

Jones v Crotona Vi Redevelopment Co., LP
2014 NY Slip Op 33190(U)
November 6, 2014
Supreme Court, Bronx County
Docket Number: 305621/12
Judge: Mark Friedlander
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**NEW YORK SUPREME COURT - COUNTY OF BRONX
PART IA-25**

THERESA JONES and RONALD JONES,

Plaintiffs,

MEMORANDUM DECISION/ORDER

Index No.: 305621/12

-against-

CROTONA VI REDEVELOPMENT COMPANY,
LP,

Defendant.

HON. MARK FRIEDLANDER

Defendant, Crotona VI Redevelopment Company, LP. ("Crotona"), moves for an order, pursuant to CPLR§3212, granting summary judgment in favor of Crotona, dismissing all claims against it, on the grounds that: (1) the alleged injuries of plaintiff, Theresa Jones ("Theresa"), occurred while she was a special employee of Crotona and her claim is barred pursuant to Workers' Compensation Law §§11 and 29, plaintiff having applied for and received workers' compensation benefits; and (2) Theresa cannot recover for injuries alleged injuries as the result of a condition she was hired to remedy. The motion is decided as hereinafter indicated.

This is an action by plaintiff Theresa to recovery monetary damages for alleged personal injuries sustained by her on December 12, 2011, as a result of her slipping and falling on steps because of a step differential. Defendant, Ronald Jones ("Ronald"), the spouse of Theresa, has asserted a derivative claim for loss of comfort, enjoyment, society, services and support of Theresa.

In support of the motion, Crotona submits a copy of the pleadings, transcripts of the deposition testimony of Theresa, and of Jermaine Johnson, of Crotona, and the affidavit of Preston Moore ("Moore"), president of Crotona and Urban Home Ownership Corporation

("UHO"). In opposition to the motion, plaintiffs submit a copy of a Notice of Decision from the Workers' Compensation Board and a letter, dated July 7, 2014, from the New York State Insurance Fund.

The facts, as culled from the pleadings, deposition testimony, Moore's affidavit, and exhibits, are as follows: Crotona was the owner of the building located at 1695 Hoe Avenue, Bronx, New York ("the Building"). The Building was residential, containing one elevator, two stairways and forty-nine apartments.

According to Moore's affidavit, Moore was the president of both Crotona and UHO. Theresa was employed by UHO, which managed the Building for Crotona. According to Moore, Theresa's title was Director of Maintenance to the President. Her duties and responsibilities with respect to the Building included overseeing the maintenance staff, conducting inspections of the Building, making sure the Building was in compliance with all regulations, ensuring that any defective conditions were repaired, and acting as liaison with representatives of HUD, the New York City Fire Department, and any other governmental agencies which performed inspections at the Building. Theresa reported to Moore, who was her immediate supervisor in Moore's capacity as president of both Crotona and UHO. The maintenance staff of the Building, including the super, Levi Ballard, and the porter Jermaine Johnson, were employees of Crotona. Theresa supervised the entire maintenance staff of the Building, and had the authority to hire and fire any of those employees. Moore further stated that Crotona did not take any action independent of, or without the direction of, UHO with respect to the operation of the Building.

Theresa testified that, at the time of her accident, she was employed by UHO and carried the dual title of administrative assistant to the president and director of maintenance. Curiously, the affirmation of movant's counsel lists both titles for Theresa, and Moore's affidavit at first did

the same, but is altered, without explanation or initialing, to reflect only the single title. As director of maintenance, she was responsible for the HR department, including running credit checks, arranging building supplies, approving the final building supply order, giving the maintenance staff work schedules, handling all of union concerns. She was responsible for making sure the buildings had adequate equipment to keep the buildings clean, processing vacations yearly, walking the buildings, handling all of the violations, handling all the 311 complaints and tenant complaints, etc. She was the person to make sure that the building would pass inspections. She was responsible for about thirty buildings located in New Jersey, Harlem and the Bronx. She does not separately specify her duties as administrative assistant to Moore.

On her walks through the Building, she would be looking for signs of violations, chipped paint, water stains, damaged floors, trip hazards, damaged windows, doors lighting, exit signs, elevators. This was part of her responsibility as both director of maintenance and assistant to the president.

Theresa inspected the Building once a week. This inspection included the common areas and stairways. She was also present on the yearly HUD or "REAC" inspections, as well as those conducted by the fire department. The HUD inspections would involve Theresa and the inspector walking the areas of the Building, which included the hallways and stairway. It was very "comprehensive" and would take all day. The common areas of the Building were also inspected by a representative of Section 8.

Theresa testified that her accident occurred on December 12, 2011, at approximately 10:50 A.M., while preparing for a HUD inspection to make sure the common areas were violation free. She fell as a result of a "difference in the stepping."

A key factor in determining whether a special employment relationship exists is who

controls and directs the manner, details and ultimate result of the employee's work. *Thompson v. Grumman Aerospace Corp.*, 78 N.Y.2d 553 (1991). Although the Workers' Compensation Board ruled that Theresa was an employee of UHO, it is undisputed that plaintiff had the power to hire, fire and supervise Crotona's building staff. Hence, Theresa was a special employee of Crotona. *Vincente v. Silverstein Properties, Inc.*, 83 A.D.3d 586 (1st Dept. 2011); *Gomez v. Penmark Realty Corp.*, 50 A.D.3d 607 (1st Dept. 2008); *Ayala v. Mutual Hous. Assn., Inc.*, 33 A.D.3d 343 (1st Dept. 2006).

The evidence further establishes that Theresa's alleged injuries occurred while she was performing a task inherent to her employment, in that she was conducting an inspection to locate potential violations or hazards in the Building. Plaintiff Theresa was injured at the precise alleged defective spot which her employer relied on her to find, identify and ultimately have repaired. If defendant were to have notice of the alleged defect, it would be as a result of information from Theresa. Defendant owes no duty to plaintiff for injuries allegedly sustained as a result of an inherent part of her job of inspecting and remedying such conditions. *See, e.g., Kowalsky v. Conreco*, 264 N.Y. 125 (1934); *Walters v. Northern Trust Co. Of New York*, 29 A.D.3d 325 (1st Dept. 2006).

Accordingly, defendant's motion for summary judgment is granted and plaintiffs' complaint is dismissed in its entirety.

The foregoing Constitutes the Decision and Order of the Court.

Dated: 11/6/14



MARK FRIEDLANDER, J.S.C.