

Budhial v Hanjin Transp. Co., Ltd.

2015 NY Slip Op 31314(U)

June 8, 2015

Supreme Court, Queens County

Docket Number: 9105/2013

Judge: Robert J. McDonald

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD
Justice

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PREMDATT BUDHIAL and RAJKUMARIE
BUDHIAL,

Plaintiffs,

Index No.: 9105/2013
Motion Date: 5/06/15
Motion No.: 20, 21 and 22
Motion Seqs.: **7, 8 & 9**

- against -

HANJIN TRANSPORTATION CO., LTD, HANJIN
LOGISTICS, INC., and AMERICAN CARGO
EXPRESS (ACE), LTD., d/b/a HANJIN
EXPRESS, NY,

Defendants.

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The following papers numbered 1 to 15 were read on the respective motions by defendants Hanjin Logistics, Inc., (Seq. 7); American Cargo Express(ACE), Ltd., d/b/a Hanjin Express, NY (seq. 8), and Hanjin Transportation Co., Ltd (Seq. 9); all for an order pursuant to CPLR 3212 dismissing the plaintiff's complaint on the ground that each defendant had no involvement and bears no liability for the injuries sustained by the plaintiff as the result of cargo handling operation at JFK International Airport:

Papers
Numbered

Notice of Motion of Hanjin Logistics, Inc., (Seq. 7)...	1-5
Notice of Motion of American Cargo Express(ACE),Ltd., d/b/a Hanjin Express, NY (Seq. 8).....	6-10
Notice of Motion of Hanjin Transportation Co., Ltd (Seq. 9).....	11-15

This is an action in which the plaintiff seeks damages for personal injuries he sustained on June 16, 2012 in an accident which occurred during cargo handling operations at Building #9 located at

JFK International Airport. Plaintiff, an employee of Cargo Airport Services, alleges that he was injured as he was being lowered on a forklift after placing a net over cargo. Plaintiff alleges that the defendants were negligent in the ownership, operation, maintenance, management, control, supervision and inspection of Building #9 and that the defendants were negligent in the ownership, operation, maintenance, management, supervision and control of the forklift from which the plaintiff allegedly fell. It is also alleged by the plaintiff that the defendants violated Sections 200, 240 and 241 of the Labor Laws of the State of New York. The Plaintiff also commenced a separate action against Korean Air Lines Co., LTD concerning the same incident in Queens County Supreme Court under Index No. 704580/2013. The alleged incident occurred in Building #9 which is the building used for KAL air cargo. That action was subsequently removed by KAL to the United States District Court, Eastern District of New York.

Defendants each move separately for an order pursuant to CPLR 3212 granting summary judgment dismissing the plaintiff's complaint against them on the ground that the evidence including the plaintiff's deposition and affidavits of the defendants demonstrates that each defendant had nothing whatsoever to do with the incident, with Building #9, with the forklift, or with his employer Cargo Airport Services. Defendants state that they did not own manage or control Building #9 nor did the own operate, maintain, manage or control the forklift involved in the incident. Defendants also submit that the plaintiffs counsel provided defense counsel with a proposed Stipulation of Discontinuance although plaintiff has yet to execute it.

No opposition has been filed.

By decision and order dated January 21, 2015, the motion by the plaintiffs' attorneys, Randazzo & Giffords, P.C. for an order seeking leave to withdraw as counsel for the plaintiff pursuant to CPLR 321(b)(2) was granted by this Court. In addition, all proceedings in this matter have been stayed for 30 days from service of the order with notice of entry to permit the plaintiff to retain new counsel.

Defendants' previous motions for summary judgment were denied with leave to renew upon the expiration of the 30 day stay.

Pursuant to plaintiff's deposition taken on April 17, 2014, on the day of the accident plaintiff maintains that he was working with his co-workers and were to place cargo netting over a pallet of cargo. The net was placed on top of a 4 x 4 wooden skid. The forklift operator would use the forklift to lift the skid with the net and one of the workers on it, up to the height of the top of the cargo and the

net would then be placed over the top of the cargo. Plaintiff further maintains that on the day of the accident his co-workers, not the CAS Duty Manager designated plaintiff to ride on the skid, lifted by the forklift. Plaintiff was lifted by the forklift and placed the net over the cargo. After making sure the cargo net was placed properly, plaintiff got back on the skid at which time the forklift operator backed the forklift away from the cargo with plaintiff still on the skid. After moving the forklift backward, the forklift operator started to lower the skid and the plaintiff when there was a sudden drop though the plaintiff never fell to the ground.

Plaintiff further testified that on the day of the accident he never received any directions from anyone other than Cargo Airport Services Duty Manager and that he had no idea why the defendants were named as defendants in the Supreme Court action. (p. 93, line 12 through p. 94 line 12). Moreover, plaintiff testified that he was employed by Cargo Airport Services, working the entire time in one location, Building #9 at JFK. He received training from Cargo Airport Services on how to pack cargo and break down pallets. All of plaintiff's orders on the day of the accident came from the Cargo Airport Services Duty Manager.

