

Berger v Punia & Marx, Inc.

2008 NY Slip Op 31505(U)

May 30, 2008

Supreme Court, New York County

Docket Number: 0105780/2005

Judge: Barbara Kapnick

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

HON. BARBARA R. KAPNICK

PRESENT:

PART 12

Justice

Index Number : 105780/2005

BERGER, ALAN

vs.

PUNIA & MARX

SEQUENCE NUMBER : 002

SUMMARY JUDGMENT

INDEX NO. 105780/05

MOTION DATE _____

MOTION SEQ. NO. 002

MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

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

Answering Affidavits - Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

FILED

JUN 03 2008

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 5/30/08

[Signature]
BARBARA R. KAPNICK

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate DO NOT POST REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 12

-----X
ALAN BERGER,

Plaintiff,

- against -

PUNIA & MARX, INC., THE BROMLEY COMPANY
and ZANIS RESTORATION INC.,

Defendants.

BARBARA R. KAPNICK, J.:

DECISION/ORDER
Index No. 105780/05
Motion Seq. No. 002

FILED
JUN 03 2008
COUNTY CLERK'S OFFICE
NEW YORK

In this action, plaintiff Alan Berger seeks to recover damages for personal injuries sustained on July 23, 2004 when a piece of wood allegedly struck his left leg as he was walking on the sidewalk in front of 265 Lexington Avenue, between 35th and 36th Street in Manhattan. Plaintiff claims that a construction worker threw the wood.

Defendant Punia & Marx, Inc. ("Punia") was the managing agent of the building. Defendant The Bromley Company ("Bromley") was the owner of the building.

Defendant Punia had entered into an agreement with defendant Zanis Restoration Inc. ("Zanis") whereby Zanis agreed to take out the old sidewalk in front of the building and replace it with a new sidewalk.

Defendants Punia and Bromley now move for an order: (i) granting summary judgment dismissing plaintiff's Complaint and any and all cross-claims against them on the ground that they are not responsible for the actions of an independent contractor; or (ii) compelling defendant Zanis to indemnify them.

Defendant Zanis opposes that portion of the motion seeking the alternative relief against it.

Plaintiff opposes that portion of the motion seeking summary judgment dismissing his Complaint against defendants Punia and Bromley, arguing that said defendants have a non-delegable duty pursuant to section 7-210 of the New York City Administrative Code to maintain the sidewalk in front of their building "in a reasonably safe condition", and pursuant to section 27-1018(a) to keep the sidewalk "free from ... debris, equipment, materials, projections, tools, or other item, substance or condition that may constitute a slipping, tripping or other hazard."

However, these sections of the Administrative Code are not applicable since this case does not involve the maintenance of the sidewalk.

Plaintiff further argues that defendants Punia and Bromley had a non-delegable duty because the activity was 'inherently dangerous'.

However, plaintiff has made no showing that the replacement of the sidewalk constituted 'inherently dangerous' work.

Accordingly, based on the papers submitted and the oral argument held on the record on April 2, 2008, the motion by defendants Punia and Bromley is granted.

The Clerk may enter judgment dismissing plaintiff's Complaint against defendants Punia & Marx, Inc. and The Bromley Company only with prejudice and without costs or disbursements.

Plaintiff's claims against the co-defendant Zanis are severed and continued.

A pre-trial/settlement conference shall be held in IA Part 12, 60 Centre Street, Room 341 on June 25, 2008 at 9:30 a.m.

This constitutes the decision and order of this Court.

Dated: May 30, 2008

BARBARA R. KAPNICK
J.S.C.

BARBARA R. KAPNICK
J.S.C.

FILED
JUN 03 2008
COUNTY CLERK'S OFFICE
NEW YORK