

Lopez-Gonzalez v 1807-1811 Park Ave. Dev. Corp.

2017 NY Slip Op 31203(U)

June 6, 2017

Supreme Court, New York County

Docket Number: 151085/2013

Judge: Kelly A. O'Neill Levy

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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: PART 19**

-----X
CARLOS LOPEZ-GONZALEZ,

Plaintiffs,

-against-

1807-1811 PARK AVENUE DEVELOPMENT CORP., ESF
PROPERTY INC. and EASTSIDE FLOOR SERVICES LTD.,

Defendants.
-----X

DECISION/ORDER

Index No. 151085/2013

Mot. Seq. 014

1807-1811 PARK AVENUE DEVELOPMENT CORP., ESF
PROPERTY INC. and EASTSIDE FLOOR SERVICES LTD.,

Third-Party Plaintiffs,

-against-

NAVAC CONSTRUCTION CORP.,

Third-Party Defendant.
-----X

Third-Party Index No.
595189/2014

NAVAC CONSTRUCTION CORP.,

Second Third-Party Plaintiff,

-against-

LURIG CONSTRUCTION INC. and CALIM FERRIS,

Second Third-Party Defendants.
-----X

Second Third-Party
Index No. 595013/2015

KELLY O'NEILL LEVY, J.:

This is an action to recover damages for personal injuries allegedly sustained by a construction worker on September 18, 2012, when he fell from a scaffold while working at a construction site located at 101 East 123rd Street, New York, New York (the Premises).

Defendants/third-party plaintiffs 1807-1811 Park Avenue Development Corp. (Park) and ESF Property Inc. (ESF) (together, defendants) move, pursuant to CPLR 2221, for an order

granting them leave to reargue that branch of plaintiff Carlos Lopez-Gonzalez's prior motion (the Prior Motion), brought pursuant to CPLR 3212, which sought partial summary judgment in his favor as to liability on the Labor Law § 240 (1) claim as against defendants, and, upon reargument, denying plaintiff's motion with respect to defendants.

BACKGROUND

On the day of the accident, Park owned the Premises. ESF was the general contractor on a project underway at the Premises, which entailed the construction of a two-story commercial building (the Project). ESF hired third-party defendant/second third-party plaintiff Navac Construction Corp. (Navac), to perform masonry work for the Project. Navac employed plaintiff as a laborer.

On the day of the accident, plaintiff was working on a scaffold at the Premises, at a height of approximately 40 feet. He had been tasked with installing a tarp over the top of the scaffold. To do so, plaintiff removed a section of railing on the scaffold. While attempting to install the tarp, plaintiff fell through the gap in the railing to the ground below. Aside from the scaffold, plaintiff was provided with no additional fall protection, such as a safety harness or lifeline.

On the Prior Motion, plaintiff moved for partial summary judgment in his favor as to liability on the Labor Law § 240 (1) claim as against Park, ESF and defendant/third-party plaintiff Eastside Floor Services LTD. By decision and order dated August 26, 2016 (the Prior Order), this court granted plaintiff's summary judgment motion as against Park and ESF only.

DISCUSSION

CPLR 2221 governs motions for leave to reargue. It provides, as relevant:

“(d) A motion for leave to reargue:

* * *

2. shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion.”

“A motion for leave to reargue pursuant to CPLR 2221 is addressed to the sound discretion of the court and may be granted only upon a showing ‘that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision’” (*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992], quoting *Schneider v Solowey*, 141 AD2d 813, 813 [2d Dept 1988]).

In their motion to reargue, defendants argue that, in the Prior Order, the court overlooked and/or misapprehended certain matters of fact and law concerning the issues of whether the plaintiff was the sole proximate cause of the accident, and whether plaintiff was provided with a proper safety device, namely the scaffold itself.

In support of their motion to reargue, however, defendants reiterate the arguments that they previously put forward in their opposition to the Prior Motion and which were considered by the court in the Prior Order.

Thus, as defendants have failed to demonstrate that the court misapprehended or overlooked a matter of fact or law when it granted the Prior Motion, defendants’ motion for reargument is denied.

CONCLUSION AND ORDER

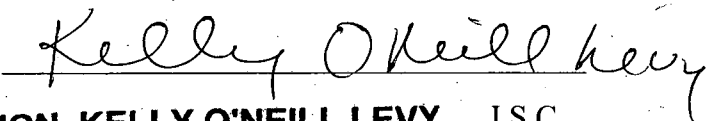
For the foregoing reasons, it is hereby

ORDERED that the motion of defendants/third-party plaintiffs 1807-1811 Park Avenue Development Corp., and ESF Property Inc., pursuant to CPLR 2221, for leave to reargue plaintiff Carlos Lopez-Gonzalez's motion for summary judgment on the Labor Law § 240 (1) claim is denied.

This constitutes the decision and order of the court.

Dated: June 6, 2017

ENTER:


HON. KELLY O'NEILL LEVY J.S.C.