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

PRESENT: JANE S. SOLOMON Justice PART 55

Index Number : 111679/2003
RONQUILLO, EDISON
vs
TURNER CONSTRUCTION
Sequence Number : 003
DISMISS

INDEX NO.
MOTION DATE 4/5/07
MOTION SEQ. NO.
MOTION CAL. NO.

his motion to/for

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1-3
Answering Affidavits — Exhibits	4-7
Replying Affidavits	8-9

Cross-Motion: ☐ Yes ☑ No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed memorandum decision and order.

N.B. -- Pre-trial conference scheduled for August 13, 2007 at 2 PM.

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

Dated: 7/18/07

JANE S. SOLOMON J.S.C.

Check one: ☐ FINAL DISPOSITION ☑ NON-FINAL DISPOSITION

☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 55
----------X

EDISON RONQUILLO,

Plaintiff,

-against-

TURNER CONSTRUCTION COMPANY, McCLIER CORPORATION and AMERICAN EXPRESS COMPANY,

Defendants.

----------X

INDEX NO. 111679/03

DECISION AND ORDER

JANE S. SOLOMON, J.

Defendants move for summary judgment dismissing the complaint in this action brought under Labor Law sections 200, 240(1), and 241(6). Plaintiff Edison Ronquillo ("Ronquillo") alleges that he suffered serious injuries while he was engaged in renovation work when a pane of glass fell on him from a doorway transom. For the reasons below, defendants' motion is granted in part.

Ronquillo's employer, Aztec Metal Maintenance Corp. ("Aztec"), was hired by defendant McClier Corporation ("McClier") to perform exterior cleaning and stone restoration on 200 Vesey Street, a building leased by defendant American Express Company ("Amex"). McClier was a general contractor hired by Amex to clean and restore the building following the September 11, 2001 disaster. McClier hired defendant Turner Construction Corporation ("Turner") as a project manager to rebuild the

southeast corner of the building, which had been demolished. Turner also hired Aztec to do exterior cleaning and metal refinishing in connection with its work at the building.

On October 3, 2002, Ronquillo was using a scaffold to perform exterior cleaning from a terrace on the fourth floor of the building. His employer directed him to remove the scaffold so they could work elsewhere. Ronquillo and a co-worker broke down the wheeled scaffold and brought it inside, intending to take it to an elevator. To reach the elevator, they passed through a doorway that had above it a transom. Ronquillo's co-worker passed through the doorway safely, but as Ronquillo walked through the doorway, he hit the door with his foot and a large glass pane fell from the transom and struck him. He allegedly suffered serious injuries, including fractured fingers, a torn rotator cuff, a concussion and spinal injuries.

At the time of the accident, the fourth floor was unoccupied; it was not under construction and Amex had not yet determined how to use it. However, it was accessible to construction workers to reach piping, duct work, conduits, etc. The witness for Amex stated that replacing the transom was not yet a part of the restoration project. When properly installed, the transom would have been screwed into place.

The witness for Turner testified that the building was significantly damaged by the 9/11 attack, and the City of New

York had done demolition work inside to stabilize the building to make it safe for renovation workers. McClier hired Turner in connection with work to be done on the upper floors - starting above the 20th floor. Its work on the fourth floor was limited to replacing some concrete floor on the southeast corner.

Ronquillo commenced this lawsuit alleging negligence and violations of the Labor Law. Defendants contend that they are entitled to summary judgment because Ronquillo does not state a claim under Labor Law sections 240(1) and 241(6), and because defendants did not owe him a duty of care under Labor Law section 200, or in common law negligence.

In opposition, Ronquillo's attorney submits a fifty-one page affirmation and the affidavit of an expert. The papers do not oppose, or even address, that part of defendants' motion seeking to dismiss the claims under section 241(6). The Rules of the Justices for New York County Supreme Court, Civil Branch, provide that affidavits shall not exceed twenty-five pages each unless advance permission is granted by the court for good cause. Rule 14(b). No advance permission to exceed the page limit was granted, and nothing in the papers suggests that plaintiff could demonstrate good cause meriting an exception to the general rule in this case. Plaintiff's counsel is admonished to comply with the rules of this jurisdiction, and defendants are granted $100 costs on this motion for the trouble of handling such unwieldy

opposing papers.

