

**Barnes v NYC Doormasters Corp.**

2014 NY Slip Op 31994(U)

June 11, 2014

Sup Ct, Bronx County

Docket Number: 305104/08

Judge: Mark Friedlander

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NEW YORK SUPREME COURT-COUNTY OF BRONX  
PART IA-25

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RAY BARNES,

Plaintiff,

-against-

MEMORANDUM  
DECISION/ORDER  
Index No.: 305104/08

NYC DOORMASTERS CORP., NATIONAL GLASS  
& DOOR SERVICE, INC., NATIONAL GLASS & DOOR  
SERVICE, INC. D/b/a NG&G FACILITY SERVICES  
INTERNATIONAL, INC. and WEST 34<sup>th</sup> REALTY LLC,

Defendants.

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HON. MARK FRIEDLANDER

Defendant, NYC Doormasters Corp. ("Doormasters"), moves for an order granting summary judgment to Doormasters. The only opposition to Doormasters' motion was submitted by plaintiff. The motion is decided as hereinafter indicated.

This is an action by plaintiff to recover monetary damages for personal injuries allegedly sustained by plaintiff on June 12, 2007, as a result plaintiff's left arm being caught in a rolling steel door while plaintiff and his co-workers were trying to unjam the door.

In support of the motion, Doormasters submits, *inter alia*, a copy of the pleadings, transcripts of the deposition testimony of plaintiff, of Sara Wilson, Customer Relations Manager of National Glass & Gate Service, Inc. ["NG&G"] and of John Rosas ["Rosas"], President of Doormasters, as well as various invoices and/or estimate (s) from Doormasters to NG&G.

In opposition to the motion, plaintiff submits excerpts from the transcripts of the depositions of plaintiff, of Rosas and of non-party witness, Eric Candelario ["Canderlario"], a logistics or stock

supervisor with Old Navy.

As a preliminary matter, plaintiff's complaint asserts claims against Doormasters sounding in negligence and violations of Labor Law §§200, 240 and 241(6). In opposition to the motion, plaintiff's attorney states that plaintiff is asserting only a negligence claim against Doormasters and is not pursuing Labor Law claims against it. Accordingly, the Court need not address the Labor Law claims originally interposed by plaintiff against Doormasters.

The facts, as culled from the pleadings, depositions transcripts and exhibits, are as follows: The Gap is the parent company of Old Navy. NG&G is in the business of facilities maintenance management. The Gap engaged NG&G to service emergency or planned maintenance at locations throughout the country. One of NG&G's customers is Old Navy, which operates a store located at 144 West 34<sup>th</sup> Street, New York, New York. NG&G provides Old Navy with 24-hour service with respect to this store. There was a loading dock at the rear of the store, located on West 33<sup>rd</sup> Street, containing a rolling steel door or gate ("rolling gate"), where deliveries were generally made.

When Old Navy had a problem and needed service pertaining to the rolling gate, Old Navy would contact, usually by E-mail, the corporate headquarters of The Gap. The Gap would then place a work request with NG&G. Upon receipt of the work request from the Gap, NG&G validates the request by calling the store to confirm that the work request was accurate. Upon confirmation, NG&G would enter the request in its computer system to generate a work order, a document sent by NG&G to the subcontractor assigned to the work, by facsimile or E-mail, telling it where to go and what needed to be fixed. After the subcontractor appeared at the location and performed the work set forth in the work order, the subcontractor would generate its own invoice to NG&G and NG&G would pay

the subcontractor directly.

The customers' entrance is located at 131 West 34<sup>th</sup> Street. The only loading dock at the Old Navy store is fully enclosed (having walls and a ceiling) and is located inside the building. Entrance thereto is accomplished through a rolling gate on West 33<sup>rd</sup> Street. There is a side entrance near the loading dock for employees. The loading dock is not open to customers of Old Navy. When deliveries were made, a tractor trailer truck would pull up and back up inside the dock. The trailer would be left inside the building, unhitched, and the truck would be parked outside. Inside the loading dock was a compactor, basically a trash receptacle, located near the rolling gate. The compactor is approximately 20 – 25 feet high. The rolling gate was constantly being used to receive deliveries and to cart away the garbage in the compactor. The rolling gate at the loading dock is approximately twenty feet wide, and the curtain (the rolling portion of the gate that moves up and down on tracks, and consists of approximately sixty – seventy individual slats, each three to four inches high) is fourteen feet high. The rolling gate could be operated electronically or manually.

