

Furino v P & O Ports

2004 NY Slip Op 30119(U)

August 24, 2004

Supreme Court, Queens County

Docket Number: 0003033/2001

Judge: Allan B. Weiss

Republished from New York State Unified Court
System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, ALLAN B. WEISS IAS PART 2
Justice

CARMINE FURINO

Plaintiff

-against-

P&O PORTS, P&O PORTS NORTH AMERICA, INC.,
INTERNATIONAL TERMINAL OPERATING CO. INC.,
VNU EXPOSITIONS, INC., BILLCOM INC.
and BILL COMMUNICATIONS, INC.

Defendants

VNU EXPOSITIONS, INC. and BILL
COMMUNICATIONS, INC.

Third-party Plaintiffs

-against-

GES EXPOSITION SERVICES, INC.

Third-party Defendant

The following papers numbered 1 to 23 read on this motion and cross-motions for summary judgment dismissing the complaint .

	<u>PAPERS</u> <u>NUMBERED</u>
Notice of Motion-Affidavits-Exhibits	1 - 4
Notice of Cross-Motion-Affidavits-Exhibits	5 - 9
Notice of Cross-Motion-Affidavits-Exhibits	10 - 12
Answering Affidavits-Exhibits.....	13 - 15
Answering Affidavits-Exhibits.....	16 - 17
Replying Affidavits.....	18 - 19
Replying Affidavits.....	20 - 21
Replying Affidavits.....	22 - 23

Index No: 30337/01
Motion Date: 8/18/04
Motion Cal. No: 11

Upon the foregoing papers it is ordered that the motion and cross-motions of the defendants and third-party defendant for summary judgment dismissing the complaint are granted and the complaint is dismissed.

The branch of defendants'/third-party plaintiffs, VNU EXPOSITIONS, INC. and BILL COMMUNICATIONS, INC., (hereinafter collectively VNU) motion for summary judgment dismissing all cross-claims so far as they are asserted against VNU is granted to the extent of dismissing the cross-claim for contribution and common law indemnification and denied as to the cross-claim for contractual indemnification.

The branch of defendant's, P&O PORTS, P&O PORTS NORTH AMERICA, INC., INTERNATIONAL TERMINAL OPERATING CO. INC. (hereinafter collectively P&O), cross-motion for summary judgment on its cross-claim for contractual indemnification is denied. Although the Licensing Agreement between ITO and Shore Varone, Inc. provided for indemnification, there exist questions of fact only one of which is whether VNU assumed the liability for indemnification contained in the Licensing Agreement when it acquired Shore Varone, Inc.

The defendant P&O entered into a lease with the New York City Economic Development Corp. to maintain and operate certain Passenger Ship Terminals for, inter alia, trade shows. P&O entered into a licensing agreement for the period commencing December 3, 1998 to and including December 8, 1998, with Shore Varone, Inc., the predecessor of VNU to manage and produce a trade show at Pier 92. Third-party defendant, GES EXPOSITION SERVICES, INC. (hereinafter GES), pursuant to a contract with VNU's predecessor, was the general service contractor hired to provide various services, materials and equipment at the trade show.

Plaintiff, a Teamster, was hired by third-party defendant, GES to unload furniture and crates from several trailers owned by GES in conjunction with the trade show. On December 4, 1998, while plaintiff and other employees of GES were unloading the fourth trailer, plaintiff tripped and fell inside the trailer over nails and part of a chock. A chock is a piece of wood which is nailed to the floor of the trailer to prevent loads from moving during transport. Plaintiff commenced this action against the defendants to recover damages for negligence and violations of Labor Law §§ 200, 240(1) and 241(6).

Defendants P&O, VNU and GES separately move for summary judgment dismissing the complaint. In support of their motions

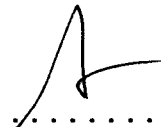
the defendants submitted competent evidence establishing, prima facie, their entitlement to summary judgment through the plaintiff's deposition testimony and the affidavit of Steven Loevsky, P&O's General Manager, which demonstrate that plaintiff was not involved in any construction work or any activity incidental to or an integral part of an activity covered by Labor Law §§ 240(1) or 241(6), and the defendants cannot be held liable for violation of Labor Law § 200 because they neither supervised, directed or controled the plaintiff's work and did not have the authority to do so and the defendants did not own, operate or maintain the trailer and they neither created the defective condition or have actual or constructive notice of the defective condition in the trailer which caused or contributed to the plaintiff's accident. (Alvarez v. Prospect Hosp., 68 NY2d 320, 324 [1986]; Winegrad v. New York Univ. Med. Ctr., 64 NY2d 851, 853 [1985]; Zukerman v. City of New York, 49 NY2d 557 [1980].)

Where, as here, the movants have established their entitlement to summary judgment, the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action. (Winegrad v. New York Univ. Med. Ctr., supra; Zukerman v. City of New York, supra.) This the plaintiff failed to do. Plaintiff submitted only his attorney's affirmation asserting without any competent evidence in support, that Labor Law § 241(6) applies because the items being unloaded by the plaintiff was materials and equipment to be used to erect "structures", as defined by the Labor Law, at the trade show. There is no evidence to show that plaintiff was unloading materials and equipment to be used to erect "structures" at the trade show. The unsubstantiated hypotheses and suppositions of the plaintiff's attorney is without evidentiary value and insufficient to defeat a motion for summary judgment. (see, Zuckerman v. City of New York, supra at 563; Joseph Yen Hsia v. City of New York, 295 AD2d 565 [2002]; Olan v. Farrell Lines, 105 AD2d 653 [1984], aff'd 64 NY2d 1092[1985].)

Also without merit is counsel's claim that defendant, P&O, by having retained the right of re-enter the premises to abate or remedy safety violations had the authority to control the plaintiff's work and thus can be held liable under Labor Law § 200. To impose liability under Labor Law 200 the party to be charged must "have the authority to control the activity bringing about the injury to enable it to avoid or correct an unsafe condition". (Russin v. Picciano & Son, 54 NY2d 311, 317 [1981]; also see Ross v. Curtis-Palmer, 81 NY2d 494, 505-6 [1993].) However, the retention of general supervisory control or the authority to enforce general safety standards is insufficient to

establish the necessary control to impose liability under Labor Law § 200. (see, Singleton v. Citnalta Constr. Corp. 291 AD2d 393 [2002]; Wendel v. Pillsbury Corp., 205 AD2d 527; [1994].) The plaintiff's unrebutted testimony at his deposition established that only GES supervised or directed or had the authority to supervise and direct his activity.

Dated: August 24, 2004
D#17


.....
J.S.C.