

Gerrish v 56 Leonard LLC

2015 NY Slip Op 32808(U)

April 27, 2015

Supreme Court, New York County

Docket Number: 159408/2013

Judge: Barbara Jaffe

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 12

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ROBERT GERRISH,

Index No. 159408/2013

Plaintiff,

Mot. seq. no. 002

- against -

DECISION AND ORDER

56 LEONARD LLC, LEND LEASE (US)
CONSTRUCTION LMB INC., and COLLAVINO
STRUCTURES, LLC,

Defendants.

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BARBARA JAFFE, J.:

For plaintiff:
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For defendants 56 Leonard, Lend Lease:
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It is undisputed that at the time of plaintiff's accident, he was fabricating steel rebars at an off-site temporary project facility in the Bronx leased by subcontractor Collavino Structures, LLC, for a construction project located at 56 Leonard Street in Manhattan, and that the 56 Leonard Street construction site was owned by defendant 56 Leonard LLC, which contracted with defendant general contractor Lend Lease (US) Construction LMB Inc., and with subcontractor Collavino Structures, LLC, which contracted with plaintiff's employer.

Fabricating materials to be used with ongoing work at a construction site is distinguished from performing construction work within the meaning of Labor Law 240(1), and working at a construction site within the meaning of Labor Law 241(6). (*Flores v ERC Holding LLC*, 87 AD3d 419 [1st Dept 2011]). Thus, in *Flores*, the plaintiff's injury, which occurred while he was engaged in the fabrication of steel at his employer's Bronx facility and not while performing construction work at the construction site in Queens, was not covered under either Labor Law §§ 240(1) or 241(6). The facts here are indistinguishable from those in *Flores*.

And, as Collavino was not defendants' agent for the purpose of leasing the offsite premises, and as defendants had no involvement in plaintiff's work at the premises, they may not be held liable under the Labor Law 200. The remaining issues need not be addressed.

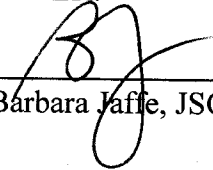
Accordingly, it is hereby

ORDERED, that defendants 56 Leonard LLC's and Lend Lease (US) Construction LMB

Inc.'s motions for an order dismissing the complaint as against them is granted, and the complaint is dismissed with costs and disbursements to defendants as taxed by the Clerk upon the submission of an appropriate bill of costs, and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED, that the remainder of this action shall continue.

ENTER:



Barbara Jaffe, JSC

DATED: April 27, 2015
New York, New York