

Renard v Stewart

2008 NY Slip Op 33731(U)

May 1, 2008

Supreme Court, New York County

Docket Number: 109780/05

Judge: Barbara R. Kapnick

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3

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

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SABINE RENARD and HENRY RENARD,

Plaintiffs,

-against-

MICHAEL P. STEWART, LANDMARK
CONSTRUCTION ASSOCIATES, INC.
and MOULIN & ASSOCIATES, INC.,

Defendants.

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BARBARA R. KAPNICK, J.:

DECISION/ORDER
Index No. 109780/05
Motion Seq. No. 002

FILED

MAY 12 2008

COUNTY CLERK'S OFFICE
NEW YORK

In this action, plaintiffs seek to recover damages for personal injuries sustained by plaintiff Sabine Renard on March 30, 2005 when she tripped and fell on the sidewalk in front of the building located at 157 West 12th Street, New York, New York (the "building") after her heel allegedly got caught in a hole in a plywood board covering a tree well, which was allegedly being used as a ramp to take debris from the building to a dumpster in the street.

Defendant Michael P. Stewart ("Stewart") is the owner of the building, which was being renovated at the time of the accident. Defendant Moulin & Associates, Inc. ("Moulin") was the project manager for the renovation. Defendant Landmark Construction Associates, Inc. ("Landmark") was the contractor working at the premises at the time of the accident.

Defendant Moulin now moves pursuant to CPLR § 3212 for summary judgment dismissing the plaintiffs' Complaint and all cross-claims against it.

Defendant Stewart opposes the motion and cross-moves for summary judgment on his cross-claims against defendant Landmark for contractual and common law indemnification.¹

Moulin's motion

Defendant Moulin argues that it is entitled to summary judgment on the grounds that: (i) its work was to act as project manager for the interior work at the building only; (ii) it was not involved in any work on the outside of the building; and (iii) it did not create the plywood planking around the tree well, nor did it direct anyone to do so.

Defendant Stewart opposes defendant Moulin's motion on the ground that Moulin was at the site daily and was aware of the presence of the plywood around the tree.

¹ Although the front page of the Notice of Cross-Motion also seeks summary judgment dismissing plaintiff's Complaint and all cross-claims against it, defendants clarified on the record on February 27, 2008 that this paragraph was inadvertently included and that he was not seeking said relief.

Defendant Landmark also opposes the motion, arguing that there are questions of fact as to whether Moulin breached its contractual duty to Stewart since Moulin was allegedly responsible for supervising all of the various contractors and subcontractors on the job site.

Finally, plaintiff opposes the motion, arguing that there are numerous issues of fact as to Moulin's negligence since: (i) Moulin arranged for the hiring of Landmark; (ii) it was Stewart's understanding that Moulin had a duty to completely manage the entire renovation project; (iii) Moulin's duties included inspecting and making sure that no unsafe conditions existed at the premises, and Moulin had the authority to notify Landmark about any dangerous condition; (iv) Robert Moulin of defendant Moulin approved the placement of the dumpster in the street; and (v) Francesco Casini, a Project Manager employed by defendant Moulin, who was present daily at the site, admitted that he must have walked past the plywood (although he did not remember precisely when he first saw the board) and he allegedly instructed Jerry Sheridan, a worker employed by Landmark, to be "more careful" in "bringing stuff off the road".

However, the contract between Stewart ("Client") and Moulin ("Project Manager") specifically provides, in relevant part, as follows:

While Project Manager will review and advise Client on all contracts, the Client is solely responsible for awarding contracts to Contractors and Subcontractors and Client holds harmless the Project Manager for any actions or results thereof of Contractors, Subcontractors and Vendors [emphasis supplied].

The Project Manager will make best efforts to supervise the Work of all Contractors and Subcontractors, Vendors, etc. The Project Manager shall endeavor to obtain satisfactory performance from each Contractor, Subcontractor, Vendor etc. The Project Manager shall recommend courses of action to the Client when requirements of a contract are not being fulfilled (i.e. quality workmanship, time completion agreements, etc.). However with respect to each Contractor's or Sub Contractor's Work, the Project Manager shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work [emphasis supplied] of each of the Contractors or Subcontractors, since these are solely the Contractor's or SubContractor's responsibility under the contract for construction... The Project Manager shall not have control over or change of acts or omissions of the Contractors or Subcontractors or their agents or employees or any other persons performing portions of the Work not directly employed by the Project Manager.

Based on the papers submitted and the oral argument held on the record on February 27, 2008, this Court finds that pursuant to its contract with Stewart, Moulin did not have control over Landmark's work and was not responsible for safety precautions in connection with the work at the site. Absent any evidence that

Moulin created the condition and/or was otherwise negligent with respect to plaintiff's accident, defendant Moulin is entitled to summary judgment. Accordingly, defendant Moulin's motion is granted.

Stewart's cross-motion

Defendant Stewart cross-moves for summary judgment on his cross-claims against defendant Landmark for contractual and common law indemnification, arguing that there is no issue of fact as to his own negligence because he did not supervise or direct the work and had no notice of the plywood on the tree well.²

Defendant Landmark opposes the cross-motion on the ground that its contractual duty to indemnify Stewart is triggered only where the injury was sustained 'in connection with' its work. Landmark contends that there has been no showing, other than circumstantial facts and speculation, that plaintiff's injury was caused by or flowed from something that Landmark did with respect to its work.

² Plaintiffs 'request' that in the event this Court grants Stewart's cross-motion for partial summary judgment against Landmark, that this Court also make a finding of liability on behalf of plaintiffs against Landmark. This application is denied since said relief was not formally sought by notice of motion or cross-motion.

Although it appears that Landmark was the only contractor at the site at the time of plaintiff's accident, Landmark denies that it placed the plywood upon which plaintiff fell over the tree well.

Based on the papers submitted and the oral argument, this Court finds that there are triable issues of fact as to whether plaintiff's injury in fact arose "in connection with" Landmark's work.

Accordingly, defendant Stewart's cross-motion for summary judgment is denied.


The Clerk may enter judgment dismissing plaintiffs' Complaint and all cross-claims against defendant Moulin & Associates, Inc. only with prejudice and without costs or disbursements. Plaintiffs' claims against the co-defendants are severed and continued.

A pre-trial/settlement conference shall be held in IA Part 12, 60 Centre Street, Room 341 on May 28, 2008 at 9:30 a.m.

This constitutes the decision and order of this Court.

Dated: May 1, 2008

FILED
MAY 12 2008


Barbara R. Kapnick
J.S.C.

COUNTY CLERK'S OFFICE
NEW YORK

BARBARA R. KAPNICK
J.S.C.