The model at the Old Navy loading dock had two buttons and a key. For security reasons, the key (s) were in possession of the supervisors and it was the job of the supervisors to operate the rolling gate. In addition to the buttons and key, there was also a gate chain which permitted the rolling gate to operated manually. The chains that could be used to manually operate the rolling gate are located in the box on top of the gate assembly, which houses the motor that electronically operates the gate. This is approximately 25 – 30 feet high. When the motor was not operating or the rolling gate was stuck, someone would go onto the compactor or a ladder, access the chains in the motor box, and begin pulling the chain up and down, trying to align it in the track so as to open and close it.

Doormasters is a company which services and repairs rolling steel doors. On occasion, when NG&G needed service for one of its customers, it contacted Doormasters. Doormasters had no written contract with NG&G. NG&G first contacted Doormasters in February 2007. Service by Doormasters was provided on a per diem basis and would only be performed after Doormasters received a purchase (work) order from NG&G. The rolling steel gate at the instant loading dock was not installed by Doormasters. When Doormasters received written authorization ( by facsimile or e-mail ) from NG&G to perform services for Old Navy, Doormasters would send its personnel to the designated location. Rosas testified that this Old Navy location is one of the highest volume stores in the country. According to Rosas, a rolling gate could be stuck open as a result of user error, normal wear and tear, lack of power, drive chain break, defective key, etc. If the rolling gate was repairable on the initial visit, an invoice would be generated and sent with a signed work ticket to NG&G. If it was not repairable on the initial visit, Rosas would prepare an estimate, based upon information received from the technicians who were on-site. Rosas prepared and sent Doormasters' estimate, dated June 6, 2007, to NG&G, for repairs at Old Navy, which stated, in relevant part, as follows:

Item	Description
Labor	Emergency service to secure storefront
Initial Trip Charge	Technicians made temporary repair at store, Georgette (NG&G) suggested that NYCDM leave door open until delivery was completed. NYCDM's temp repairs allowed for store to secure door via motor. Once closed Door should not be used again until repairs are complete. NYCDM recommends the following repairs to restore door to proper working order: Replace motor operator, replace door stops, troubleshoot wiring of control station,
MG0202 Bel mouth stop Labor Trip Charge	2HP, 220V, IØ  Note: Above cost based on repairs being performed during business hours.

Rosas testified that although the estimate date was June 6, 2007, the emergency service to repair the storefront was probably for the day before, June 5, 2007. The work ticket, signed by Canderlario, an Old Navy supervisor, for the "emergency service performed and needed repairs," is dated May 5, 2007, but Rosas testified that he believed it was signed on June 5, 2007. NG&G issued a confirmation to Doormasters, dated June 7, 2007, to perform the work described in Doormasters' aforementioned estimate. Rosas testified that the two horsepower motor was not something that was kept in stock by Doormasters and it generally would take between one and two weeks to get same, although sometimes he could get it faster. On or about June 19, 2007, J. Biscardi of Old navy, signed the work ticket for work completed pursuant to the estimate.

Plaintiff testified that was employed by Old Navy as a stock worker. He commenced employment with Old Navy on July 11, 2004. His hours were 10:30 P.M. to 7:00 A.M. His duties consisted of processing, taking clothes that were in boxes and putting them out on the floor, or on hangers or in the stockroom. Plaintiff worked as part of a crew, usually consisting of three or four people, including himself. Within several of weeks of his commencement of work with Old Navy there were problems with the rolling steel gate at Old Navy's loading dock. The gate would get stuck and wouldn't come completely down. The repairmen who came in 2004 explained what they were doing to resolve the problem and told plaintiff and his crew if it happened again that night, plaintiff and his crew would have to manually use the chain, to bring it up and down until it fell back into place. Plaintiff did not know the name of the company that sent the repairmen and he was never told why the gate was out of place. In the three years plaintiff was at Old Navy prior to his accident, this problem with the gate occurred once or twice every two weeks. The gate consistently got stuck, both when opening and

closing. The gate was never replaced and plaintiff was told by one of Old Navy's managers that it was too expensive to replace. There were no other problems with the gate. If a problem with the gate occurred at night, one of his supervisors would call for the repairmen. In the six months prior to his accident, the repairmen came seven or eight times.

