

Romano v New York City Tr. Auth.
2016 NY Slip Op 30874(U)
May 10, 2016
Supreme Court, New York County
Docket Number: 153015/14
Judge: Michael D. Stallman
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 21**

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MICHAEL L. ROMANO,

Plaintiff,

Index No. 153015/14

- against -

Motion Seq. 002 & 003

NEW YORK CITY TRANSIT AUTHORITY,
METROPOLITAN TRANSPORTATION
AUTHORITY, FIVE STAR ELECTRIC CORP. and
PROVIDENCE CONSTRUCTION CORP.,

Decision and Order

Defendants.

-----X

HON. MICHAEL D. STALLMAN, J.:

In this action, plaintiff alleges that, on August 26, 2013, plaintiff Michael Romano tripped and fell on construction materials while performing work at the Mother Clara Hale Bus Depot. (Smith Affirm., Ex. D [Romano Aff].)

Defendant Five Star Electric Corp. (Five Star) and plaintiff now separately move for default judgments against defendant Providence Construction Corp. (Providence), in motion sequence numbers 002 and 003 respectively.

On April 8, 2015, Five Star impleaded Providence. (Rex Affirm., Ex. A [Third-Party Summons, Complaint and Affidavit of Service].) On April 24,

2015, plaintiff amended the complaint to add Providence as a direct defendant. Five Star served the third-party complaint on Providence on April 20, 2015, by service upon the Secretary of State. (Affidavit of Service of Third Party Complaint on Providence [NYSCEF Document No. 14].) Plaintiff also served the supplemental summons and amended complaint on Providence by service upon the Secretary of State on May 20, 2015. (Smith Affirm., Ex. B [Affidavit of Service of Supplemental Summons and Amended Complaint on Providence].) The amended complaint alleges causes of action against Providence sounding in common-law negligence, and violations of Labor Law §§ 200, 240 and 241 (6). (Smith Affirm., Ex. A [Supplemental Summons and Amended Complaint].) The third-party complaint seeks contribution and common-law indemnification from Providence.

On December 16, 2015, Plaintiff moved and Five Star cross-moved for a default judgment against Providence. (Smith Affirm., Ex. E [Decision and Order, dated December 18, 2015] at 2.) Even though this Court found that Providence had defaulted in answering the third-party complaint and the amended complaint, this Court denied plaintiff's motion and Five Star's cross-motion without prejudice, because the movants failed to show a prima facie case for liability on their respective causes of action. (*Id.* at 2.)

In particular, the Court found that plaintiff had failed to submit “any firsthand confirmation” that would substantiate plaintiff’s causes of action, and that plaintiff’s affidavit of merit “neither mentions Providence nor describes Providence’s responsibility for the pipe/conduit that somehow resulted in plaintiff’s trip and fall.” (*Id.* at 2-3.)

“Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested causes of action. The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts.” (*Joosten v Gale*, 129 AD2d 531, 535 [1st Dept 1987] [internal citation omitted]; *Feffer v Malpeso*, 210 AD2d 60 [1st Dept 1994]. Plaintiff now submits an affirmation of merit in which he states that “PROVIDENCE CONSTRUCTION CORP., [*sic*] was the masonry contractor doing work in the area where my accident occurred.” (Smith Affirm., Ex. E [Romano Affirm.] [emphasis in original].) Similarly, Five Star submits excerpts of plaintiff’s deposition testimony in which plaintiff appears to indicate that there was debris scattered around the area where his accident occurred “[b]ecause the masons made a mess.” (Rex Affirm., Ex. F [Romano EBT] at 165:17-166:05.) Thus, the Court finds that plaintiff and Five Star have presented a prima showing of liability sufficient to meet their respective burdens on these motions.

CONCLUSION

Accordingly, it is hereby

ORDERED that defendant Five Star Electric Corp.'s motion for a default judgment on the third-party complaint against defendant Providence Construction Corp. (Motion Sequence No. 2) is granted without opposition, and an assessment of damages shall take place jointly at the time of trial; and it is further

ORDERED that plaintiff Michael Romano's motion for a default judgment against defendant Providence Construction Corp. (Motion Sequence No. 3) is granted without opposition on the first cause of action only and is otherwise denied, and an assessment of damages shall take place jointly at the time of trial; and it is further

ORDERED that a copy of this order with notice of entry be served forthwith upon the Clerk of the Trial Support Office (60 Centre Street, Room 158).

**Dated: May 10, 2016
New York, New York**

ENTER:



J.S.C.

**MICHAEL D. STALLMAN
J.S.C.**