

Bravo v Church of Annunciation at Manhattanville

2011 NY Slip Op 30043(U)

January 7, 2011

Sup Ct, New York County

Docket Number: 114463/09

Judge: Judith J. Gische

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

PRESENT: HON. JUDITH J. GISCHE

PART 10

J.S. Justice

Index Number : 114463/2009

BRAVO, SANTIAGO

VS.

CHURCH OF ANNUNCIATION

SEQUENCE NUMBER : 002

SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. 002

MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

Index of Motion/ Order to Show Cause or Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

FILED

JAN 10 2011

NEW YORK
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motion (s) and cross-motion(s)
decided in accordance with
the annexed decision/order
of even date.

Dated: 1/07/11

J. Gische
HON. JUDITH J. GISCHE *J.S.C.*

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

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 10**

-----X
Santiago Bravo,

Plaintiff (s),

-against-

Church of the Annunciation at Manhattanville a/k/a
RC Church of the Annunciation,

Defendant (s).
-----X

DECISION/ ORDER
Index No.: 114463/09
Seq. No.: 002

PRESENT:
~~Hon. Judith J. Gische~~
FILED

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Recitation, as required by CPLR § 2219 [a] of the papers considered in the review of this (these) motion(s):

Papers	Numbered
Notice of Motion, PJJ affirm., JC affd., TC affd., exhibits	1
DMA affd. in opp., exhibits	2
PJJ reply affirm., JC affd., exhibits	3

Upon the foregoing papers, the decision and order of the court is as follows:

Defendant, The Church of the Annunciation at Manhattanville a/k/a RC Church of the Annunciation (sometimes the "Church") moves for summary judgment dismissing the complaint. The motion is opposed by plaintiff, Santiago Bravo ("Bravo"). Issue has been joined and the note of issue has not yet been filed. The motion will, therefore, be considered by the court on its merits. (CPLR § 3212 [a]; Brill v. City of New York, 2 N.Y.3d 648 [2004]; Myung Chun v. North American Mortgage Co., 285 AD2d 42 [1st Dept. 2001]).

The underlying action seeks monetary compensation for personal injuries that plaintiff allegedly sustained when he fell off a ladder, on July 15, 2009, while working as

a custodian at the Annunciation School (the "School") on the Church's property. Plaintiff alleges that the injuries occurred on account of defendant's negligence and violations of the New York State labor Laws. Plaintiff claims that he is an employee of the School. The Church moves for summary judgment claiming that the Church is plaintiff's actual employer and that, therefore, this action is barred by the Worker's Compensation Laws. Bravo opposes the motion, claiming that the Church and School are separate and distinct legal entities, Bravo is not a special employee of the Church, there is still significant discovery outstanding, and the Worker's Compensation Board has already found that the Church and the School are separate legal entities.

A movant seeking summary judgment in its favor must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case " (Winegrad v. New York Univ. Med. Ctr., 64 N.Y.2d 851, 853 [1985]). The evidentiary proof tendered, however, must be in admissible form (Friends of Animals v. Assoc. Fur Manufacturers, 46 N.Y.2d 1065 [1979]). Once met, this burden shifts to the opposing party who must then demonstrate the existence of a triable issue of fact (Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 324 [1986]; Zuckerman v. City of New York, 49 N.Y.2d 557 [1980]). When an issue of law is raised in connection with a motion for summary judgment, the court may and should resolve it without the need for a testimonial hearing (See: Hindes v. Weisz, 303 A.D.2d 459 [2nd Dept 2003]).

In support of its *prima facie* case the Church has provided the following:

Father Jose Clavero, pastor of the Church, submitted an affidavit stating the School is a parish School which is operated by the Church. The School is not a

separate legal entity but operates on the property that is owned by the Church. Fr. Clavero is the final authority concerning all budget, staffing, and other management decisions at the Church and the School. Theresa Cetinski, who is the principal of the School, submitted an affidavit stating that she answers to Fr. Clavero, as pastor of the Church. She states that the School is only an un-incorporated division of the Church. Final budget decisions for the School are made by Fr. Clavero. The custodial staff who work at the School, also perform custodial work for the Church at large. She admits that Bravo is paid from a checking account and receives W-2 statements in the name of the School, but maintains that the Church is the entity ultimately responsible for paying Mr. Bravo. The Church has also provided a copy of the Certificate of NYS Worker's Compensation Insurance Coverage, which shows that it was issued only to the Church. The Church claims, and Bravo does not dispute, that this is the policy against which he has collected Worker's compensation Benefits.

