

Mohan v 4719 34th Ave., LLC
2015 NY Slip Op 31923(U)
September 3, 2015
Supreme Court, Queens County
Docket Number: 704731/201
Judge: Darrell L. Gavrin
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DARRELL L. GAVRIN IA Part 27
Justice

OMESH MOHAN X
Plaintiff,

Index
Number 704731 2013

-against-

Motion
Date June 12, 2015

4719 34th AVENUE, LLC T-MOBILE,
AWMOBILE, INC. and WIRELESS 1
OF NY, INC.,

Motion
Cal. Number 74

Defendants. Motion Seq. No. 1

X

FILED
SEP 10 2015
COUNTY CLERK
QUEENS COUNTY

The following papers numbered 1 to 8 read on this motion by defendant T-Mobile USA Inc., doing business and sued herein as T-Mobile and AW Mobile Inc., and defendant Wireless One of NY Inc., doing business as non-party American Wireless (collectively referred to as the T-Mobile defendants), for summary judgment dismissing the complaint.

Papers
Numbered

Notice of Motion - Affidavits - Exhibits 1-4
Answering Affidavits - Exhibits 5-6
Reply Affidavits 7-8

Upon the foregoing papers it is ordered that the motion is determined as follows:

This is an action to recover for personal injuries that plaintiff Omesh Mohan (plaintiff) allegedly sustained as a result of violations of Labor Law §§ 200, 240 (1), 241 (6), and common-law negligence. Plaintiff has alleged that on May 24, 2011, he was an employee of non-party R & S Plumbing and that he was injured when a ladder he was standing on, slid

out from under him while he was working to install a sprinkler system at premises located at 389-391 Peninsula Boulevard, in the County of Nassau. Defendant 4719 34th Avenue, LLC (4719), owned the subject premises and allegedly hired non-party Class One Construction, which then hired R & S Plumbing, to install plumbing and a sprinkler system at the subject premises, while the T-Mobile defendants leased the premises from 4719.

The T-Mobile defendants have moved for summary judgment dismissing the complaint. The court will first turn to plaintiff's claims brought under Labor Law §§ 240 (1) and 241 (6). The T-Mobile defendants have argued that they were not owners within the contemplation of Labor Law and did not exercise the requisite control over the work for purposes of Labor Law. In support of their motion, the T-Mobile defendants must "make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; see *Smalls v AJI Indus., Inc.*, 10 NY3d 733, 735 [2008]).

"Labor Law §§ 200, 240, and 241 apply to owners, general contractors, or their agents" (*Guclu v 900 Eighth Ave. Condominium, LLC*, 81 AD3d 592, 593 [2011] [internal quotation omitted]). "[T]he term 'owner' is not limited to the titleholder of the property where the accident occurred and encompasses a person 'who has an interest in the property and who fulfilled the role of owner by contracting to have work performed for his [or her] benefit'" (*Scaparo v Village of Ilion*, 13 NY3d 864, 866 [2009], quoting *Copertino v Ward*, 100 AD2d 565, 566 [1984]). A lessee that does not contract for or otherwise have authority to supervise or control construction work being performed, is not an owner or agent under the Labor Law (see *Ferluckaj v Goldman Sachs & Co.*, 12 NY3d 316, 320 [2009]). "A party is deemed to be an agent of an owner or general contractor under the Labor Law when it has the ability to control the activity which brought about the injury" (*Guclu v 900 Eighth Ave. Condominium, LLC*, 81 AD3d at 593 [internal quotation omitted]; see *Rodriguez v JMB Architecture, LLC*, 82 AD3d 949, 951 [2011]).

The T-Mobile defendants have relied upon, among other things, plaintiff's deposition testimony, the testimony of David Shavolian (Shavolian), a member of 4719, the testimony of Vikram Tomar (Tomar), Director of Operations for Wireless One, and a copy of the lease agreement between 4719 and AW Mobile Inc. Plaintiff testified that he was an employee of R & S Plumbing, that he was installing a sprinkler system at the subject premises, that his supervisor, Ravin, instructed him on how to perform his work and that no one else instructed him. He further testified that R & S Plumbing provided all the equipment he needed to perform his work, including the ladder that was involved in the accident, which Ravin brought to the premises and instructed plaintiff to use.

