

Maldonado v Fresh Meadow Mech. Corp.
2018 NY Slip Op 32984(U)
November 29, 2018
Supreme Court, New York County
Docket Number: 152797/16
Judge: Carol R. Edmead
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

-----X
RENE MALDONADO,

Plaintiff,

-against-

FRESH MEADOW MECHANICAL CORP., 99
JOHN STREET, LLC, MIDBORO MANAGEMENT,
INC., and THE BOARD OF MANAGERS OF THE
99 JOHN DECO LOFTS CONDOMINIUM,

Defendants.

-----X
99 JOHN STREET, LLC,

Third-Party Plaintiff,

-against-

99 JOHN DECO LOFTS CONDOMINIUM,

Third-Party Defendant.

-----X
MIDBORO MANAGEMENT, INC., THE BOARD
OF MANAGERS OF THE 99 JOHN DECO LOFTS
CONDOMINIUM,

Second Third-Party Plaintiffs,

-against-

RAEL MAINTENANCE CORP.,

Second Third-party Defendant.

-----X
CAROL R. EDMOND, J.S.C.:

In a Labor Law action, defendant/third-party plaintiff 99 John St., LLC s/h/a 99 John Street, LLC (99 John) moves, pursuant to CPLR 3212, for summary judgment dismissing all

claims and cross claims as against it. Plaintiff Rene Maldonado (Plaintiff, or Maldonado) opposes the motion on the basis that it is premature.

BACKGROUND

This action arises from Plaintiff's fall in the basement of a condominium. More specifically, Maldonado alleges that, on March 25, 2014, he fell from a ladder in the basement of a condominium located 99 John Street in lower Manhattan. Plaintiff filed his complaint on April 1, 2016. He filed an amended complaint December 16, 2016 and he filed an amended complaint on March 6, 2017. The amended complaint alleges that defendants are liable under Labor Law §§ 240 (1) and 241 (6), as well as under Labor Law § 200 and common-law negligence. 99 John is the owner and sponsor of certain units within the condominium. It argues that Plaintiff's Labor Law claims must be dismissed, as it is not an owner under the Labor Law and it did not have any duty to plaintiff.

DISCUSSION

"Summary judgment must be granted if the proponent makes '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,' and the opponent fails to rebut that showing" (*Brandy B. v Eden Cent. School Dist.*, 15 NY3d 297, 302 [2010], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). However, if the moving party fails to make a prima facie showing, the court must deny the motion, "*regardless of the sufficiency of the opposing papers*" (*Smalls v AJI Indus., Inc.*, 10 NY3d 733, 735 [2008], quoting *Alvarez*, 68 NY2d at 324).

Labor Law

It is axiomatic that, to be liable under Labor Law §§ 200, 240 (1), and 241 (6), a defendant must be an owner, a general contractor or an agent of either. 99 John submits an

affidavit from its CEO, Richard Brancato (Brancato). Brancato states that, at the time of Plaintiff's accident, 99 John's "only connection with the premises was that it was the sponsor/owner of unsold units within the condominium" (NYSCEF doc No. 171, ¶ 4). Brancato also states that defendant/third-party defendant/second third-party plaintiff 99 John Deco Lofts Condominium (the Condo) "was responsible for the maintenance and repair of the common elements of the building" (*id.* at 5). To substantiate this, Brancato attached to his affidavit "a copy of the Declaration of Condominium dated July 10, 2008" (*id.*). Finally, Brancato also stated that 99 John did not hire plaintiff's employer, second third-party defendant, Rael Maintenance Corp. (Rael) (*id.*, ¶ 6).

99 John makes a *prima facie* showing of entitlement to dismissal of all Labor Law claims as against it through Brancato's affidavit. As Plaintiff's accident happened in the common area of the condominium, and as 99 John did not own the common area of the condominium, it is not an owner of the subject property (*see Jerdonek v 41 W. 72 LLC*, 143 AD3d 43 [1st Dept 2016] [holding that ownership of a unit does not confer status as a Labor Law "owner" for common areas of a condominium]). Moreover, Brancato's testimony shows that 99 John was not a general contractor or an agent for either the general contractor or the owner or the contractor (*see Samaroo v Patmos Fifth Real Estate, Inc.*, 102 AD3d 944, 946 [2d Dept 2013] [statutory agency appropriate where a party has "supervisory control" over the work leading to the plaintiff's accident]).

In opposition, Plaintiff argues in a conclusory fashion that summary judgment is premature. Plaintiff, however, fails to raise an issue of fact as to the question of ownership. Plaintiff argues that the Declaration of Condominium was not properly authenticated as a business record, but Brancato's affidavit is sufficient, by itself, to make a *prima facie* showing

that 99 John is not a proper Labor Law Defendant. As such, Plaintiff's Labor Law §§ 200, 240 (1), and 241 (6) claims as against 99 John are dismissed

Common-Law Negligence

99 John argues that the common-law negligence claim against it must also be dismissed, as it has no duty to Plaintiff. 99 John is correct that individual unit owners in condominiums have no duty to keep common areas in condominiums safe (*see Rothstein v 400 E. 54th St. Co.*, 51 AD3d 431 [1st Dept 2008]). As such, Plaintiff's common-law negligence as against 99 John must be dismissed.

Cross Claims

None of 99 John's co-defendants oppose this motion. Thus, all cross claims against 99 John are dismissed as abandoned (*see Perez v Folio House, Inc.*, 123 AD3d 519, 520 [1st Dept 2014]).

CONCLUSION

Accordingly, it is

ORDERED that the motion of Defendant 99 John St., LLC s/h/a 99 John Street, LLC (99 John) for summary judgment dismissing all claims and cross claims as against it is granted; and it is further

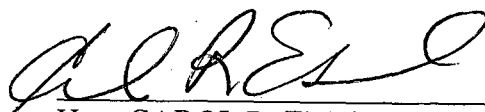
ORDERED that the Clerk shall enter judgment accordingly; and it is further

ORDERED that the action is severed and shall continue against remaining defendants; and it is further

ORDERED that counsel for 99 John is to serve a copy of this decision, along with notice of entry, on all parties within 15 days of entry.

Dated: November 29, 2018

ENTER:



Hon. CAROL R. EDMED, JSC

HON. CAROL R. EDMED
J.S.C.