

Castillo v Liz Clairborne, Inc.
2011 NY Slip Op 32614(U)
September 26, 2011
Supreme Court, New York County
Docket Number: 114000/06
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. EILEEN A. RAKOWER

PART 15

Index Number : 114000/2006
CASTILLO, ROBERT
vs.
LIZ CLAIRBORNE, INC.
SEQUENCE NUMBER : 003
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

this motion to/for _____

notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...
Answering Affidavits — Exhibits _____
Replying Affidavits _____

PAPERS NUMBERED
1
2,3
4,5

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE WITH
THE ACCOMPANYING MEMORANDUM DECISION.**

FILED

OCT 04 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 9/24/11

HON. EILEEN A. RAKOWER

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: PART 15

-----X
ROBERTO CASTILLO and MILAGROS CASTILLO,

Plaintiffs,

Index No.
114000/06

- against -

**DECISION
and ORDER**

LIZ CLAIRBORNE, INC., JUICY COUTURE, INC.,
VAN WYCK & VAN WYCK, INC. and
FREDERICK B. LOCKER,

Mot. Seq.

FILED⁰⁰³

Defendants.

~~OCT 04 2011~~X

HON. EILEEN A. RAKOWER, J.S.C.

NEW YORK
COUNTY CLERK'S OFFICE

Plaintiffs brings this action, sounding in Labor Law §240(1), §241(6), and §200, for personal injuries allegedly sustained when plaintiff Roberto Castillo, now deceased, fell from a ladder while he was working at the premises known as 76 Fordune Drive, in the Hamlet of Watermill, State of New York, on August 31, 2006. Specifically, plaintiff alleges that he was "hanging large curtains from a suspended wire," while helping to assemble a tent on the property, when the ladder he was on became unstable, causing him to lose his balance. Milagros Castillo brings a derivative action.

The tent was being erected for an event being held for the launch of defendant Juicy Couture, Inc.'s ("Juicy") new fragrance line. Juicy is a wholly owned subsidiary of defendant Liz Clairborne, Inc. ("Clairborne"). Clairborne had entered into a short term license agreement for use of the premises with defendant Frederick B. Locker ("Locker"), the owner of the property. Clairborne also entered into a "Services Agreement" with defendant Van Wyck and Van Wyck, Inc. ("Van Wyck"), wherein Van Wyck was to arrange and contract for all services needed for the event. Van Wyck subcontracted with Mr. Castillo's employer, Event Flowers ("Flowers") to

install and decorate the tent.

Locker now moves for summary judgment pursuant to CPLR 3212, to dismiss the Labor Law §200 claim against him, and for conditional summary judgment, on the issue of common law and contractual indemnification against Van Wyck. Plaintiff and Van Wyck each partially oppose the motion.

Locker, in support of its motion, submits: the pleadings; the deposition transcript of Ms. Castillo; the deposition transcript of Mr. Locker; the deposition transcript of Bronson Van Wyck; the Short Term Property Licence Agreement between Locker and Clairborne; and a copy of the Services Agreement between Clairborne and Van Wyck. Locker argues that the §200 claim should be dismissed against him because he did not supervise, direct or control plaintiff's work.

Plaintiffs, in opposition, submit only an attorney affirmation, and essentially argue that Locker has not "proved" that he did not have notice of a dangerous condition on his property. Van Wyck argues that Locker's motion is premature.

The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law. That party must produce sufficient evidence in admissible form to eliminate any material issue of fact from the case. Where the proponent makes such a showing, the burden shifts to the party opposing the motion to demonstrate by admissible evidence that a factual issue remains requiring the trier of fact to determine the issue. The affirmation of counsel alone is not sufficient to satisfy this requirement. (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]). In addition, bald, conclusory allegations, even if believable, are not enough. (*Ehrlich v. American Moninger Greenhouse Mfg. Corp.*, 26 N.Y.2d 255 [1970]). (*Edison Stone Corp. v. 42nd Street Development Corp.*, 145 A.D.2d 249, 251-252 [1st Dept. 1989]).

Labor Law §200 codifies an owner or general contractor's common law duty to maintain a safe construction site. (*Nevins v. Essex Owners Corp.*, 276 AD2d 315[1st Dept. 2000]). However, "where such a claim arises out of alleged defects or dangers arising from a subcontractor's methods or materials, recovery against the owner or general contractor cannot be had unless it is shown that the party to be charged exercised some supervisory control over the operation." (*Ross v. Curtis-Palmer Hydro-Electric Co.*, 81 NY2d 494[1993]).

Plaintiffs allege here that the ladder Mr. Castillo was standing on while he was assembling the tent was improperly shored or secured, and was unstable because it was “standing upon a plastic sheet covering a plywood floor.” It is not claimed that Locker supplied any materials to Mr. Castillo. Nor will plaintiff be able to establish that Locker controlled or supervised Mr. Castillo’s work.

“In the case of common-law indemnification . . . [w]here the proposed indemnitee's liability is purely statutory and vicarious, conditional summary judgment for common-law indemnification against a proposed indemnitor is premature absent proof, as a matter of law, that the proposed indemnitor “ was either negligent or exclusively supervised and controlled plaintiff's work site.” (*Perri v. Gilbert Johnson Enters., Ltd.*, 14 AD3d 681 [2nd Dept. 2005]). Locker’s motion is premature, as issues of fact remain as to Van Wyck’s negligence, if any, and the extent to which it controlled the work site.

With respect to contractual indemnification, the Services Contract between Clairborne and Van Wyck entitles only Clairborne to a defense and indemnification, and “there is no basis for extending these contractual rights to [Locker], who is not in contractual privity with [Van Wyck].” (*Fernandes v. Equitable Life Assurance Society of the United States*, 4 AD3d 214 [1st Dept. 2004]).

Wherefore it is hereby

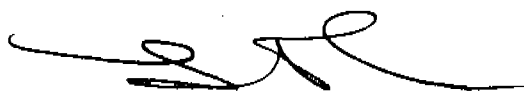
ORDERED that the portion of defendant Frederick B. Locker’s motion for summary judgment, dismissing the Labor Law §200 claim as against him, is granted, and the clerk is directed to enter judgment accordingly; and it is further

ORDERED that the portion of defendant Frederick B. Locker’s motion seeking conditional summary judgment on the issue of common law and contractual indemnification is denied.

This constitutes the decision and order of the court. All other relief requested is

denied.

DATED: September 26, 2011



EILEEN A. RAKOWER, J.S.C.

FILED

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