Shavolian testified that 4719 owned the premises, that the T-Mobile defendants leased the premises from 4719, that 4719 hired Class One Construction to perform the sprinkler work and that Class One Construction, in turn, hired R & S Plumbing. Tomar testified that Wireless One had a contract with T-Mobile as a retailer, that AW Mobile Inc., is also a retailer of T-Mobile products and that the T-Mobile defendants did not perform any work at the subject premises. Tomar also testified that 4719 was responsible for all work that had to be performed, that while he recalled some work being performed at the premises, the T-Mobile defendants were not involved in that work and did not have the right to direct, control or supervise any of plaintiff's work.

Based upon this evidence, the record has demonstrated that, under the circumstances, the T-Mobile defendants were lessees and tenants of the premises, that they did not contract for the work to be performed for their benefit and that they did not direct or control the work which led to plaintiff's injury (*see Reynoso v Bovis Lend Lease, Lmb, Inc.*, 39 Misc3d 1224[A], *9 [2013]). Thus, the record has demonstrated that the T-Mobile defendants were not owners or agents of the owner within the purview of Labor Law (*id.*) In opposition, plaintiff has failed to point to evidence to raise a triable issue of fact (*see Guryev v Tomchinsky*, 87 AD3d 612, 614 [2011], *affd* 20 NY3d 194 [2012]). Therefore, for Labor Law §§ 240 (1) and 241 (6) purposes, the T-Mobile defendants have adequately demonstrated that they are not strictly liable to plaintiff under these sections.

The T-Mobile defendants have moved to dismiss plaintiff's claims brought under Labor Law § 200 and for common-law negligence. They have argued that they did not have the authority to supervise or control plaintiff's work, that they were not responsible for the manner in which the work was being performed, and that they were not negligent. Labor Law § 200 "is a codification of the common-law duty of an owner or general contractor to provide workers with a safe place to work" (*Ortega v Puccia*, 57 AD3d 54, 60 [2008]). Labor Law § 200 provides that owners and contractors may be liable for injuries to workers where they supervised or controlled the work which caused the injury (*see Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 505 [1993]; *Lombardi v Stout*, 80 NY2d 290, 295 [1992]). In the instant matter, plaintiff has alleged that the subject accident was proximately caused by a defective ladder, which involves the manner in which the work was performed. Where a claim arises out of the methods or materials of the work, an owner or general contractor may be liable if it is shown that he or she had the authority to supervise or control the work (*see LaGiudice v Sleepy's Inc.*, 67 AD3d 969, 972 [2009]; *Ortega v Puccia*, 57 AD3d at 61-63).

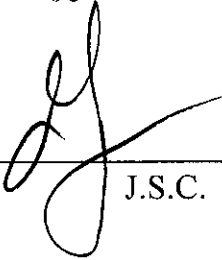
The evidence in the record, including plaintiff's deposition testimony that only his supervisor, Ravin, instructed him on how to perform his work that Ravin provided him with the subject ladder, as well as Tomar's testimony that the T-Mobile defendants were not

involved in the work which led to the accident and did not direct, control or supervise plaintiff's work, has adequately demonstrated that they did not have the requisite authority to supervise or control the manner in which the injury-producing work was performed (*see Ramos v Baker*, 91 AD3d 930, 932-933 [2012]). In opposition, plaintiff has failed to point to sufficient evidence to raise a triable issue of fact (*see id.* at 933). Therefore, the T-Mobile defendants are entitled to the dismissal of plaintiff's claims brought under Labor Law § 200 and for common-law negligence.

Accordingly, the motion by the T-Mobile defendants for summary judgment dismissing plaintiff's claims brought under Labor Law §§ 200, 240 (1), 241 (6) and for common-law negligence is granted.

Dated:

Sept. 3, 2015



J.S.C.

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