

Golubowski v City of New York
2013 NY Slip Op 32498(U)
October 8, 2013
Supreme Court, New York County
Docket Number: 402150/2011
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. KATHRYN FREED
JUSTICE OF SUPREME COURT
Justice

PART ✓

Index Number : 402150/2011
GOLUBOWSKI, WLODZIMIERZ
VS.
CITY OF NEW YORK
SEQUENCE NUMBER : 002
SUMMARY JUDGMENT CAL: 426

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

FILED

OCT 17 2013

NEW YORK
COUNTY CLERK'S OFFICE

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER

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

Dated: 10-8-13


HON. KATHRYN FREED
JUSTICE OF SUPREME COURT, 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 5

-----X
WLODZIMIERZ GOLUBOWSKI,

Plaintiff,

-against-

DECISION/ORDER

Index No. 402150/2011

Seq. No. 002

THE CITY OF NEW YORK, 150 WILLIAM STREET
ASSOCIATES, L.P., BRAUN MANAGEMENT INC.,
BRAUN MANAGEMENT SERVICES, INC.,
GLICKMAN ENGINEERING ASSOCIATES, PLLC,

Defendants.
-----X

HON. KATHRYN E. FREED:

RECITATION, AS REQUIRED BY CPLR§2219 (a), OF THE PAPERS CONSIDERED IN THE REVIEW OF
THIS MOTION.

PAPERS

NUMBERED

NOTICE OF MOTION AND AFFIDAVITS ANNEXED.....
ORDER TO SHOW CAUSE AND AFFIDAVITS ANNEXED.....
ANSWERING AFFIDAVITS.....
REPLYING AFFIDAVITS.....
EXHIBITS.....
OTHER.....

FILED

OCT 17 2013 (C-G)

NEW YORK
COUNTY CLERK'S OFFICE

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THE MOTION IS AS FOLLOWS:

Defendant Glickman Engineering Associates, PLLC ("Glickman Engineering"), moves for
an order granting summary judgment dismissing the complaint and any cross-claims against it. No
opposition has been received.

After a review of the papers presented, all relevant statutes and case law, the Court grants
the motion.

Factual and procedural background:

Plaintiff seeks monetary damages for personal injuries he allegedly sustained on September

20, 2010, when while on the 7th floor of the premises located at 150 William Street in New York County, he fell or slipped from a ladder which had become wet from a leaky pipe he had been in the process of dismantling. Thereafter, he filed a Summons and Complaint. An Answer was subsequently served on August 3, 2011.

In his Bill of Particulars, plaintiff alleges Labor Law and Common Law claims. However, counsel for Glickman Engineering argues that the complaint against Glickman Engineering necessitates dismissal because his client is an engineer, and thus, is subject to the exclusionary rules concerning liability for Labor Law claims. Furthermore, counsel argues that because Glickman Engineering did not perform any work at the subject premises which led to plaintiff's accident, nor did it supervise, direct or control any of the means and methods of plaintiff's work at any time prior to his accident, no liability can be attributed to it.

Eden Glickman, wife of David Glickman, owner of Glickman Engineering testified at a deposition on March 13, 2013. Mrs. Glickman testified that she works at Glickman Engineering and deals with employee related issues, such as payroll and medical benefits. She also testified that Glickman Engineering designs heating systems, ventilation systems, air conditioning systems, etc. Mrs. Glickman also testified that in December 2005, Glickman Engineering entered into a contract with Braun Management wherein Glickman Engineering was to provide engineering services for a project located at 150 William Street, New York County.

The scope of said project was to provide mechanical, electrical, fire protection, life safety systems and plumbing for the second, third, seventh and thirteenth floors of the building. Mrs. Glickman also testified that during the course of the project, no one from Glickman Engineering maintained a daily site presence, except to respond to a specific request for information. She further

testified that Glickman Engineering did not direct, or supervise the work of any contractors or subcontractors involved in this project.

Conclusions of law:

“The proponent of a summary judgment motion must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law” (*Dallas-Stephenson v. Waisman*, 39 A.D.3d 303, 306 [1st Dept. 2007], citing *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 [1985]). Once the proponent has proffered evidence establishing a prima facie showing, the burden then shifts to the opposing party to present evidence in admissible form raising a triable issue of material fact (see *Zuckerman v. City of New York*, 49 N.Y.2d 557 [1989]; *People ex rel Spitzer v. Grasso*, 50 A.D.3d 535 [1st Dept. 2008]). “Mere conclusory assertions, devoid of evidentiary facts, are insufficient for this purpose, as is reliance upon surmise, conjecture or speculation” (*Morgan v. New York Telephone*, 220 A.D.2d 728 [2d Dept. 1985]). If there is any doubt as to the existence of a triable issue of fact, summary judgment must be denied (*Rotuba Extruders v. Ceppos*, 46 N.Y.2d 223 [1978]; *Grossman v. Amalgamated Hous. Corp.*, 298 A.D.2d 224 [1st Dept. 2002]).

Turning to plaintiffs’ Labor Law §200 and common law negligence claims, Labor Law § 200 “merely codifies the common-law duty of an owner or general contractor to provide a safe place of work” (*Comes v. New York State Elec. & Gas Corp.*, 82 N.Y.2d 876 [1993]; see also *Cun-En Lin v. Holy Family Monuments*, 18 A.D.3d 800 [2d Dept. 2005]. The statute applies to owners and contractors who exercise control and supervision over the work being performed, or who have either created a dangerous condition or possessed actual or constructive notice of such condition (*Lombardi v. Stout*, 80 N.Y.2d 290, 294-95 [1992]).

The Court finds the aforementioned deposition testimony to be sufficient evidence that Glickman Construction was merely the engineer on the project, and as such, was not involved in job safety or control of the work force. Moreover, it is well settled that engineers are specifically exempt from liability by labor laws if they do not control work at a construction site (see Labor Law § 240(1); *Hamby v. High Steel Structures, Inc.*, 134 A.D.2d 884 [4th Dept. 1987]; *Abbatiello v. Lancaster Studio Associates*, 307 A.D.2d 788 [1st Dept. 2003], *aff'd* 8 N.Y3d 46 [2004]). Therefore, the Court finds that Glickman Engineering has established a prima facie entitlement to summary judgment.

Accordingly, it is hereby

ORDERED that Glickman Engineering Associates, PLLC's motion for summary judgment is granted and plaintiff's complaint and any cross-claims against it are dismissed; and it is further

ORDERED that the remainder of the action shall continue; and it is further

ORDERED that Glickman Engineering Associates, PLLC shall serve a copy of this order on all other parties as well as the Trial Support Office at 60 Centre Street, Room 158; and it is further

ORDERED that this constitutes the decision and order of the Court.

DATED: October 8, 2013

OCT 08 2013

FILED

OCT 17 2013

NEW YORK
COUNTY CLERK'S OFFICE

ENTER:

Hon. Kathryn E. Freed
J.S.C.

HON. KATHRYN FREED
JUSTICE OF SUPREME COURT