

Georges v City of New York

2007 NY Slip Op 30548(U)

March 30, 2007

Supreme Court, New York County

Docket Number: 0401560/2004

Judge: Marilyn Shafer

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

HON. MARILYN SHAFER, JSC

PRESENT

PART 8

Index Number : 401560/2004

GEORGES, HANS

vs

CITY OF NEW YORK

Sequence Number : 004

SUMMARY JUDGMENT

INDEX NO. 401560/2004
MOTION DATE 10/30/06
MOTION SEQ. NO. 004
MOTION CAL. NO. 53

The following papers, numbered 1 to 6 were read on this motion to/for Summary Judgment

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1
234
56

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is denied
present to attached item

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

FILED
APR 05 2007
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 3/30/07

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. MARILYN SHAFER
Justice

PART 62

**HANS GEORGES, an adult by his mother and natural
guardian GEORGINA GEORGES, and GEORGINA
GEORGES, Individually,**

Plaintiffs,

-against-

INDEX NO. 401560/04

MOTION DATE _____

MOTION SEQ. NO. 004

**THE CITY OF NEW YORK, CONSOLIDATED EDISON
COMPANY OF NEW YORK, INC., EMPIRE CITY SUBWAY
COMPANY (LIMITED), PETROCELLI ELECTRIC CO.,
INC., OUTSTANDING TRANSPORT INC. and AHRC
NEW YORK CITY FOUNDATION, INC.,**

Defendants.

The following papers, numbered 1 to 6, were read on this motion for summary judgment:

	<u>PAPERS NUMBERED</u>
Notices of Motion — Affidavits — Exhibits	1
Notice of Cross-Motion — Answering Affidavits — Exhibits	2, 3, 4
Replying Affidavits	5, 6

FILED

APR 05 2007

Cross-Motion: Yes No

**NEW YORK
COUNTY CLERK'S OFFICE**

Upon the foregoing papers, It is ordered that the motion and cross-motion are decided as follows:

This motion stems from a personal injury action in which plaintiff Hans Georges ("plaintiff") alleges that he slipped and fell on the defective sidewalk located at the southeast corner of West Hudson Street and Varick Street in New York County (the "Premises"). At the

time of the accident, plaintiff was being dropped off at the Premises by defendant Outstanding Transport, Inc. ("Outstanding"). Plaintiff attends defendant AHRC New York City Foundation, Inc. ("AHRC"), a facility which provides services to people with developmental disabilities. AHRC had contracted with Outstanding, a bus company, for Outstanding to provide transportation service for its clients (the "Contract"). Pursuant to the Contract, Outstanding was to provide the matrons/escorts for the bus transportation and for the matrons to deliver the clients to the AHRC facility. The Premises is located across the street from AHRC. On the date of the accident, defendant Petrocelli Electric Co., Inc. ("Petrocelli") was performing work on the western crosswalk of the intersection at the Premises.

Petrocelli's motion for summary judgment

Petrocelli now moves for summary judgment on the grounds that it did not perform work at the Premises where plaintiff allegedly fell. In support of its motion for summary judgment, Petrocelli has submitted business records regarding its work as well as the deposition testimony of its director of outside electrical installations. As a preliminary matter, Petrocelli's motion for summary judgment is granted without opposition. Accordingly, plaintiff's complaint and all cross-claims against Petrocelli are dismissed.

AHRC's cross-motion

AHRC cross-moves for summary judgment contending that there are no issues of fact and that they are entitled to have the complaint and all cross-claims dismissed against it. AHRC further contends that there is no question of fact that plaintiff was not in the care, custody or control of the AHRC or on their property when the accident occurred. Specifically, at the time of the accident, the plaintiff was being dropped off by Outstanding across the street from AHRC's

facility and was being escorted across the street by a bus company patron. AHRC asserts that there is no evidence that AHRC directed, supervised or controlled the work of Outstanding. AHRC claims that it owed no duty to the plaintiff since the accident occurred outside of AHRC's facility and it was Outstanding's contractual duty to bring plaintiff to the AHRC facility.

