Bryant v Old Oaks Country Club, Inc.
2015 NY Slip Op 30291(U)
March 2, 2015
Supreme Court, New York County
Docket Number: 161614/13
Judge: Paul Wooten
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. PAUL WOOTEN **PART 7**
Justice

ROSA BRYANT,

Plaintiff, **INDEX NO. 161614/13**

- against-

MOTION SEQ. NO. 001

OLD OAKS COUNTRY CLUB, INC. d/b/a OLD OAKS COUNTRY CLUB,

Defendant.

The following papers, numbered 1 to 3, were read on this motion by defendant for summary judgment.

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits (Memo)	
Replying Affidavits (Reply Memo)	

Cross-Motion: [ ] **Yes** [X] **No**

This is a personal injury action commenced by Rosa Bryant (plaintiff) on December 18, 2013 to recover damages for injuries allegedly sustained on May 7, 2011 at approximately 11:45 p.m. when plaintiff slipped and fell in a passageway of the premises at Old Oaks Country Club (the country club) while working as a serving person. Issue was joined by the filing of an answer by Old Oaks Country Club, Inc. d/b/a Old Oaks Country Club on March 26, 2014. The Note of Issue has not been filed and discovery is not complete.

Before the Court is a motion by the defendant, pursuant to CPLR 3212, for summary judgment dismissing the complaint on the grounds that this action is barred by Sections 29 and 11 of the Workers' Compensation Law. Specifically, defendant contends that it was the special employer of plaintiff. In support of its motion, defendant attaches the purchase order between defendant and Gotham Personnel LLC (Gotham), the outside company from which plaintiff, along with eight other temporary workers, was hired to help serve at a catered Bat Mitzvah

taking place at the country club; the incident report; as well as the affidavit of defendant's General Manager Craig Henne (Henne) (*see* Notice of Motion, exhibits C-E).

In opposition, plaintiff maintains that this motion is premature as discovery is still ongoing and such discovery is necessary for her to rebut the arguments presented herein by the defendant.

STANDARD

Summary judgment is a drastic remedy that should be granted only if no triable issues of fact exist and the movant is entitled to judgment as a matter of law (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Andre v Pomeroy*, 35 NY2d 361, 364 [1974]; *Meridian Management Corp. v Cristi Cleaning Service Corp.*, 70 AD3d 508, 510 [1st Dept 2010], quoting *Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). The party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence in admissible form demonstrating the absence of material issues of fact (*Ostrov v Rozbruch*, 91 AD3d 147, 152 [1st Dept 2012], citing *Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]; *Santiago v Filstein*, 35 AD3d 184, 185-186 [1st Dept 2006], quoting *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; CPLR 3212 [b]). A failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Smalls v AJI Indus., Inc.*, 10 NY3d 733, 735 [2008]). Once a prima facie showing has been made, however, "the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution" (*Mazurek v Metropolitan Museum of Art*, 27 AD3d 227, 228 [1st Dept 2006]; *Giuffrida v Citibank Corp.*, 100 NY2d 72, 81 [2003]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *DeRosa v City of New York*, 30 AD3d 323, 325 [1st Dept 2006]).

When deciding a summary judgment motion, the Court's role is solely to determine if any triable issues exist, not to determine the merits of any such issues (*see Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). The Court views the evidence in the light most favorable to the nonmoving party, and gives the nonmoving party the benefit of all reasonable inferences that can be drawn from the evidence (*see Negri v Stop & Shop, Inc.*, 65 NY2d 625, 626 [1985]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]; *Grossman v Amalgamated Hous. Corp.*, 298 AD2d 224, 226 [1st Dept 2002]; CPLR 3212[b]).

DISCUSSION

"It is, of course, true that an employee, although generally employed by one employer, may be specially employed by another employer, and that a special employer may avail itself of the Workers' Compensation Law to bar negligence claims against it for injuries sustained by a special employee in the course of special employment" (*Bellamy v Columbia Univ.*, 50 AD3d 160, 161 [1st Dept 2008]). "A special employee is one who is transferred, for a limited time of whatever duration, to the service of another. When an employee is eligible to receive Workers' Compensation benefits from his general employer, a special employer is shielded from any action at law commenced by the employee" (*Warner v Continuum Health Care Partners, Inc.*, 99 AD3d 636, 636 [1st Dept 2012]; *see also* Workers Compensation Law § 29[6]). "Essential to a special employment relationship 'is a working relationship with the injured plaintiff sufficient in kind and degree so that the [putative special employer] may be deemed plaintiff's employer" [*Bautista v David Frankel Realty, Inc.*, 54 AD3d 549, 550 [1st Dept 2008], quoting *Fung v Japan Airlines Co., Ltd.*, 9 NY3d 351, 359 [2007]).

