SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

----------X

RUTH PERRY,

Plaintiff(s),

-against-

AHRC NYC NEW PROJECTS INC.,

Defendant(s),

----------X

DCM PART 5

Present:
HON. JUDITH N. MCMAHON

DECISION AND ORDER

Index No. 102479/2007
Motion No. 002

The following papers numbered 1 to 3 were used on this motion this 14th day of July, 2009:

Notice of Motion [Defendant]	**1**
Affirmation in Opposition [Plaintiff]	**2**
Reply Affirmation [Defendant]	**3**

On February 14, 2007, the plaintiff, Ruth Perry, allegedly sustained injuries when she fell while descending stairs at the premises located at 23 Lander Avenue, Staten Island, New York. As a result of the accident the plaintiff received workers' compensation. The premises was owned by defendant AHRC NYC New Projects, Inc. [hereinafter "New Projects"] and utilized as a home for developmentally disabled consumers. At the time of the accident the plaintiff contends that she was employed by AHRC NYC [hereinafter "AHRC"].

Plaintiff states that she fell because of a wet condition on a stairway and as a result commenced this action, on or about May 10, 2007, against the property owner. Presently, issue has been joined and discovery is complete. Defendant New Projects is moving for summary judgment on the ground that plaintiff's action is barred by Workers Compensation Law §§ 11 and 29(6), which restricts an employee's ability to sue her employer after she receives workers compensation. The plaintiff contends that AHRC

NYC is her employer, not defendant New Projects and that summary judgment is inappropriate.

Summary judgment is a drastic remedy that should not be granted where there is any doubt as to the existence of triable issues of fact (see Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986]; Herrin v Airborne Freight Corp., 301 AD2d 500, 500-501 [2d Dept 2003]). The party moving for summary judgment bears the initial burden of establishing its right to judgment as a matter of law (*see* Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 [1985]), and in this regard " the evidence is to be viewed in a light most favorable to the party opposing the motion, giving [it] the benefit of every favorable inference" (Cortale v Educational Testing Serv., 251 AD2d 528, 531 [2d Dept 1998]). Nevertheless, upon a prima facie showing by the moving party, it is incumbent upon the party opposing the motion to produce "evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (Alvarez v Prospect Hosp., 68 NY2d at 324; see Zuckerman v City of New York, 49 NY2d 557, 562 [1980]).

"Generally, an injured employee's sole remedy against his or her employer is recovery under the Workers' Compensation Law" (Hageman v. B & G Bldg. Servs., LLC,

33 AD3d 860, 861 [2d Dept., 2006]; N.Y.S. Workers' Compensation Law § 11[1] and 29[6][2]). However, "[t]he defense afforded to employers by the exclusivity provisions of the Workers' Compensation Law may also extend to suits brought against an entity which is found to be the alter ego of the corporation which employs the plaintiff (Cappella v. Suresky at Hatfield Lane, LLC, 55 AD3d 522, 522 [2d Dept., 2008]; Ortega v Noxxen Realty Corp., 26 AD3d 361 [2d Dept., 2006]). In order to succeed"based on the exclusivity defense of the Workers' Compensation Law [the moving defendant] must show, prima facie, that it was the alter ego of the plaintiff's employer" (Cappella v. Suresky at Hatfield Lane, LLC, 55 AD3d at 522).

Here, defendant New Projects has presented evidence sufficient to establish that it and AHRC was operating as a single integrated entity, therefore entitling them to summary judgment (Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986]; Herrin v Airborne Freight Corp., 301 AD2d 500, 500-501 [2d Dept 2003]). Specifically, New Projects has no employees and that all bills and operating expenses of the premises were paid by AHRC and in fact, they operated as one single unit (Cappella v. Suresky at Hatfield Lane, LLC, 55 AD3d 522, 522 [2d Dept., 2008]; Ortega v Noxxen Realty Corp., 26 AD3d 361 [2d Dept.,

---

[1] "The liability of an employer prescribed by the last preceding section shall be exclusive and in place of any other liability whatsoever, to such employee, . . . or any person otherwise entitled to recover damages, contribution or indemnity, at common law or otherwise, on account of such injury or death or liability arising therefrom, except that if an employer fails to secure the payment of compensation for his or her injured employees and their dependents as provided in section fifty of this chapter".

[2]"The right to compensation or benefits under this chapter, shall be the exclusive remedy to an employee . . . when such employee is injured or killed by the negligence or wrong of another in the same employ".

2006]). Further, the court notes that a recent appellate division decision dealt not only with this issue but with this exact defendant (Anduaga v. AHRC NYC New Projects, Inc., 57 AD3d 925, 925 [2d Dept., 2008][finding summary judgment appropriate where plaintiff opted for workers compensation recovery against defendant AHRC who was the 'alter ego' of New Projects]).

In opposition, the plaintiff has failed to raise a triable issue of fact, that New Projects and AHRC were separate entities and further, this court is constrained to follow the recent decision finding New Projects as the 'alter ego' of AHRC and as such summary judgment is appropriate (Anduaga v. AHRC NYC New Projects, Inc., 57 AD3d 925, 925 [2d Dept., 2008]; Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986]; Herrin v Airborne Freight Corp., 301 AD2d 500, 500-501 [2d Dept 2003]).

Accordingly, it is,

ORDERED that defendant AHRC NYC New Projects, Inc.'s motion for summary judgment is hereby granted, and it is further

ORDERED that the plaintiff's complaint is hereby dismissed in its entirety, and it is further,

ORDERED that the Clerk enter judgment accordingly.

THIS IS THE DECISION AND ORDER OF THE COURT.

Dated: Sept 10, 2009 **E N T E R,**

_____

Hon. Judith N. McMahon
Justice of the Supreme Court