiffs WFP Tower D Co., L.P. and Holt Construction Corp., which was assigned motion sequence number 25 and calendar number 4, consists of 1,828 pages in the aggregate (*see* NYSCEF Doc Nos. 643-680).

In short, the five motions filed by the parties consist of 6,090 pages in the aggregate, over one thousand pages in excess of a ten-ream box of paper consisting of 5,000 pages.

All parties failed to submit to this Part hardcopies of their moving papers, in contravention of this Part's Rules, which require as follows that hardcopies be provided to the Part when a party's papers exceed 75 pages:

3. Hardcopies. For motions where the papers are filed on NYSCEF, hardcopies of a party's papers shall be submitted in the event that the party's papers exceed 75 pages. This hardcopy submission – which shall include a contents list – shall be made at least nine calendar days prior to the date on which the motion is calendared, in order to facilitate review in advance by the Court.

(New York State Unified Court System, 2nd JD -- Civil Term, Kings Supreme Court, Hon. Aaron D. Maslow: Part 2 Rules, rule I [B] [3], <https://ww2.nycourts.gov/courts/2jd/kings/civil/MaslowRules.shtml> [last accessed Jan. 21, 2024].)

As this Part has held in a similar situation involving movants which failed to provide the Part with hardcopies of their moving papers totaling 1,301 pages in violation of this Part's Rules requiring that parties supply hardcopies in circumstances where their papers exceed 75 pages:

Review of motions in advance is a practice of this court (*see Matter of Court's Discharge of Its Responsibilities Pursuant to 22 NYCRR § 100.3 (D) (2), (3)*, -- Misc 3d --, 2023 NY Slip Op 23258, *1 [Sup Ct, Kings County 2023]), as it enables full consideration and deliberation which each motion deserves. It is this routine which impelled this court's hardcopy submission rule. As the length of the motion papers filed by a party increases, the sheer amount of pages involved makes the requisite reading and deliberation an increasingly daunting task. When the number of pages reaches 75, hardcopy submission becomes an expediency. As the number of pages to review increases by the hundreds, it becomes an imperative. When

a submission is over 1,000 pages, a party has a conscientious duty to the court to offer chambers a hardcopy even in the absence of a rule requiring same; it is only common sense. The presence of paper documents facilitates more comprehensive review by allowing this Court to physically annotate important points on paper, to compare papers side-by-side for opposing arguments, to more easily locate cited decisions, and to reap other benefits of reading tangible, actual documents as opposed to staring at a computer screen.

While this Court's chambers could conceivably print the motion submissions, this undertaking would deplete copy paper, toner cartridges, and time, all at taxpayer expense, which would contravene public policy. The time it takes to perform this routine would be better spent on reading other motions. It therefore becomes incumbent on parties to a motion to provide these documents in paper format in addition to the NYSCEF electronic filings when the Part Rules call for it. The value of advance preparation which informs this obligation also informs the second component of the rule, namely that hardcopies be provided at least nine days prior to the scheduled motion date. As lengthy motions typically demand higher levels of preparation, a party's provision of hardcopies at least nine days before the calendar date enhances this Court's ability to perform its responsibilities.

(See *Ramzy v Safdi Plaza Realty Inc.*, 80 Misc 3d 1236(A), 2023 NY Slip Op 51175(U) [Sup Ct, Kings County 2023]).

This Court finds it perplexing that the parties would expect it to read over 6,000 pages on a computer screen.

Based on the foregoing, in light of the following parties' failure to provide this Court with hardcopies of their moving papers totaling 6,090 pages in the aggregate in violation of this Court's Part Rules, it is hereby ordered as follows:

- (a) The 1,021-page motion filed on May 5, 2023 interposed by Third-Party Defendant Burgess Steel Erectors of New York, LLC pursuant to CPLR 3212 to dismiss the third-party action and all cross-claims against Third-Party Defendant Burgess Steel Erectors of New York, LLC (see NYSCEF Doc Nos. 508-526), which was assigned motion sequence number 19, is DENIED without prejudice to renew;
- (b) The 878-page motion for summary judgment to dismiss Plaintiff's Complaint pursuant to CPLR 3212, filed on July 13, 2023 by Third-Party Defendant Allran Electric of NY, LLC (see NYSCEF Doc Nos. 576-591), which was assigned motion sequence number 22 and calendar number 2, is DENIED without prejudice to renew;
- (c) The 1,247-page motion for summary judgment to dismiss Plaintiff's Complaint, as well as the Third-Party Plaintiffs' Complaints pursuant to CPLR 3212, filed on July 13, 2023 by Third-Party Defendant Shelbourne Construction Corp. (see NYSCEF Doc Nos. 601-623), which was assigned motion sequence number 23 and calendar number 5, is DENIED without prejudice to renew;
- (d) Plaintiff's 1,116-page motion for partial summary judgment as to liability pursuant to Labor Law 241 (6), filed on September 21, 2023 (see NYSCEF Doc Nos. 624-642), which was assigned motion sequence number 24 and calendar number 3, is DENIED without prejudice to renew; and

- (e) The 1,828-page motion for summary judgment to dismiss Plaintiff's Complaint pursuant to CPLR 3212, filed on September 21, 2023 by Defendants/Third-Party Plaintiffs/Second Third-Party Plaintiffs WFP Tower D Co., L.P. and Holt Construction Corp. (*see* NYSCEF Doc Nos. 643-680), which was assigned motion sequence number 25 and calendar number 4, is DENIED without prejudice to renew.

1 Counsel are reminded of the provisions requiring that an opinion be included in the record on appeal should one be taken (*see* CPLR 5526; 22 NYCRR 1250.7 [b] [4] [1] [iii]). Transcripts may be procured from the court reporter (*see Matter of Lewandowski v Office of Ct. Admin.*, 173 Misc 2d 335 [Sup Ct, Albany County 1997]).

For Clerk's use only:
 MG _____ MD Motion Sequence No(s): 19,22-25

CPLR 5513 (a) provides: "Time to take appeal as of right. An appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof."

E N T E R

HON. AARON D. MASLOW
JUSTICE OF THE SUPREME COURT