

Grant v Metro-North Commuter R.R. Co.

2010 NY Slip Op 32997(U)

October 21, 2010

Sup Ct, Orange County

Docket Number: 9732-2007

Judge: Lewis Jay Lubell

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Status Conf; November 29, 2010

To commence the 30 day statutory
time period for appeals as of right
(CPLR 5513[a]), you are advised to
serve a copy of this order, with
notice of entry, upon all parties

**SUPREME COURT OF THE STATE of NEW YORK
COUNTY OF ORANGE**

-----X

JAMES GRANT,

Plaintiff(s),

-against -

METRO-NORTH COMMUTER RAILROAD COMPANY
and its officers, agents, servants
and employees,

Defendant(s).

-----X

LUBELL, J.

DECISION/ORDER

Index No. 9732-2007

Motion Date: 9-3-10

The following papers were considered in connection with this motion by defendant Metro-North Commuter Railroad Company for an ORDER pursuant to CPLR 3212 granting summary judgment in its favor against plaintiff regarding the Labor Law §§200, 240(1) and 241(6) and common law negligence claims:

PAPERS	NUMBERED
Motion/Affirmation/Exhibits A-D	1
Affirmation in Opposition/Exhibits 1-5	2
Reply Affirmation/Affidavit	3

Plaintiff brings this personal injury action against Metro-North Commuter Railroad Company ("Metro-North") in connection with injuries allegedly sustained on March 27, 2007, while engaged in the construction of the northbound overpass stairway at the Dobbs Ferry Metro North Train Station.

At the time of the incident, plaintiff was employed by non-party Architectural Building Associates ("ABA"), a subcontractor of general contractor non-party Perini Corporation ("Perini"). Plaintiff was injured when, while making preparations for the installation of a window, he tripped over a bright red extension cord and fell down a set of six steps while responding to a supervisor's call for assistance.

Plaintiff testified that the extension cord had been plugged into an outlet located at the top of the stairwell, from where it traveled along the stairwell to the platform below. Plaintiff does not know who owned the extension cord, who had placed it there or the purpose for which the extension cord served. In any event, plaintiff testified that the cord did not belong to his employer.

Defendant Metro-North and Perini were responsible for monitoring safety conditions at the site. Towards that end, Metro-North hired a site safety subcontractor "to visit the site every few days to help keep everyone safe". Nonetheless, the record is devoid of any showing that either Metro-North or Perini exercised any direct control or supervision over ABA's work.

While there is testimony that Metro-North supplied temporary lighting to subcontractors by way of a string line positioned above the work area with "pig tails" and vertical lines coming down for any needed electrical power (so as to keep the wire off of the floor), there is no showing that this line or any part thereof caused, contributed to or had anything to do with the underlying accident.

I. Labor Law §200 / Common Law Negligence

Cases involving Labor Law §200 fall into two broad categories: namely, those where workers are injured as a result of dangerous or defective premises conditions at a work site, and those involving the manner in which the work is performed. These two categories should be viewed in the disjunctive.

Where a premises condition is at issue, property owners may be held liable for a violation of Labor Law §200 if the owner either created the dangerous condition that caused the accident or had actual or constructive notice of the dangerous condition that caused the accident [citations omitted].

. . . [W]hen a claim arises out of alleged defects or dangers in the methods or materials of the work, recovery against the owner or general contractor cannot be had under Labor Law §200 unless it is shown that the party to be charged had the authority to supervise or control the performance of the work (citations omitted).

(Ortega v. Puccia, 57 A.D.3d 54, 61 [2d Dept., 2008]).

Here, Metro-North has come forward in the first instance with a showing that it neither created the underlying dangerous condition, had actual or constructive notice of it, nor the authority to supervise or control plaintiff's performance of the underlying task. In response, however, plaintiff has failed to show the existence of a material fact regarding same.

Among other things, the Court rejects any suggestion that Metro-North's act of providing an overhead electrical line constitutes "actual and constructive notices of a potential hazardous tripping condition and defendant's control and supervision to address and minimize said hazards" (Paragraph "8" to [Supposed] Affirmation in Opposition of Peter T. Moynihan, Esq., undated).¹ This is especially so since there is absolutely no showing that any component of the overhead electrical wire had anything to do with the accident. In addition, a general supervisory or inspection privileges over underlying work, such as existed here, does not constitute supervision and control within the meaning of section 200 (see, Hoelle v. New York Equities, 258 A.D.2d 253 [1st Dept., 1999]). Furthermore, there is no question that the noted hazard was anything other than "readily observ[able] by the reasonable use of the senses, having in view the age, intelligence, and experience of [plaintiff]" (Gasper v. Ford Moror Co., 13 N.Y.2d 104, 110 [1963]). Nor is there a duty of the landlord to warn a worker of dangers or conditions which are open and obvious (see, Perez v. New York City Industrial Development Agency, 223 A.D.2d 628 [2d Dept., 1996]).

II. Labor Law §241(6)

Labor Law §241(6), which applies to contractors and owners engaged in construction, excavation, and demolition activities, requires that the work be constructed, shored, equipped, guarded, arranged, operated, and conducted as to provide reasonable and adequate protection and safety to persons employed therein. The obligations of Labor Law §241(6) are nondelegable [citations omitted], and causes of action invoking that statute must be based upon violations of specific codes, rules, or regulations applicable to the circumstances of the accident [citations omitted]).

(Ortega v. Puccia, supra, at p. 60)

¹ There is neither a signature page nor date on this asserted affirmation.

Plaintiff's section 241(6) cause of action is based upon asserted violations of sections 23-1.5, -1.7, -1.13, -1.30, -2.1, -2.2 and -2.3 of the Industrial Code Regulation. His opposition to defendant's motion, however, centers on section 23-1.7(e), the "potential" applicability of which defendant concedes. As such, the Court will proceed to address the motion to that extent and, to any further extent, deems the section 241(6) prong of the defendant's motion to dismiss as unopposed.

Defendant's motion to dismiss plaintiff's section 241(6) cause of action premised upon an asserted Industrial Code §23.1.7(e) violation is denied in that defendant has failed to come forward in the first place with an initial showing of entitlement to judgment in its favor as a matter of law on its nondelegable duty to keep

. . . passageways . . . free from accumulations of dirt and debris and from any other obstructions or conditions which could cause tripping . . . [and the] parts of floors, platforms and similar areas where persons work or pass . . . free from accumulations of dirt and debris and from scattered tools and materials . . .

(12 NYCRR 23.17[e]). Among other things, defendant has not established that the extension cord was not "debris" or "scattered tools and material" within the meaning of the section or was "consistent with" and thus an "integral part" of the work being performed (see, Giza v. New York City School Const. Authority, 22 A.D.3d 800 [2d Dept., 2005]).

III. Labor Law §240(1)

There being no opposition to this aspect of defendant's motion to dismiss, it is hereby granted for the reasons advanced by defendant.

Based upon the foregoing, it is hereby

ORDERED, that defendant's motion for summary judgment in its favor be and is hereby granted except as to Labor Law §241(6) to the extent herein determined.

The parties are directed to appear before the Court at 9 a.m. on November 29, 2010 for a Status Conference.

The foregoing constitutes the Opinion, Decision, and Order of the Court.

Dated: Goshen, New York
October 21, 2010

S/_____
HON. LEWIS J. LUBELL, J.S.C.

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