

Peters v Rudin Mgt. Co., Inc.

2013 NY Slip Op 31995(U)

August 22, 2013

Supreme Court, New York County

Docket Number: 100204/11

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

Index Number : 100204/2011

PETERS, WILLIAM

vs

RUDIN MANAGEMENT CO., INC

Sequence Number : 002

SUMMARY JUDGMENT

PART 15

FILED

AUG 28 2013

**NEW YORK
COUNTY CLERK'S OFFICE**

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). 1,2

Answering Affidavits — Exhibits _____ | No(s). 3,4,5

Replying Affidavits _____ | No(s). 6

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

**DECIDED IN ACCORDANCE WITH
ACCOMPLISHED DECISION / ORDER**

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

Dated: 8/22/13


HON. EILEEN A. RAKOWER 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 15

-----X
WILLIAMS PETERS,

Plaintiff,

Index No. 100204/11

- against -

Decision/Order
Mot. Seq.: 002

RUDIN MANAGEMENT CO., INC., BROAD
STREET COMPANY, 55 BROAD STREET LLC,
55 BROAD STREET, LP, CORPORATE INTERIORS
CONTRACTING, INC., TRICO ELECTRIC CORP.,
RCN NEW YORK COMMUNICATIONS, LLC,
SIDERIA NETWORKS, LLC and SIDERIA NETWORKS,
LLC, as Successor In Interest to, and formerly known as
RCN NEW YORK COMMUNICATIONS, LLC,

FILED

AUG 28 2013

Defendants.

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COUNTY CLERK'S OFFICE

-----X
RUDIN MANAGEMENT CO. INC., BROAD STREET
COMPANY, 55 BROAD STREET LLC, 55 BROAD
STREET, L.P., and CORPORATE INTERIORS
CONTRACTING, INC.,

Third-Party Index No.:
590921/11

Third-Party Plaintiffs,

-against-

TRICO ELECTRIC CORP.,

Third-Party Defendant.

-----X
RUDIN MANAGEMENT CO. INC., BROAD STREET
COMPANY, 55 BROAD STREET LLC, 55 BROAD
STREET, L.P., and CORPORATE INTERIORS
CONTRACTING, INC.,

Second Third-Party
Index No. 590185/13

Second Third-Party Plaintiffs,

-against-

CONSOLIDATED CARPET WORKROOM, LLC,

Second Third-Party Defendant.

-----X

RCN NEW YORK COMMUNICATIONS, LLC,
SIDERIA NETWORKS, LLC and
SIDERIA NETWORKS, LLC, as Successor In Interest to,
and formerly known as RCN NEW YORK
COMMUNICATIONS, LLC,

Third Third Party
Index No.: 590269/13

Third Third-Party Plaintiffs,

-against-

RCG CONSULTING, LLC,

Third Third-Party Defendant.

-----X

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

Plaintiff William Peters (“Plaintiff”) commenced this action on January 5, 2011 to recover for personal injuries sustained on August 6, 2010 when he allegedly tripped over a bundle of 20-50 white wires coming out of the ground while performing a carpet installation at 55 Broad Street, New York, New York (“the Premises”), for Consolidated Carpet Workroom, LLC.

Defendants Rudin Management Co., 55 Broad Street Company, 55 Broad Street LLC, and 55 Broad Street L.P. (collectively, “Rudin”) owned, operated and maintained the Premises. Defendant Corporate Interiors Contracting, Inc. (“Corporate Interiors”) was the general contractor. Third-party defendant Trico Electric Corp. (“Trico”) was hired by the Corporate Interiors to perform certain work at the Premises.

Upon deposition testimony that Plaintiff may have tripped over data/computer/telecommunications wire rather than electrical wires, Plaintiff

commenced a separate action by service of a Summons and Verified Complaint upon RCN New York Communications, LLC, Sidera Networks, LLC, as successor in interest to, and formerly known as RCN New York Communications, LLC (collectively, "RCN"). RCN interposed an answer to Plaintiff's Verified Complaint on November 19, 2012. That action and the instant proceeding were consolidated by Order dated February 21, 2013. On or about April 5, 2013, RCN commenced a third party action against RCG Consulting, LLC ("RCG"), alleging that RCG was the entity that installed the telephone/data/telecommunication wires.

