

Barrios v City of New York

2009 NY Slip Op 33301(U)

April 13, 2009

Supreme Court, Richmond County

Docket Number: 13776/04

Judge: Thomas P. Aliotta

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND**

-----X
FLOR BARRIOS,

Plaintiff,

-against-

CITY OF NEW YORK, SKANSKA USA BUILDING, INC.
and SPEARIN, PRESTON & BURROWS, INC.,

Defendants.

-----X
FLOR BARRIOS,

Plaintiff,

-against-

NEW YORK CITY ECONOMIC DEVELOPMENT
CORPORATION, BARNEY SKANSKA, INC., and
BARNEY SKANSKA CONSTRUCTION COMPANY,

Defendants.

TP-12
Present:
Hon. Thomas P. Aliotta

Decision and Order

Index No.: 13776/04

Motion No. 3937-008
3987-009

Action No. 2

Index No. 10670/07

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The following papers numbered 1-7 were marked fully submitted on the 18th day of February, 2009:

	Pages Numbered
Notice of Motion to Renew and/or Reargue by Defendants The City of New York and The New York City Economic Development Corporation, with Supporting Papers and Exhibits (dated December 22, 2008).....	1
Notice of Motion to Renew and/or Reargue by Defendants Skanska USA Building, Inc, Barney Skanska Inc. and Barney Skanska Construction Company, with Supporting Papers and Exhibits (dated December 22, 2008).....	2
Affirmation in Opposition by Defendants The City of New York and The New York City Economic Development Corporation (dated January 13, 2009).....	3

Affirmation in Opposition by Plaintiff, with Supporting Papers (dated January 14, 2009).....	4
Affirmation in Opposition by Defendants Skanska USA Building, Inc, Barney Skanska Inc. and Barney Skanska Construction Company, with Supporting Papers and Exhibits (dated January 15, 2009).....	5
Reply Affirmation by Defendants Skanska USA Building, Inc, Barney Skanska Inc. and Barney Skanska Construction Company (dated February 13, 2009).....	6
Reply Affirmation in Support by Defendants The City of New York and The New York City Economic Development Corporation (dated February 17, 2009).....	7

Upon the foregoing papers, the motion (No. 3937) for leave to renew and reargue by defendants The City of New York (hereinafter “City”) and The New York City Economic Development Corporation (hereinafter “EDC”) is denied; the motion (No. 3987) for leave to renew and reargue by defendants Skanska USA Building, Inc., Barney Skanska, Inc. and Barney Skanska Construction Company (hereinafter collectively “Skanska”) is granted to the extent indicated.

At the outset, the Court would note that since both movants have failed to present any “new facts not offered on the prior motions that would change the prior determination” (CPLR 2221[e]; *see Zolotar v. Ben Krupinski Gen Contr., Inc.*, 36 AD3d 802 [2nd Dept 2007]; *Vincente v. Roy Kay, Inc.*, 35 AD3d 448 [2nd Dept 2006]), the motions, insofar as they seek renewal, are denied. The balance of this decision will be addressed solely to movants’ request for reargument.

This is an action to recover damages for personal injuries allegedly sustained by plaintiff when she fell from a ladder while performing asbestos removal during the renovation of the St. George Ferry Terminal in Staten Island. The subject premises is owned by the City.

Pursuant to a contract between itself and the EDC (hereinafter the “EDC-Skanska Contract”), defendant Skanska was designated as the construction manager and general contractor for the St. George renovation project (Skanska’s Exhibit “C”).¹ Pursuant to another EDC contract, nonparty Transcontinental Steel (hereinafter “Transcontinental”), agreed to perform hazardous material abatement work, and later subcontracted this work to plaintiff’s employer, Safeway Environmental (hereinafter “Safeway”). Various other subcontractors were hired by Skanska, including nonparty GRB, which was engaged to perform safety inspections at the site.

¹EDC was retained by the City to perform certain services related to maritime business and navigational matters on its behalf (*see* City-EDC Contract annexed as Skanska’s Exhibit “C”).

In moving for leave to reargue their previously denied motion for summary judgment against Skanska for contractual and common-law indemnification, the City and EDC maintain that the Court overlooked or mistakenly construed the indemnification provision of the subject contract and its applicability to the case. The Court disagrees. “[T]here is no evidence that the Court overlooked or misapprehended the relevant facts or misapplied any controlling principle of law” (*Spectrum Painting Contr, Inc v. Kreisler Borg Florman Gen Constrs Co, Inc.*, 54 AD3d 748, 749 [2nd Dept 2008]; see *Ferenczi v. Port Auth of NY & NJ*, 34 AD3d 722, 724 [2nd Dept 2006]). Accordingly, so much of the motion of these defendants as seeks reargument is denied.