On June 11, 2007, plaintiff arrived at work, entering through the employees' side entrance, and observed that the gate was stuck. Repairmen were adjusting the rivets (something that linked the different sections or plates of the gate together), trying to adjust one of the plates to align it on the rails. Plaintiff believed that if one or more of the rivets were not correct, it would get stuck along the track. Plaintiff did not know which company these repairmen were from. Apparently, the repair was made, because plaintiff's supervisor, Eric Canderlario, opened the gate to let a truck in that arrived at approximately 11:00 P.M. The truck was unloaded and all merchandise had been taken away from the immediate area near the gate prior to plaintiff's accident. The area around was fully and brightly lit. The truck left and, at approximately 1:30 A.M., they were in the loading dock trying to close the gate electronically. The gate would only go down on one side, approximately three quarters of the way down. Plaintiff testified that "... it looked like a clip on the top was preventing one of the rivets from the actual gate to come down; like it got stuck." According to plaintiff, his supervisor, Canderlario called the repair people (the company he called was not identified), and was told that they couldn't send anyone out until 8:00 A.M. Plaintiff testified that, rather than have a group of people stay inside the loading dock to make sure that no one comes in, both Phil (an Old Navy supervisor) and Canderlario made the determination to shut the gate. Plaintiff's opinion about whether it should be brought down manually was not sought. Canderlario, however, testified that when the gate got stuck plaintiff said:

"Hey, I'll take care of it."

The repairmen who were there earlier that night told them how to fix it if there were any other problems. Old Navy personnel on previous occasions had manually operated the gate. It usually involved two people. One would go on top of the compactor and would hold the link chain. The other, standing on the floor, would be holding the rope chain. Plaintiff had done this on previous occasions and neither he nor anyone else ever got hurt. The length of time to bring the gate down manually varied. If the gate was stuck high, about ten to fifteen minutes. If low, less. Plaintiff was on top of the compactor. Wilfred was on the ground. Plaintiff's hand was on the top of the coil, which was the cylinder that the gate goes into. Wilfred was going to pull the rope chain and plaintiff was going to pull the link chain. This was to be done simultaneously. Both started pulling the chain. It started to adjust, but then it got stuck, so they kept on bringing it up and down until it started to get aligned. In between, plaintiff stopped pulling his chain, because he had to push the gate with his left hand. Every few minutes they would stop pulling the chain and try to realign the gate, then go back to pulling the chain. During this process, as he was pushing the gate, his hand got caught in between the rivets and the gate. At the same time, the gate automatically went up. His left hand went up into the coil, all the way up to the shoulder.

Plaintiff asserts that, as a result of Doormasters temporary repair work on the gate a few days before the accident, it launched a force or instrument of harm endangering him and that the gate should have been secured by Doormasters preventing its further use until additional repairs were made.

The Court finds that Doormasters owed no duty to plaintiff. Assuming arguendo that Doormasters had any duty, it was discharged by its recommendation that the door not be used again

until repairs were completed. The motion papers do not intimate, let alone establish, that Doormasters had the authority to secure the rolling gate in either an open or closed position, rendering it inoperable. As previous stated by Rosas, this Old Navy location is one of the highest volume stores in the country. Thus, there is no reasonable basis for finding fault with Doormasters, merely because Old Navy could not or would not close its loading dock, which was the only means for delivery of merchandise and removal of refuse, for a one or two week period. The other option suggested by plaintiff, that the rolling gate should have been secured in an open position pending completion of repairs, is more properly the basis of a claim against Old Navy (not available here by reason of the Workers' Compensation Law) in that it was clearly the choice of plaintiff's supervisors to avoid leaving the entry open, as this would have required continuous guarding by employees, who were needed for other tasks. If, as the evidence shows, it was inimical to Old Navy's conduct of the business to "freeze" the gate in either an open or closed position, such result is not attributable to Doormasters, and no evidence submitted here shows that Doormasters could have or should have behaved other than it did. Doormaster's motion for summary judgment is granted, and plaintiff's complaint against Doormasters, only, is dismissed.

The foregoing constitutes the Decision and Order of the Court.

Dated: 6/11/14

  
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MARK FRIEDLANDER, J.S.C.