In opposition, Bravo relies only on the affirmation of his own attorney. He attaches documents showing that Bravo's tax documents indicate that he is employed by the School and that the Church and the School have separate and distinct taxpayer identification numbers. He also annexes Worker's Compensation Documents in which the School is identified as plaintiff's employer.

It is black letter law that where an employee accepts Worker's Compensation benefits in connection with an injury suffered during the course of his/her employment, he or she cannot maintain a separate personal injury action against the employer. (WCL §11; 29(6); Zabava v. 178 East 78, Inc., 212 AD2d 406 [1st dept. 1995]; Baksh v. Yassky, 195 AD2d 356 [1st dept. 1993]). Factors to be considered in determining

whether the Church is Bravo's employer are the right to control, the method of payment, who furnishes the equipment, the right to discharge, and the relative nature of the work. (Pappas v. Greek Archdiocese of North and South America, 178 AD2d 104 [1st dept. 1991]).

At bar, the Church has satisfied its burden of coming forward with facts establishing that it exercised complete dominion and control over the operation of the School and its employees. Among other things, the Church owned the School property, it controlled all of the Schools financing, its pastor hired the School principal and all administrative personnel, and the Church was responsible for all management decisions. Bravo himself, although primarily assigned to the School, had custodial duties that included all of the Church property. (Smith v. Roman Catholic Diocese of Syracuse, 252 AD2d 805 [3rd dept. 1998]).

Bravo had not come up with any admissible evidence to create an issue of fact about whether the Church was his employer, as opposed to the School.

Contrary to Bravo's argument, the Worker's Compensation Board never made any "finding" that the School was his employer. The issue of the identity of Bravo's employer was never raised before the Board and, consequently, not decided by it. The fact that certain Worker's Compensation forms list the School as the employee is not a finding that binds the parties (Bradford v. Air La Carte, Inc., 79 AD2d 553 [1st dept. 1980]).

Also the fact that the Church and the School have separate tax identification numbers is not legally significant on the question of whether the School, and not the Church, is Bravo's employer. The Church has provided the court with legal authority,

not otherwise disputed by Bravo, that the Internal Revenue Service requires subordinate organizations affiliated with a religious organization to maintain a separate tax identification number and file separate information returns, even if it otherwise is an exempt from taxation (IRS Ruling 8144006 [March 22, 1984]; IRS letter dated July 12, 2010).

Nor has Bravo made the prerequisite showing that it needs discovery in order to properly oppose the motion. The court may consider whether a motion for summary judgment is premature because the information necessary to fully oppose the motion remains under the control of the proponent of the motion. A general belief, however, unsupported by specific details, that further discovery may reveal additional facts to support his case is not a sufficient basis for delaying summary judgment for additional discovery. CPLR § 3212 (f); Lewis v. Safety Disposal System of Pennsylvania, Inc., 12 AD3d 324 (1st dept. 2004).

Bravo mis-characterizes the Worker's Compensation Policy as a "group policy" issued to both the Church and the School. The Certificate of NYS Worker's Compensation Insurance Coverage, however, lists only the Church as the insured. Thus, Kaplan v. Bayley Seaton Hall (201 AD2d 461 [2nd dept. 1994) relied upon for the proposition that group insurance coverage does not preclude a finding of separate employers, in inapposite.

Finally, Bravo has not, himself, submitted any affidavit contesting the facts of circumstances of his employment, including who he was supervised by and what his duties were at the time of the accident (Hatzlachh Supply Co., Inc. v. Bank of America New York, 188 AD2d 298 [1st dept. 1992]).

Accordingly, the Court finds that this action is barred by the exclusivity provisions of the Worker's compensation Laws.

In accordance herewith, it is hereby:

ORDERED the defendant's motion for summary judgment dismissing the complaint is granted in its entirety, and it is further

ORDERED that the Clerk of the Court is directed to enter a judgment in favor of defendants and against plaintiff dismissing the action with prejudice and with statutory costs and disbursements, and it is further

ORDERED any requested relief not otherwise expressly granted herein is denied and that this constitutes the decision and order of the Court.

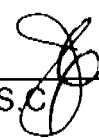
Dated: New York: NY
January 7, 2011

FILED

JAN 10 2011

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SO ORDERED:



J.G. J.S.C.