In support of its reargument motion, Skanska maintains that the Court erred in granting plaintiff’s motion for partial summary judgment under Labor Law §240(1). In addition, Skanska asks that, upon reargument, the Court search the record and dismiss plaintiff’s Labor Law claims against it.

So much of Skanska’s motion as is for leave to reargue is granted.

In support of its request that the Court (1) deny plaintiff’s motion for summary judgment under Labor Law §240(1), (2) search the record and (3) dismiss plaintiff’s claim under Labor Law §240(1), Skanska maintains that it was retained by EDC as the construction manager and one of two prime contractors on the project, and that it had no authority over plaintiff’s work at the time of the occurrence.

Liability for the violation of Labor Law §240(1) may be imposed upon an owner, a contractor and those parties who, e.g., by the delegation of authority to supervise and control the work, have become the statutory agents of the owner or contractor (*see Tomyuk v. Junefield Assoc*, 57 AD3d at 520; *Aranda v. Park E Constr*, 4 AD3d 315, 316). In this regard, it has been held that the title by which an entity is known is not determinative, and a party with essentially the same duties as an owner or contractor will be held responsible as such for purposes of this section of the Labor Law (*id.*). Here, Skanska was clearly a general contractor under Labor Law §240(1), as it both hired third-parties to perform the actual work, and had the authority to enforce safety standards at the jobsite (*see Williams v. Dover Home Improvement*, 276 AD2d 626 [2nd Dept 2000]). As noted in this Court’s prior decision, a copy of the daily report prepared by a Skanska representative indicated that on the day of plaintiff’s accident, GRB, the subcontractor hired by Skanska to perform safety inspections, had “[m]onitored Safeway’s lead abatement throughout site” (Skanska’s Exhibit “C”). In addition, Skanska has failed to controvert the evidence that a defective or inadequately secured ladder caused plaintiff to fall (*cf. Artoglou v. Gene Scappy Realty Corp*, 57 AD3d 460, 461 [2nd Dept 2008]). Accordingly, as the Court previously held, Skanska has failed to rebut plaintiff’s prima facie showing that her injuries resulted from a violation of Labor Law §240(1) (*see Mingo v. Lebedowicz*, 57 AD3d 491 [2nd Dept 2008]), by raising a triable issue of fact (*cf. Hunter v. RJL Dev, LLC*, 44 AD3d 822, 823 [2nd Dept 2007]).

With regard to Labor Law §200, the evidence of Skanska’s exercise of supervision or control over plaintiff’s work at the time of her injury reveals triable questions of fact (*see Tomyuk v. Junefield Assoc*, 57 AD3d 518, 521 [2nd Dept 2008]; *Hunter v. RJL Dev, LLC*, 44 AD3d at 824 [2nd Dept 2007]; *cf. Aranda v. Park E Constr*, 4 AD3d at 316 [2nd Dept 2004]). Accordingly, the record of the prior proceedings fail to show that Skanska is entitled to summary judgment dismissing

plaintiff's claims under Labor Law §200 and common-law negligence.

However, this Court did hold in its prior decision that plaintiff's complaint lacked the specificity required to support a cause of action under Labor Law §241(6). As a result, it granted the City and EDC's cross motion, and dismissed said cause of action against them. Searching the record, it is evident that the like cause of action as against Skanska is equally insufficient and should be dismissed (*see Parrales v. Wonder Works Constr Corp*, 55 AD3d 579, 582 [2nd Dept 2008]; *cf. Tomyuk v. Junefield Assoc*, 57 AD3d at 521).

Accordingly, it is

ORDERED that the motion for leave to renew and reargue by defendants The City of New York and The New York City Economic Development Corporation is denied in its entirety; and it is further

ORDERED that the motion for leave to renew and reargue by defendants Skanska USA Building, Inc., Barney Skanska, Inc. and Barney Skanska Construction Company is granted as to reargument only and, upon searching the record, severing and dismissing so much of the complaint and cross-claims against these defendants as allege violations of Labor Law §241(6); and it is further

ORDERED that in all other respects, the Court adheres to its prior determination; and it is further

ORDERED that so much of the motion by the Skanska defendants as requests renewal is denied; and it is further

ORDERED that the matter be set down for a trial on the issue of damages upon the filing of the necessary papers and the payment of any required fees; and its is further

ORDERED that the action shall continue as to each of the remaining causes of action and cross claims; it is further

ORDERED that the Clerk enter judgment in accordance herewith.

ENTER,

/s/
Hon. Thomas P. Aliotta
J.S.C.

Dated: April 13, 2009