"Many factors are weighed in deciding whether a special employment relationship exists, and generally no one is decisive. . .[w]hile not determinative, a significant and weighty feature has emerged that focuses on who controls and directs the manner, details and ultimate result of

the employee's work" (*Thompson v Grumman Aerospace Corp.*, 78 NY2d 553, 558 [1991] [internal citation omitted]; *see also Warner*, 99 AD3d at 636; *Bautista*, 54 AD3d at 550; *Bellamy*, 50 AD3d at 162). The question of whether a special employment relationship exists generally presents an issue for the trier of fact (*see Thompson*, 78 NY2d at 557; *Bautista*, 54 AD3d at 550), however "the determination of special employment status may be made as a matter of law where the particular, undisputed critical facts compel that conclusion and present no triable issue of fact" (*Thompson*, 78 NY2d at 557-558).

The record in this case supports the conclusion that defendant was plaintiff's special employer, and thus plaintiff is barred from maintaining this action against the defendant pursuant to the Workers' Compensation Law. Specifically, in his affidavit, which is uncontroverted by the plaintiff, Henne states that a flat fee was paid to Gotham for temporary workers' services for the subject event. According to Henne, Gotham in turn would then pay its employees, including the plaintiff. While plaintiff was at the country club, Henne maintains that she worked under the authority of the Dining Room Manager and General Manager. Temporary employees such as herself were given instructions and work assignments by said managers, and could be fired by these managers without consultation with Gotham. Henne further asserted that there were no Gotham employees present at the event who had authority over the plaintiff. Thus, it is evident from the evidence submitted that the defendant controlled and directed the manner, details, and ultimate result of the plaintiff's work (*see Thompson*, 78 NY2d at 558). The Court finds that the facts in this case compel the conclusion that a special employment relationship existed between the plaintiff and defendant, and that defendant has met its *prima facie* burden establishing dismissal of the complaint as a matter of law.

While plaintiff argues in opposition that this motion is premature, she fails to set forth a reliable factual basis for that assertion such as to warrant denial of defendant's motion (*see Chappo & Co., Inc. v Ion Geophysical Corp.*, 83 AD3d 499, 500-501 [1st Dept 2011] ["plaintiff . .

. will not be allowed to use pretrial discovery as a fishing expedition when [it] cannot set forth a reliable factual basis for what amounts to, at best, mere suspicions"], quoting *Devore v Pfizer Inc.*, 58 AD3d 138, 144 [1st Dept 2008]; *Auerbach v Bennett*, 47 NY2d 619, 636 [1979] ["to speculate something might be caught on a fishing expedition provides no basis to postpone decision on the summary judgment motions under the authority of CPLR 3212[f]"]). As such, defendant's motion is granted and the complaint is dismissed.

CONCLUSION

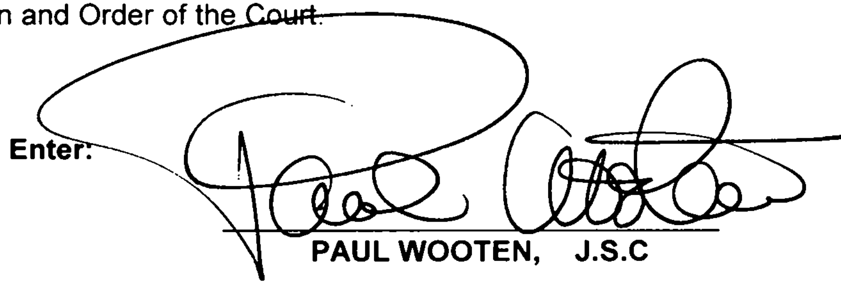
For these reasons and upon the foregoing papers, it is,

ORDERED that defendant's motion, pursuant to CPLR 3212, seeking summary judgment dismissing the complaint is granted, and the complaint is hereby dismissed; and it is further,

ORDERED that counsel for defendant is directed to serve a copy of this Order with Notice of Entry upon the plaintiff and the Clerk of the Court who is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

Dated: 3/27/15 **Enter:**



PAUL WOOTEN, J.S.C

Check one: ■ **FINAL DISPOSITION** ☐ **NON-FINAL DISPOSITION**
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