

Vanduyne v 204th Street Partners LLC

2014 NY Slip Op 32646(U)

September 18, 2014

Supreme Court, Bronx County

Docket Number: 307161/2011

Judge: Jr., Kenneth L. Thompson

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+ Index Code Violations
EXCEPT sec 23 1.7(e)(2)

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX IA 20 X
FRANCHOT VANDUYNE

Index No 307161/2011

Plaintiff,

-against-

DECISION/ORDER

204TH STREET PARTNERS LLC, J & C PRODUCE INC.
AND JACK COHEN

Present:
HON. KENNETH L. THOMPSON, Jr.

Defendant(s) X

The following papers numbered 1 to 3 read on this motion, Summary Judgment

No	On Calendar of June 13, 2014	PAPERS NUMBERED
	Notice of Motion-Order to Show Cause - Exhibits and Affidavits Annexed-----	<u>1</u>
	Answering Affidavit and Exhibits-----	<u>2</u>
	Replying Affidavit and Exhibits-----	<u>3</u>
	Affidavit-----	
	Pleadings -- Exhibit-----	
	Memorandum of Law-----	
	Stipulation -- Referee's Report --Minutes-----	
	Filed papers-----	

Upon the foregoing papers and due deliberation thereof, the Decision/Order on this motion is as follows:

Defendants, 204th Street Partners LLC, (Partners) and Jack Cohen, (Cohen), move pursuant to CPLR 3212, for summary judgment dismissing plaintiff's complaint and claims of violation of Labor Law 200, 240 and 241(6) as against the moving defendants. This action arose as a result of personal injuries sustained by plaintiff in a trip and fall on a piece of uneven sheet metal that was on the floor of the worksite, a commercial property that was being cleaned out, demolished and renovated. Defendant, 204th Street Partners LLC, (partners), owned the property. Cohen was the sole shareholder and President of a corporation that controls Partners. Plaintiff was in the employ of nonparty, Safe Landing Construction, (Safe Landing),

Plaintiff does not oppose that portion of the motion that seeks to have all claims against Cohen dismissed. Furthermore, plaintiff does not oppose dismissal

of the Labor Law 240(1) claims against Partners.

LABOR LAW 200 and COMMON LAW NEGLIGENCE

Section 200 of the Labor Law 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. An implicit precondition to this duty is that the party charged with that responsibility have the authority to control the activity bringing about the injury.

(Comes v. New York State Electric and Gas Corp., 82 N.Y.2d 876, 877 [1993]) (citations omitted).

However, plaintiff opposes dismissal of his Labor Law 200 and common law claims on grounds that “a property owner is liable under Labor Law § 200 when the owner created the dangerous condition causing an injury or when the owner failed to remedy a dangerous or defective condition of which he or she had actual or constructive notice’ (*Chowdhury v Rodriguez, 57 AD3d 121, 128 [2008]; Ortega v Puccia, 57 AD3d 54 [2008]; Smith v Cari, LLC, 50 AD3d 879, 880 [2008]*).” *Aguilera v Pistilli Constr. & Dev. Corp., 63 A.D.3d 763, 764 [2nd Dept 2009]*. Similar to the case at bar, in *Aguilera*, plaintiff fell on debris at a worksite.

With respect to whether defendants had constructive notice of the dangerous condition, “if a reasonable inspection would have disclosed the dangerous condition, the failure to make such an inspection constitutes negligence and may

make the owner liable for injuries proximately caused by the condition (see *Lee v Bethel First Pentecostal Church of Am.*, 304 AD2d 798, 800 [2003]).” (*Colon v Bet Torah, Inc.*, 66 A.D.3d 731, 732 [2nd Dept 2009]). Cohen testified that he did not visit the site and was unaware of anyone who visited the site on behalf of Partners. Therefore, Partners failed to submit evidence that it provided any inspection, whatsoever, of the area where plaintiff tripped. Moreover, defendant failed to establish, *prima facie*, that it did not have constructive notice of the sheet metal plaintiff tripped upon. “To obtain summary judgment it is necessary that the movant establish [a] cause of action or defense sufficiently to warrant the court as a matter of law in directing judgment in [movant’s] favor [CPLR 3212, subd. (B)], and [movant] must do so by tender of proof in admissible form” (*Friends of Animals v. Asso. Fur Mfrs.*, 46 NY2d 1065, 1067 [1979]).

LABOR LAW 241(6)

“Labor Law § 241 (6)...imposes a nondelegable duty upon owners and contractors to provide reasonable and adequate protection and safety to construction workers. In actions brought under this section it has been held that violations of general safety standards of the regulations promulgated by the Commissioner of Labor will not suffice to sustain a cause of action (see, *Ross v Curtis-Palmer Hydro-Elec. Co.*, *supra*, at 503-505...[W]e find that the regulations

alleged, 12 NYCRR 23-1.2 (e), 23-1.5 (a) and subpart 23-6, relate to general safety standards and are not concrete specifications sufficient to impose a duty on defendant (see, *Comes v New York State Elec. & Gas Corp.*, 189 AD2d 945, affd 82 NY2d 876; *Rosen v McGuire & Bennett*, 189 AD2d 966; *Simon v Schenectady N. Congregation of Jehovah's Witnesses*, 132 AD2d 313).” (*Narrow v Crane-Hogan Structural Sys.*, 202 A.D.2d 841, 842-843 [3rd Dept 1994]).

Section “23-1.5 of the Industrial Code is too general to support a cause of action for violating Labor Law § 241(6).” (*Kochman v. City of New York*, 110 A.D.3d 477, 478 [1 Dept 2013]). Section 23-1.3 merely recites the applicability of the industrial code to particular work situations and the applicability of the industrial code to the owners and their contractors. Section 23-1.2 merely recites the general hazards to workers in construction, demolition and excavation as the reason for special protections.

With respect to section 23-1.7, it does not apply in its entirety. However, section 23-1.7(e)(2), applies as it requires working area floors to be kept free of debris. Section 23-1.7(e)(1) does not apply as plaintiff was not working in a passageway. Furthermore, Section 23-1.7(d) does not apply, because plaintiff did not fall as a result of a slippery condition.

CONCLUSION

Defendants' motion is granted to the extent that the complaint is dismissed as against defendant, Jack Cohen. Furthermore, the defendants' motion is granted to the extent that plaintiff's Labor Law 240 claim is dismissed and all alleged industrial code violations pursuant to Labor Law 241(6) except, section 23-1.7(e)(2), are dismissed.

This is the decision and order of this Court.

Dated: SEP 18 2014



KENNETH L. THOMPSON JR. J.S.C.