Plaintiff's expert's opinion that the transom glass should have been secured, preferably by screws, is consistent with the testimony of defendants' lay witnesses and common sense. Apart from this, he offers only legal opinions regarding the law of negligence and the Labor Law, for which he is neither qualified nor helpful.

With respect to the common law negligence claim and the claim under Labor Law section 200, defendants' motion is granted as against Turner and McClier because there is no evidence that they had notice of the alleged defect, and because they did not directly supervise Ronquillo or control his work. The testimony shows that Ronquillo worked solely at the direction of his employer.

With respect to Amex, supervisory control is only an element of a claim under section 200 where the defect arose from the contractor's methods. Comes v New York State Elec. & Gas Corp, 82 NY2d 876, 877 (1993); and see Roppolo v Mitsubishi Motor Sales of America, Inc., 278 AD2d 149 (1st Dept 2000). Here, there is no evidence that the alleged defect arose from a contractor's methods. Defendants have not established as a matter of law that Amex did not have constructive notice of the defect by virtue of the condition having existed for some time. The trier of fact could conclude from the evidence that an owner

exercising reasonable care would have detected the loose transom and replaced the screws or otherwise secured it.

Ronquillo contends that the negligence claim should survive against all defendants under the doctrine of res ipsa loquitor. Submission of a case to the jury under this doctrine is warranted when plaintiff can establish these elements: (1) the event is of a kind that does not ordinarily occur in the absence of negligence; (2) it must have been caused by an agency or instrumentality within the exclusive control of defendant; (3) it must not be due to any voluntary action or contribution of plaintiff. Dermatassian v. New York City Transit Auth., 67 NY2d 219 (1986).

Here, Ronquillo fails to demonstrate that res ipsa loquitor applies to this lawsuit. There is evidence that other construction trades were on the fourth floor, as well as City demolition contractors before McClier's work began, so Ronquillo cannot establish that any defendant had exclusive control over the transom. See Dulgov v City of New York, 33 AD3d 584 (2d Dept 2006) (plaintiff must demonstrate that defendant had sufficient exclusivity to rule out the chance that the defect was caused by some agency other than defendant's).

The motion also is granted with respect to the claim under Labor Law section 240(1). To state a claim under section 240(1) for an injury arising from a falling object, plaintiff

must show that he is a person covered by the statute and that the offending object fell while being hoisted or secured because of the absence or inadequacy of a safety device enumerated in the statute. Narducci v Manhasset Bay Assoc., 96 NY2d 259 (2001). Ronquillo's injury is not attributable to the absence or inadequacy of any safety devise enumerated in the statute. The transom was not the subject of any work in the building, and the risk it presented was the ordinary danger of a construction site rather than the extraordinary elevation risk covered by section 240(1). Narducci, 96 NY2d at 267-268.

Finally, the complaint would be dismissed as against Turner even if Ronquillo had made out a claim under section 240(1), because Turner was not the general contractor for the work Aztec was performing at the time of the accident. Unlike McClier, which was the general contractor for the entire building, Turner was not responsible for any work at the time and place of the accident.

In conclusion, the only claims that remain are those for common law negligence and under Labor Law section 200 as against Amex. Accordingly, it hereby is

ORDERED that defendants' motion for summary judgment dismissing the complaint is granted with respect to defendants Turner and McClier, and the complaint is severed and dismissed as against those defendants, and the Clerk of the Court is directed

to enter judgment accordingly, with costs and disbursements as taxed; and it further is

ORDERED that the motion is granted with respect to Amex only to the extent that plaintiff's claims under Labor Law sections 240(1) and 241(6) are dismissed, and otherwise the motion is denied; and it further is

ORDERED that defendants are awarded $100 in costs for this motion to be taxed upon resolution of this action; and it further is

ORDERED that counsel shall appear for a pre-trial conference in Part 55, 60 Centre Street, Room 432, New York, NY on August 13, 2007 at 2 PM.

Dated: July 18, 2007

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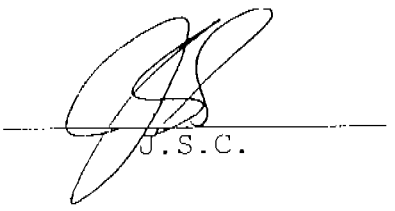

J.S.C.

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JANE S. SOLOMON