

Wilson v Innovax-Pillar Inc.

2007 NY Slip Op 31555(U)

May 30, 2007

Supreme Court, Queens County

Docket Number: 0006996/2005

Judge: Janice A. Taylor

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE JANICE A. TAYLOR IAS Part 15
Justice

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ROGER WILSON,

Index No.:6996/05

Plaintiff(s),

Motion Date:03/13/07

- against -

Motion Cal. No.: 07

INNOVAX-PILLAR INC., NEW YORK CITY TRANSIT
AUTHORITY and METROPOLITAN TRANSPORTATION
AUTHORITY,

Defendant(s).

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The following papers numbered 1 to 10 read on this motion by the
defendant Innovax-Pillar, Inc. for an order granting summary
judgment.

	<u>Papers Numbered</u>
Notice of Motion-Affirmation-Exhibits-Service.....	1 - 4
Affirmation in Opposition-Exhibits-Service.....	5 - 7
Reply Affirmation-Exhibits-Service.....	8 - 10

Upon the foregoing papers it is **ORDERED** that the motion is
decided as follows:

This is an action for personal injuries allegedly sustained by
plaintiff while working for a subcontractor inside of a subway
station owned by the defendant Metropolitan Transportation
Authority. Innovax-Pillar, Inc. ("Innovax") was the general
contractor on the worksite. In his complaint, plaintiff alleges
that he was injured when he tripped over frayed masonite boards
that had been placed to protect the station's tile floor. Plaintiff
contends that the placement and lack of maintenance of the masonite
boards constitute Innovax's violation of Labor Law §200, Labor Law
§241(6), New York State Industrial Code §23-1.7(e)(1), §23-1.7
(e)(2).

Labor Law §240 (1)

Defendant moves, pursuant to CPLR §3212, for summary judgment and dismissal of plaintiff's Labor Law §200 claims. However, a review of the complaint reveals that plaintiff has no causes of action for violations of Labor Law §240(1). Accordingly, that portion of defendant's motion which seeks dismissal of plaintiff's Labor Law §240(1) claims is denied as moot.

Labor Law §200

Defendant also moves for summary judgment and dismissal of plaintiff's Labor Law §200 claims. Labor Law §200 is a codification of the common-law duty imposed upon an owner or general contractor to provide construction site workers with a safe place to work (see *Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876 [1993]; *Russin v Picciano & Son*, 54 NY2d 311 [1981]). Generally, there is no liability under the common-law or Labor Law §200 unless the owner or general contractor exercised supervision or control over the work performed (see *Schuler v Kings Plaza Shopping Ctr. & Mar.*, 294 AD2d 556 [2002]; *Sprague v Peckham Materials Corp.*, 240 AD2d 392 [1997]).

However, an owner or general contractor may be held liable for a violation of Labor Law §200 for injuries allegedly sustained by a worker due to a defective condition on its premises if it had notice of the condition or exercised control of the work being performed. (See *Shipkowki v. Watch Case Factory Associates*, 292 AD2d 589 [2d Dept. 2002]; *Lara v. St. John's University*, 289 AD2d 457 [2d Dept. 2001]). In the instant case, it is uncontested that Innovax did not exercise control over plaintiff's work. However, it is alleged that Innovax controlled the placement and maintenance of the masonite boards which caused plaintiff's fall. As an issue of fact exists as to any notice given to Innovax regarding the condition of the boards, and as to the propriety of their placement, summary judgment is not warranted. Accordingly, defendant's motion for summary judgment and dismissal of plaintiff's claims, pursuant to Labor Law §200 is denied.

Labor Law §241(6)

Finally, defendant moves for dismissal of plaintiff's Labor Law §241(6) claims. "Labor Law §241(6) imposes a nondelegable duty upon owners and contractors to provide reasonable and adequate protection and safety to construction workers [citations omitted]" (*Giza v New York City School Construction Authority*, 22 AD3d 800, 801 [2005]). "In order to support a cause of action pursuant to Labor Law §241(6), a plaintiff must demonstrate that his or her injuries were proximately caused by a violation of an Industrial Code regulation that is applicable to the circumstances

of the accident" (*Biafora v City of New York*, 27 AD3d 506 [2006]; see also *Locicero v Princeton Restoration*, 25 AD3d 664 [2006]), and which "sets forth specific safety standards" (*Giza v New York City School Construction Authority*, *supra*).

Plaintiff alleges that defendant Innovax violated New York State Industrial Code §23-1.7(e)(1) and §23-1.7(e)(2). Industrial Code §23-1.7 refers to "tripping and other hazards", while Subsection (e) (1) specifically deals with passageways. In the instant action, it is uncontested that plaintiff fell on the threshold of a bathroom in the subject subway station. In his deposition, plaintiff described this as a staging area enclosed by plywood. Plaintiff also testified that this staging area was over thirty feet long. As plaintiff brings forth no evidence that this staging area was a passageway, plaintiff cannot maintain an action, pursuant to Labor Law §241(6) for Innovax's alleged violation of new York State Industrial Code §23-1.7(e)(1). Accordingly, defendant's motion for summary judgment and dismissal of plaintiff's claims, pursuant to Labor Law §241(6), and New York State Industrial Code §23-1.7(e)(1), is granted.

Defendant Innovax also moves to dismiss plaintiffs claims for violation of Industrial Code §23-1.7(e)(2). This statute requires owners to keep working areas, and floors clear of debris and scattered material, insofar as may be consistent with the work performed. (See *New York State Industrial Code §23-1.7(e)(2)*; *Alvia v. Teman Electrical Contracting, Inc. et al.*, 287 AD2d 421 [2d Dept. 2001]). Innovax asserts that the masonite boards on which plaintiff tripped were essential to the work being performed, so plaintiff may not claim that their presence was a violation of the Industrial Code. In opposition, plaintiff contends that it was not the existence of the masonite boards, but their placement and condition which caused plaintiff's fall, thus, he has a viable cause of action.

The court's function, when presented with a summary judgment motion, is not to determine credibility or engage in issue determination, but rather to determine whether there are material issues of fact for the court to determine. (See, *Quinn v. Krumland*, 179 A.D.2d 448 [1st Dept. 1992]). Summary judgment shall be granted only when there are no issues of material fact and the evidence requires the court to direct judgment in favor of the movant as a matter of law. (See, *Friends of Animals, Inc., v. Associated Fur Mfrs.*, 46 N.Y.2d 1065 [1979]; *Orwell Bldg. Corp. v. Bessaha*, 5 A.D.3d 573 [2d Dept. 2003]). As plaintiff has demonstrated that triable issues of fact remain, the defendant's motion for summary judgment and dismissal of plaintiff's claims, pursuant to Labor Law

§241(6), and New York State Industrial Code §23-1.7(e)(2), is denied.

Dated: May 30, 2007

JANICE A. TAYLOR, J.S.C.

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