Trico now moves pursuant to CPLR §3212 for an order of summary judgment and dismissal of the complaint and all cross complaints. In support of its motion, Trico submits the following: Summons and Complaint; Trico's answer; Plaintiff's Bill of Particulars; Plaintiff's deposition testimony; deposition testimony of John Trilivas of Trico; deposition testimony of Corporate Interiors' Director of Project Management Phil Fraschilla; and deposition testimony of George Sammis of Rudin.

Plaintiff, Rudin, RCN, and Corporate Interiors oppose Trico's motion.

On August 6, 2010, Plaintiff was installing carpet at the Premises. Plaintiff was a journeyman/shop steward for Consolidated Carpet Workroom. Plaintiff testified that on that date, he tripped over 20 to 50 white wires. Plaintiff testified, "After I fell I looked. It was a bunch of white wires which I recognized as data wires, computer wires." When asked about the length of the wires, Plaintiff testified, "They were all connected so they weren't spread out straight so they may have been 50 feet. Don't know, I honestly don't know." He further testified that the subject wires were coming out of a 4" to 6" round hole in the floor.

Trico's Project Manager/Foreman and licensed electrician John Trilivas, who was regularly on the Premises, testified that Trico had been hired by Corporate Interiors to provide "general lighting, general power, [sic] fire alarm." Trilivas testified, "[The electrical wires used by Trico at the Project] came straight up through the hole approximately six to eight inches long, [and were comprised of] various colors, white, red, blue, black and sometimes green." The different colors was a "typical electrical wiring sequence." Trilivas further testified that data-tel [telecommunication] wires also came out of the floor, that Trico did not perform any

work threading such wires through the conduit or out of the floor, that Trico did not install any telephone cable wires at the site, that Trilivas observed data-tel wires being installed at the job site and believes they were run by RCN, that both electrical wires and data-tel wires would not be coming out of the same hole because that would be against the code, and that Trico would never be running 20 to 50 all white wires out any hole.

Corporate Interiors' Director of Project Management Phil Fraschilla testified that Corporate Interiors, as general contractor, hired Trico to install the electrical on the Project. Fraschilla further testified that Corporate Interiors was not hired to install tel-data or telephone wires. George Sammis, the building manager of 55 Broad Street, testified on Rudin's behalf that he did not believe Trico installed the data or cable wires for the Project and at that he believed RCN (the tenant) did the work.

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]).

As against Trico, Plaintiff's claims that Trico was negligent in failing to provide Plaintiff with a safe place to work, failing to properly coordinate and supervise the work, for creating a trap, hazard, and nuisance in having wires coming out of the floor without barricading the area that were not properly coiled, failing to warn of the hazard, and violating applicable laws and regulations, including Sections 200 and 241(6) of the Labor Law.

"To establish a prima facie case of negligence, a plaintiff must demonstrate (1) a duty owed by the defendant to the plaintiff, (2) a breach thereof, and (3) injury proximately resulting therefrom." *Solomon v. City of New York*, 66 N.Y.2d 1026, 1027 [1985]. Where the plaintiff fails to submit evidence legally sufficient to

establish each and every element, summary judgment dismissing the claim is appropriate. *Febesah v. Elcejay Inn Corp.*, 157 A.D. 3d 102, 104 [1st Dept 1990]).

Here, defendant Trico has made a prima facie showing of entitlement to judgment as a matter of law. Based on the testimony of Plaintiff and the other parties in this case, there is no evidence that Trico installed or had anything to do with the type of wires over which Plaintiff allegedly tripped. There is no evidence that Trico caused or in any way contributed to Plaintiff's accident. Plaintiff, RCN, Rudin, and Corporate Interiors have failed to raise any triable issues in opposition.

Wherefore, it is hereby

ORDERED that defendant/third party defendant Trico Electric Corp's motion for summary judgment is granted and the Complaint and all cross claims are dismissed as against Trico Electric Corp. and the Clerk is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

DATED: 8/22/13



EILEEN A. RAKOWER, J.S.C.

FILED

AUG 28 2013

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