Briones v Verizon N.Y., Inc.
2012 NY Slip Op 31743(U)
June 29, 2012
Sup Ct, Queens County
Docket Number: 13984/09
Judge: Bernice D. Siegal
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Short Form Order

NEW YORK STATE SUPREME COURT – QUEENS COUNTY
Present: HONORABLE BERNICE D. SIEGAL IAS TERM, PART 19
Justice

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Segundo Briones,

Plaintiff,

-against-

Verizon New York, Inc.,

Defendant.

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Index No.: 13984/09
Motion Date: 4/25/12
Motion Cal. No.: 6
Motion Seq. No.: 1

The following papers numbered 1 to 9 read on these motions for an order pursuant to CPLR §3212 seeking summary judgment and dismissing plaintiff's complaint.

	PAPERS NUMBERED
Notice of Motion - Affidavits-Exhibits.....	1 - 4
Affirmation in Opposition.....	5 - 9

Upon the foregoing papers, it is hereby ordered that the motion is resolved as follows:

Defendant, Verizon New York, Inc. ("Verizon" or "defendant") moves for an order pursuant to CPLR 3212 for summary judgment against the plaintiff.

Facts

Verizon occupied a building at 615 West 47th Street, New York City for storage and maintenance of its vehicles. There were three service bays located on the ground floor of the building. Verizon contracted with an independent contractor, P.M. Savvy ("Savvy"), to provide mechanics to perform maintenance on Verizon's vehicles.

Plaintiff, Segundo Briones ("Briones") was employed by Savvy as a mechanic and he worked

out of Verizon's garage. Verizon provided all the equipment for the maintenance of the vehicles except for hand tools. Savvy supervised the work of the mechanics and it is Savvy's contention that no one from Verizon oversaw the mechanics' work.

On the date of the accident, Briones was performing maintenance on one of Verizon's vehicles, specifically, he was tasked with repairing tires and lights near the roof of the vehicle. After completing work on the tire, he utilized a movable stairway to access the roof. However, the movable stairway was not high enough to access the roof so he climbed on the front bars of the movable stairway. As he was attempting to descend the movable stairway he attempted to use the top most rail as a step and the movable stairway allegedly moved causing him to fall.

Plaintiff alleges two separate causes of action against Verizon, the first sounding in Common Law Negligence and the second alleging violations of Labor Law §§§200, 240(1) and 241(6).

For the reasons set forth below, defendant's motion for summary judgment is granted and plaintiff's causes of action for Common Law Negligence, Labor Law §§§200, 240(1) and 241(6) are dismissed.

Discussion

Labor Law 200 and Common Law Negligence

To grant a motion of summary judgment, the movant must eliminate all issues of fact. (*New v. Stachowiak*, 84 A.D.3d 1326 [2nd Dept 2011].) Generally to make out a prima facie case of negligence where the defendant owns or occupies the premises "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." (*Ortega v Puccia*,

57 A.D.3d 54, 61 [2nd Dept 2008]; citing *Rizzuto v L.A. Wenger Contr. Co.*, 91 N.Y.2d 343 [1998].)

Labor Law § 200 has two standards for determining a property owner's liability. The first is the authority to supervise the work when a plaintiff's injury arises out of defects or dangers in the methods or materials of the work and the second standard is applicable to worker injuries arising out of the condition of the premises rather than the methods or manner of the work. (*Schultz v. Hi-Tech Const. & Management Services, Inc.*, 69 AD3d 701, 701 [2nd Dept 2010]; *See also*, *Bridges v. Wyandanch Community Development Corp.*, 66 AD3d 938 [2nd Dept. 2009]; *Chowdhury v. Rodriguez*, 57 AD3d 121 [2nd Dept 2008]). "If a worker's injury results from a dangerous or defective premises condition, it logically follows that a property owner's liability should be predicated upon evidence of the owner's creation of the condition or actual or constructive notice of it, since the property owner in charge of the site has authority to remedy any dangers or defects existing at its own premises." (*Chowdhury v. Rodriguez*, 57 AD3d at 130.) In Chowdhury, the owners of the premises loaned a ladder that was defective but the court held that the mere loaning a defective ladder is not equivalent to directing or controlling the work and does not serve as a predicate for liability. (*Id.* at 132.)

In the within action plaintiff claims to have fallen from a ladder owned and provided for by Verizon and said ladder was not the correct height for the job. Defendant established via the deposition testimony of Neil Werner ("Werner"), Fleet Manager for Verizon and Briones that Verizon did not create or have actual or constructive notice of the allegedly defective condition of the ladder. Therefore, the defendant established its entitlement to judgment as a matter of law dismissing the causes of action to recover damages for both Common Law Negligence and a violation of Labor Law § 200. (See *Arredondo v. Valente*, 94 A.D.3d 920 [2nd Dept April 17, 2012].)

In opposition, plaintiff contends that he had made complaints to his supervisor about the movable stairway prior to the accident. However, there is no evidence that his supervisor, who worked for Savvy, relayed the complaints to Verizon and plaintiff acknowledged that he never complained about the moveable stairway to Verizon.

Verizon also argues that if the standard of review was whether or not Verizon had the authority to supervise or control the performance of the work that contention was negated by the various deposition testimony. Werner testified that he was the person in charge of the garage but that no one supervised the garage on a daily basis. Briones also testified that there were no Verizon employees working at the garage. Here, defendant shows, and it is not disputed, that it did not control or supervise the work leading to the injury. (*Rosa v. Internap Network Services Corp*., 83 A.D.3d 905 [2nd Dept 2011][general supervisory authority is insufficient to impose liability].)

Accordingly, Verizon's motion dismissing the causes of action to recover damages for both common-law negligence and a violation of Labor Law § 200 is granted.

Labor Law 240(1)

It is well settled that routine maintenance in a nonconstruction, nonrenovation context is not an activity protected under Labor Law § 240(1). *(Antonczyk v. Congregation Mosdos D'Rabini of Monsey, Inc.*, 309 A.D.2d 776 [2nd Dept 2003]; citing *Brown v. Christopher Street Owners Corp.*, 87 N.Y.2d 938 [1996].) In the within action, plaintiff was merely replacement of a bulb and the base socket, which is more akin to routine maintenance and not construction or renovation work. (*Deoki v Abner Props. Co.*, 48 A.D.3d 510 [2nd Dept 2008][holding that replacing ballast in fluorescent light fixture fell within category of routine maintenance and was not actionable under Labor Law §240(1)].) Plaintiff's opposition failed to address this portion of Verizon's motion. Accordingly,

Verizon's motion to dismiss plaintiff's cause of action under Labor Law §240(1) is granted.

Labor Law 241(6)

Verizon also contends that plaintiff's cause of action pursuant to Labor Law §241(6) must be dismissed. As noted above, plaintiff's work was merely routine maintenance. As such, there can be no recovery under Labor Law 241(6) since the plaintiff's work was unrelated to construction, excavation, or demolition. (*Deoki v Abner Props. Co.*, 48 A.D.3d at 511 citing *Esposito v New York City Indus. Dev. Agency*, 1 N.Y.3d 526 [2003].) Plaintiff's opposition failed to address this portion of Verizon's motion. Accordingly, Verizon's motion to dismiss plaintiff's cause of action under Labor Law §241(6) is granted.

Conclusion

For the reasons set forth above, defendant's motion for summary judgment is granted and plaintiff's causes of action for Common Law Negligence, Labor Law §§§200 240(1) and 241(6) are dismissed.

Dated: June 29, 2012

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Bernice D. Siegal, J. S. C.