Bay v Saint Vincent's Catholic Med. Ctrs. of N.Y.

2013 NY Slip Op 31986(U)

August 26, 2013

Sup Ct, New York County

Docket Number: 112470-2005

Judge: Louis B. York

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SCANNED ON 8/27/2013

[* 1]

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: LOUIS B. YORK J.S.C. PART 2

Justice

Index Number : 112470/2005
BAY, ROBERT
vs.
JSK CONSTRUCTION
SEQUENCE NUMBER : 001
REARGUMENT/RECONSIDERATION

FILED
AUG 27 2013
COUNTY CLERK'S OFFICE
NEW YORK

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

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE _____
FOR THE FOLLOWING REASON(S): _____

Dated: 8/26/13

LOUIS B. YORK, J.S.C.

1. CHECK ONE: ..... ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☐ DENIED ☒ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 2

----------x

ROBERT BAY,

Plaintiff,

-against-

Index No.:112470-2005

SAINT VINCENT'S CATHOLIC MEDICAL CENTERS OF NEW YORK, 450 WESTSIDE PARTNERS, LLC, MAX/FW MANAGEMENT, LLC, MAX CAPITAL MANAGEMENT CORP., JSK CONSTRUCTION CORP., and V.I.P. RELOCATIONS, LTD.,

Defendants.

----------x

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NEW YORK

YORK, J.:

Motion sequence numbers 011 and 012 are consolidated for disposition. In motion sequence 011, defendant JSK Construction Corp. (JSK), moves, pursuant to CPLR 2221, for an order granting leave to reargue an October 16, 2009 order of this court. In motion sequence 012, plaintiff Robert Bay, also moves, pursuant to CPLR 2221, for an order granting leave to reargue the October 16, 2009 order.

FACTUAL ALLEGATIONS

This action arises from an incident in which plaintiff was injured on December 18, 2003, while working on the twelfth floor of a building located at 450 West 33rd Street in Manhattan, New York. Plaintiff, an electrician, was allegedly installing overhead lighting, when he tripped and fell on a masonite board located on the floor.

Plaintiff commenced an action against St. Vincent's Catholic Medical Centers of New York (St. Vincent's), JSK, and V.I.P. Relocations, Ltd. (VIP), alleging causes of action for

negligence, and violations of Labor Law §§ 200 and 241 (6). On June 27, 2006, plaintiff executed a stipulation of discontinuance without prejudice, discontinuing its action against St. Vincent's. Defendant VIP never filed an answer or appeared, and a default judgment was entered against it. On December 29, 2006, plaintiff filed the note of issue.

On December 14, 2006, a separate action was commenced by plaintiff against St. Vincent's, 450 Westside Partners, LLC, MAX/FW Management, LLC, and Max Capital Management Corp. On September 17, 2007, St. Vincent's filed a motion to consolidate the first and second action, which was subsequently granted by the Honorable Leland G. DeGrasse.

On December 8, 2008, JSK filed a motion for summary judgment, and St. Vincent's, 450 Westside Partners, LLC, MAX/FW Management Corp., and Max Capital Management Corp., filed a cross motion for summary judgement. On October 16, 2009, this court denied JSK's motion for summary judgment, and granted the cross motion of St. Vincent's, 450 Westside Partners, LLC, MAX/FW Management Corp., and Max Capital Management Corp. In the order, this court noted that plaintiff had discontinued his claims against St. Vincent's.

On November 30, 2009, JSK filed a motion to reargue the October 16, 2009 order, and a cross motion to reargue was filed by plaintiff on December 4, 2009. Following the submission of the motions, St. Vincent's filed for bankruptcy, staying the litigation. This court denied the motions to reargue without prejudice, with leave to renew upon the lifting of the bankruptcy stay. On March 23, 2012, the bankruptcy stay was lifted, pursuant to a stipulation and order of the Honorable Cecelia G. Morris of the United States Bankruptcy Court for the Southern District. In July of 2012, both plaintiff and JSK filed separate motions to reargue the October 16, 2009 order. This court denied both motions to reargue without prejudice with leave to renew, citing certain

deficiencies with the exhibits.

JSK and plaintiff now move separately for leave to reargue the October 16, 2009 decision and order.

DISCUSSION

"A motion for leave to reargue pursuant to CPLR 2221 is addressed to the sound discretion of the court and may be granted only upon a showing 'that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision." *William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 (1st Dept 1992) *quoting Schneider v Solowey*, 141 AD2d 813, 813 (2d Dept 1988); *see also Viola v City of New York,* 13 AD3d 439 (2d Dept 2004).

Here, the court grants reargument as to both motions. First, the court will address the arguments which have been made regarding the timeliness of the motions to reargue. St. Vincent's, 450 Westside Partners, LLC, Max/FW Management, LLC, and Max Capital Management Corp., argue that both motions to reargue were served after the statutory deadline. However, on September 26, 2012, when this court denied the motion to reargue without prejudice, it indicated that the parties were permitted to remedy deficiencies in their papers, including supplying missing exhibits. In the order, the court did not set forth a deadline for the parties to remedy the problems with the papers. Therefore, because the court permitted the parties to address the deficiencies, without including a specific deadline, the court declines to hold that either motion is untimely.