The plaintiff and Outstanding both oppose AHRC's cross-motion. Outstanding maintains that there are issues of fact which would preclude summary judgment. Specifically, Outstanding argues that there are questions of fact regarding the role the AHRC played in escorting the plaintiff and other clients from the buses into the AHRC facility. Outstanding further maintains that "the evidence demonstrated that at least three employees of AHRC were actively participating in assisting the students from outside the school building into the school building."

Plaintiff argues that AHRC's cross-motion for summary judgment must be denied because there are issues of fact as to "1) whether plaintiff was within the orbit of its authority at the time of the accident complained; and 2) whether it exercised sufficient direction and control over the manner or method of plaintiff's transportation to and from the [AHRC's] facility by [Outstanding] to create an employer/employee relationship as to hold AHRC vicariously liable for the negligence of Outstanding." Plaintiff further argues that there are questions of fact as to whether AHRC had a duty concurrent with Outstanding to see to the safe passage of plaintiff from the bus to the program facility premises.

It is well settled that the proponent of a summary judgment motion must make a prima facie case showing entitlement to judgment as a matter of law, submitting sufficient evidence to demonstrate the absence of any material issues of fact (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]). The failure to make such a showing requires denial of the motion, regardless of the

sufficiency of the opposing papers (*Winegrad v New York University Medical Center*, 64 NY2d 851[1985]). Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*Zuckerman v City of New York*, 49 NY2d 557 [1980]).

This Court finds that the AHRC's submissions, including the deposition testimony of plaintiff and a copy of the Contract, in support of its motion for summary judgment satisfy the prima facie showing required by law, thus shifting to the plaintiff and Outstanding the obligation to show by evidentiary proof the existence of a triable issue of material fact. In the matter at bar, neither plaintiff nor Outstanding has produced sufficient evidence to establish a question of fact as to preclude summary judgment. The language of the Contract is unambiguous as to Outstanding's duties and responsibilities in providing transportation services to the AHRC facility. Pursuant to Section III (5), Outstanding is to "provide door-to-door transportation for each program participant between his/her home and the Program site." At the time of the accident, the bus was parked across the street from the AHRC facility and plaintiff was being escorted from the bus to the facility by a bus matron. Outstanding's argument that the fact that AHRC had several employees waiting to receive the plaintiff at its door raises questions of fact as to the role the AHRC played in escorting the plaintiff from the bus into the AHRC facility is unavailing.

Plaintiff's argument that AHRC exercised sufficient direction and control over the manner or method of plaintiff's transportation to and from AHRC's facility by Outstanding creates an employer/employee relationship as to hold AHRC vicariously liable for the negligence

of Outstanding is similarly without merit. Plaintiff has not produced any evidence that demonstrates AHRC's control over the manner or method Outstanding would transport plaintiff to the AHRC facility. Although the Contract details specific provisions as they relate to safety concerns while the clients are on the bus, the Contract is silent as to the manner or method of how the clients would be escorted "door-to-door" once they have alighted the bus. There is no evidence to show that AHRC controlled or directed where the bus would stop thereby raising questions of fact as to AHRC's control or supervision over Outstanding and plaintiff. In general, the mere engagement of an independent contractor does not make one liable for the independent's negligence (*Pannone v Burke*, 149 AD2d 673 [2d Dept 1989]).

Accordingly, it is hereby ORDERED that Petrocelli's motion for summary judgment is granted; and it is further

ORDERED that the complaint and all cross-claims against Petrocelli are dismissed with costs and disbursements as taxed by the Clerk of the Court; and it is further

ORDERED that AHRC's cross-motion for summary judgment is granted; and it is further

ORDERED that the complaint and all cross-claims against AHRC are similarly dismissed with costs and disbursements as taxed by the Clerk of the Court; and it is further

ORDERED that the rest of the action is severed and shall continue; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

This reflects the decision and order of this Court.

Dated: March 30, 2007

Check one: [] FINAL DISPOSITION [X] NON-FINAL DISPOSITION

FILED
APR 05 2007
MARILYN COUNTY NEW YORK
STATE CLERK'S OFFICE
J.S.C.