Hanjin Logistics, Inc., Hanjin Transportation Co., Ltd. and American Cargo Express submit the deposition testimony taken on June 18, 2014 of Thomas Knoll, appearing on behalf of Korean Airlines. That action was subsequently removed by KAL to the United States District Court, Eastern District of New York.

Mr. Knoll testified that Cargo Airport Services (currently Consolidated Airport Services) is contracted with Korean Airlines and has a staff that is responsible for all of the operations inside Building #9 which include operation of forklifts and the breakdown and buildup of freight.

Hanjin Logistics, Inc., Hanjin Transportation Co., Ltd. and American Cargo Express were not deposed as plaintiffs' counsel agreed to waive the deposition of all defendants if defendants would provide affidavits establishing their total non-involvement with the incident. Counsel thereafter indicated that the matter would be voluntarily discontinued and circulated a stipulation of discontinuance which has not been signed by the parties, attached to Hanjin Logistic's motion papers as Exhibit K.

The proponent of a summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case. If the proponent succeeds, the burden shifts to the party opposing the motion, who then must show the existence of material issues of fact requiring a trial of the action by producing

evidentiary proof in admissible form, in support of his position (see Vermette v Kenworth Truck Co., 68 NY2d 714 [1986]; Zuckerman v City of New York, 49 NY2d 557 [1980]).

Labor Law § 200 codifies the common-law duty imposed upon an owner to provide his employees with a safe place to work and to maintain a safe construction site (see Rizzuto v L.A. Wenger Contr. Co., 91 NY2d 343 [1998]; Colon v Bet Torah, Inc., 66 AD3d 731 [2d Dept. 2009]; Lane v Fratello Constr. Co., 52 AD3d 575 [2d Dept. 2008]). Claims involving Labor Law § 200 generally fall into two categories: those where workers are injured as a result of the methods or manner in which the work is performed, and those where workers are injured as a result of a defect or dangerous condition existing on the premises (see McLean v 405 Webster Ave. Associates, 98 AD3d 1090 [2d Dept. 2012]; Cappabianca v Skanska USA Bldg. Inc., 99 AD3d 139 [1st Dept 2012]; Ortega v Puccia, 57 AD3d 54 [2d Dept. 2008]). Where an accident is the result of a contractor's or worker's means or methods, it must be shown that a defendant exercised actual supervision and control over the activity, rather than possessing merely general supervisory authority (Mitchell v New York Univ., 12 AD3d 200 [1st Dept 2004]).

Both Labor Law § 240(1) and § 241 impose nondelegable duties upon contractors, owners and their agents to comply with certain safety practices for the protection of workers engaged in various construction-related activities. Those statutes also expressly and specifically exempt the "owners of one and two-family dwellings who contract for but do not direct or control the work" (Labor Law § 240(1); § 241) from the duties imposed thereunder. Ladato v. Greyhawk North America, 39 AD3d 491 (2d Dept. 2007); Fowler v. Violas, 4 Misc3d 1030(a) (Sup. Ct. 2004).

The moving defendants maintain that Labor Law §§ 200, 240 and 241(6) are entirely inapplicable to the facts of this case and that plaintiff's theory of res ipsa loquitor has no application in this matter.

At no time did the moving defendants own, manage or control Building #9 at JFK. Nor did the moving defendants own, operate, maintain, manage or control the forklift involved in the accident and that plaintiff work did not involve any construction, renovation, or demolition related activity and that none of the moving defendants were owners, contractors or agents for the purposes Labor Law §§ 200, 241 and 241.

Pursuant to the affidavit of Mr. June Hong, and officer of Hanjin Logistics, dated August 14, 2014, the affidavit of Latchmin Bhirso, of

the Human Resources Administration of Hanjin Transportation Co., Ltd. dated January 29, 2014 and the affidavit of Mr. Byung Min Kim of American Cargo Express (ACE) d/b/a Hanjin Express, N.Y. dated June 26, 2014 at no time did the moving defendants own, operate, maintain, manage or control the forklift involved in the accident or have any authority to do so. They did not direct, supervise or control the handling of cargo or the means and methods of cargo handling utilized by plaintiff and plaintiff's co-workers on behalf of their employer Cargo Airport Services.

Accordingly, defendants' motions are granted without opposition from plaintiff and the complaint is dismissed as to HANJIN TRANSPORTATION CO., LTD, HANJIN LOGISTICS, INC., and AMERICAN CARGO EXPRESS (ACE), LTD., d/b/a HANJIN EXPRESS, NY; and, it is further

ORDERED, that the Clerk is directed to enter judgment accordingly.

Dated: June 8, 2015
Long Island City, N.Y.

ROBERT J. MCDONALD
J.S.C.