Granados v Port Auth. of N.Y. & N.J.
2018 NY Slip Op 31581(U)
March 9, 2018
Supreme Court, Queens County
Docket Number: 714754/2017
Judge: Denis J. Butler
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ORIGINAL

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DENIS J. BUTLER IAS Part 12
Justice

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SAUL GRANADOS,

Plaintiff(s),

-against-

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, LA GUARDIA GATEWAY PARTNERS, LLC and PETER SCALAMANDRE & SONS, INC.,

Defendant(s).

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Index Number: 714754/2017

Motion Date: January 29, 2018

Motion Seq. No.: 1

The following papers numbered were read on this motion by Defendant, The Port Authority of New York and New Jersey ("Port Authority") for an order dismissing Plaintiff's causes of action against the Port Authority predicated upon on application of New York's Labor Law sections 240(1) and 241(6), on the grounds that the Port Authority is not subject to unilaterally imposed state laws that directly regulate the Port Authority.

	Papers Numbered
Notice of Motion, Affirmation, Affidavits and Exhibits	E8-13
Affirmation In Opposition, Affidavit, Exhibits	E15-19
Affirmation In Reply	E21

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

In this action to recover for personal injuries, Plaintiff sues Defendants under a theory of negligence and violations of New York's Labor Law. Defendant Port Authority moves to dismiss Plaintiff's Labor Law §§ 240(1) and 241(6) claims against it, arguing that the Port Authority is not subject to suit under those laws due to its status as a bi-state entity created under

the Compact Clause of the United States Constitution (Article I, Section 10, Clause 3).

Movant cites no precedent holding that the Port Authority cannot be held liable under § 240(1) or § 241(6). Moreover, in multiple cases the Port Authority has been found liable for personal injuries under these sections of New York's Labor Law statute. (See, e.g., *Minchala v Port Authority of NY & NJ*, 67 AD3d 978 [2d Dept 2009]; *Verdon v Port Authority of NY & NY*, 111 AD3d 580 [1st Dept 2013]; *Albericci v Port Authority of NY & NJ*, 55 Misc3d 946 [Sup. Ct. Bronx Co. 2017]; *Rooney v Port Authority of NY & NJ*, 875 F.Supp. 253 [SDNY 1995]; see also *Spagnuolo v Port Authority of NY & NJ*, 8 AD3d 64 [1st Dept 2004].) None of the above decisions reflect that the Port Authority ever raised its Compact Clause argument as a defense. For the reasons set forth below, controlling case law neither compels the result which the Port Authority now seeks, nor persuades this Court to make new law recognizing such a defense under these facts and circumstances.

It is well established that the Port Authority of New York and New Jersey is a bi-state entity, created by a compact between New York and New Jersey and the approval of Congress, pursuant to the requirements of the federal Constitution. (*See, e.g., Hess v Port Authority Trans-Hudson Corp.*, 513 US 30 [1994].) Interpretation of an interstate compact is governed by federal law. (*Sugar Refining Co of NY v Waterfront Comm'n of New York Harbor*, 55 NY2d 11, 25-26 [1982]; *Cuyler v Adams*, 449 US 433, 438 [1981].) Bi-state entities "are not subject to the unilateral control of any one of the States." (*Hess*, 513 US at 42.) Therefore, New York cannot unilaterally regulate the Port Authority's internal operations, such as the wages paid to employees. (*Agesen v Catherwood*, 26 NY2d 521, 525 [1970].)

Although courts have repeatedly held that the Port Authority is not bound by unilateral state laws that purport to control its internal operations, these same courts have opined that the Port Authority is nevertheless obligated to comply with generally applicable state laws governing the Port Authority's external conduct, particularly regarding matters of public health and safety. New York's Court of Appeals has stated that "New York and New Jersey have each undoubted power to regulate the external conduct of the Authority, and it may hardly be gainsaid that the Authority, albeit bistate, is subject to New York's laws involving health and safety, insofar as its activities may externally affect the public." (*Agesen*, 26 NY2d at 525.) The Court also observed that "[t]he distinction between the internal operations and conduct affecting external relations of the

Authority is crucial in charting the areas permitting unilateral and requiring bilateral State action." (*Id.*)

Other courts and academics have cited with approval the external-internal distinction articulated by *Agesen*. (*See, e.g., Dezaio v Port Authority of NY & NJ*, 205 F3d 62 [2d Cir 2000]; *Baron v Port Authority of NY & NJ*, 968 F.Supp. 924, 928 [SDNY 1997]; Matthew S. Tripolitsiotis, *Bridge over Troubled Waters: the Application of State Law to Compact Clause Entities*, 23 Yale J. & Pol'y Rev. 163, 181-182 [2005].) Even in *Heightened Independence & Progress Inc v Port Authority of NY & NJ*, a case relied upon by movant, the Third Circuit concluded that it "need not consider the matter" of whether it should adopt the internal-external distinction, because the employment law at issue in that case did not "relate to anything external to the Authority or to health or safety." (693 F3d 345 [3d Cir 2012].)

It is not disputed that Labor Law 240(1) and 241(6) are laws governing the Port Authority's external conduct, and that they bear on matters of public health and safety. The Port Authority asks this Court to be the first to carve out an exception to a health and safety statute based upon the Port Authority's status as a Compact Clause entity. The arguments set forth by the Port Authority have not convinced the Court to make new law to exempt the Port Authority from liability in these circumstances.

Accordingly, the motion is hereby DENIED.

This constitutes the Decision and Order of the Court.

Dated: March 9, 2018

Denis J. Butler, J.S.C.

FILED
MAR 19 2018
COUNTY CLERK
QUEENS COUNTY