Both motions to reargue address a mistake in the October 16, 2009 order regarding St. Vincent's involvement in the case. When the court granted St. Vincent's cross motion for

summary judgment, the court was under the impression that plaintiff had discontinued his action against St. Vincent's. In the order, the court held that "[p]laintiff discontinued against St. Vincent's when it filed bankruptcy ... ." While plaintiff did discontinue the first action against St. Vincent's, plaintiff commenced a second action against St. Vincent's following the lifting of the bankruptcy stay. Therefore, at the time that this court issued the October 16, 2009 order, St. Vincent's was still a party to this action, and the court should have considered its arguments for summary judgment.

As St. Vincent's was still an active party, the court will now consider the arguments presented in its cross motion for summary judgment. St. Vincent's cross-moves for summary judgment, pursuant to Labor Law §§ 200 and 241 (6). Labor Law § 200 is a "codification of the common-law duty imposed upon an owner or general contractor to provide construction site workers with a safe place to work." *Cruz v Toscano*, 269 AD2d 122, 122 (1st Dept 2000). Labor Law § 200 (1) provides in part:

> "[a]ll places to which this chapter applies shall be so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein or lawfully frequenting such places. All machinery, equipment, and devices in such places shall be so placed, operated, guarded, and lighted as to provide reasonable and adequate protection to all such persons."

The Appellate Division, First Department, has held that "[w]here an existing defect or dangerous condition caused the injury, liability attaches if the owner or general contractor created the condition or had actual or constructive notice of it." *Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 144 (1st Dept 2012).

Here, the court has previously held in its October 16, 2009 order, that because a question

of fact exists as to whether JSK, the general contractor, and VIP, a subcontractor, had notice of the condition where plaintiff fell, summary judgement pursuant to Labor Law § 200, must be denied as to both of these parties. Here, it remains unclear whether St. Vincent's had a supervisory role over VIP or Project Advantage, a subcontractor, and whether it had constructive notice of the condition where plaintiff's accident took place.

St. Vincent's contends that there is no evidence that it supervised, directed, or controlled the work being done at the site. However, JSK maintains that St. Vincent's was either the owner or lessee of the property where plaintiff's accident occurred, that it had hired JSK to preform renovation work at the building where plaintiff's accident took place, that St. Vincent's hired VIP to provide relocation work, and that it hired Project Advantage to oversee facility planning and relocation management. Maria Papola, who was the corporate director of facilities at St. Vincent's, testified that she supervised Project Advantage, who in turn, supervised VIP. She also testified that she visited the worksite on a weekly basis in December of 2013, that St. Vincent's paid VIP for their work, and that she saw the masonite boards being utilized on the floor on the level of the building where plaintiff fell, but that she did not hear any complaints about the boards.

As a question of fact exists regarding whether St. Vincent's had a supervisory role over VIP and Project Advantage at the time of plaintiff's accident, and because the court has previously held that an issue of fact exists regarding notice, the part of St. Vincent's cross motion seeking to dismiss the claim pursuant to Labor Law § 200 must be denied.

St. Vincent's also cross-moves for summary judgment to dismiss plaintiff's cause of action pursuant to Labor Law § 241 (6). Labor Law § 241 (6) provides, in pertinent part:

> "[a]ll contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, when constructing or demolishing buildings or doing any excavating in connection therewith, shall comply with the following requirements:
>
> * * *
>
> (6) All areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, equipped, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places. ..."

Labor Law § 241 (6) is not self-executing, and in order to show a violation of this statute, and withstand a defendant's motion for summary judgment, it must be shown that the defendant violated a specific, applicable regulation of the Industrial Code, rather than a provision containing only generalized requirements for worker safety. *See Buckley v Columbia Grammar & Preparatory*, 44 AD3d 263, 271 (1st Dept 2007).

Here, because the court has already held that a factual issue exists as to whether JSK, the general contractor, violated Labor Law § 241 (6), the court, in turn, declines to grant St. Vincent's motion regarding this section of the Labor Law.

Finally, while plaintiff contends that 450 Westside Partners, LLC, Max/FW Management LLC, and Max Capital Management, failed to meet their burden of proof in their cross motion for summary judgment, the October 16, 2009 order states that the cross motion should be dismissed because "[n]othing in the record indicates that these defendants had caused or created the allegedly dangerous condition existing in the Masonite board ... ." As there is no evidence that this court did not properly consider the arguments or was mistaken in reaching its conclusion, the court declines to deny the cross motion as to these parties.

CONCLUSION and ORDER

Accordingly, it is hereby

ORDERED that defendant JSK Construction, Corp.'s motion to reargue (Sequence No. 011) is granted; and it is further

ORDERED that plaintiff Robert Bay's motion to reargue (Sequence No. 012) is granted; and it is further

ORDERED that upon reargument, the part of the October 16, 2009 order of this court which granted summary judgment as to St. Vincent's Catholic Medical Center is vacated, and St. Vincent's cross motion for summary judgement pursuant to Labor Law §§ 200 and 241 (6) is denied.

Dated: 8/26/13

ENTER:

Levy.

J.S.C.

FILED
AUG 27 2013
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