

Matthews v Bright Star Messenger Ctr., LLC
2019 NY Slip Op 32370(U)
August 6, 2019
Supreme Court, Kings County
Docket Number: 503791/2013
Judge: Debra Silber
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : PART 9**

x

FAUNAUE MATTHEWS,

Plaintiff,

-against-

**BRIGHT STAR MESSENGER CENTER, LLC,
METROPOLITAN DATA CORP. and
THE METROPOLITAN MUSEUM OF ART,**

Defendants.

x

DECISION / ORDER

**Index No. 503791/2013
Motion Seq. No. 8
Date Submitted: 6/20/19
Cal No. 40**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of defendants Metropolitan Data Corp. and the Metropolitan Museum of Art's motion for summary judgment.

Papers	NYSCEF Doc.
Notice of Motion, Affirmation and Exhibits Annexed.....	<u>125-133</u>
Affirmation in Opposition and Exhibits Annexed.....	<u>135, 137-142</u>
Reply Affirmation.....	<u>144</u>

**Upon the foregoing cited papers, the Decision/Order on this application is
as follows:**

This is personal injury action arising out of an October 27, 2011 work-related accident on the premises of the Metropolitan Museum of Art. Plaintiff was employed by Bright Star Messenger Center, LLC, formerly known as Bright Star Couriers, LLC, a temporary staffing agency (hereafter "Bright Star") and was assigned to work for defendant Metropolitan Data Corp. Metropolitan Data Corp. (hereafter "Metropolitan Data") was contracted by defendant Metropolitan Museum of Art to digitize a part of the museum's collection of mechanical drawings. Plaintiff alleges that his accident occurred when he lost his balance because of the weight or unbalanced weight distribution of a

box and fell to the floor from the top of a file cabinet in a sub-basement storage room at defendant Museum. He claims the documents he needed to scan were in boxes that had been placed on top of the file cabinets, presumably because they were too large to put into the file cabinets. He was not given a ladder or anyone to help him. He needed to bring the items to Metropolitan Data Corp.'s facilities to be scanned. Metropolitan Data was directing and supervising his work, not the Museum.

Movant Metropolitan Data contends that it was plaintiff's special employer so that the Workers' Compensation Law bars plaintiff's claims against it. In addition, movant Metropolitan Museum of Art asserts that there is no evidence that its actions or omissions were negligent or were a proximate cause of the accident; that there was no testimony that a defective condition or debris caused the accident.¹ Further, movants both contend that the motion should be considered timely based upon court-ordered post-note of issue discovery.

Bright Star has submitted partial opposition. It takes no position as to the Metropolitan Museum of Art and opposes Metropolitan Data's motion only to the extent that Bright Star maintains that if the court finds that Metropolitan Data was plaintiff's special employer, then Bright Star had to be plaintiff's general employer, notwithstanding a prior order denying Bright Star summary judgment on this basis due to their submission of inadequate papers.

As a preliminary matter, defendants have established good cause for their late summary judgment motion, insofar as court-ordered discovery was ongoing after the

¹Further, defendants correctly contend and that inasmuch as the claim does not arise out of construction or renovation, plaintiff is not a protected person under the Labor Law. Violation of the Labor Law is not pled in the complaint.

filing of the note of issue (see *Khan v Macchia*, 165 AD3d 637, 638 [2d Dept 2018]).

With respect to Metropolitan Data, “[a] person may be deemed to have more than one employer for purposes of the Workers' Compensation Law, a general employer and a special employer” (*Schramm v Cold Spring Harbor Lab.*, 17 AD3d 661, 662 [2d Dept 2005]). “A general employee of one employer may also be in the special employ of another, notwithstanding the general employer's responsibility for payment of wages and for maintaining workers' compensation and other employee benefits” (*Thompson v Grumman Aerospace Corp.*, 78 NY2d 553, 557 [1991]). While often a question of fact, “where, combined with other indicia of special employment, the uncontroverted record documents an employer's comprehensive and exclusive daily control over and direction of the special employee's work duties for (an extended period of time) with the corresponding complete absence of any supervision or control of his work duties by the originating general employer” the matter can properly be determined as a matter of law (*Thompson v Grumman Aerospace Corp.*, 78 NY2d at 557).

Here, plaintiff's own testimony, as well as that the defendants, establishes that he was a special employee of Metropolitan Data, as a temporary employee hired by temp agency Bright Star, his general employer, and that his work was supervised and controlled solely by Metropolitan Data, who had the power to, and ultimately did, terminate his employment. He received Workers' Compensation benefits from Bright Star, his general employer, thereby barring this action against his special employer, Metropolitan Data. Thus, Metropolitan Data has established its entitlement to summary judgment based upon its Workers' Compensation Law defense (see *Giovannucci v Petrone*, 51 AD3d 632, 633 [2d Dept 2008] [“Employee of temporary staffing agency

who was injured in fall while assigned to work for business was barred by exclusive remedy provision of Workers' Compensation Law from suing co-owner of premises for her injuries, where employee was special employee of business, which controlled and directed her activities, and premises owner was co-employer of special employee by virtue of being chief executive officer of business"]; *Doboshinski v Fuji Bank Ltd.*, 78 AD2d 537, 538 [2d Dept 1980] ["Plaintiff was directed in her work solely by the defendant, and the record (which includes a transcript of her deposition) makes clear her understanding that she was to look to the defendant as her employer, albeit only as a temporary employer"]; *Garner v Two Exch. Plaza Partners*, 215 AD2d 352 [2d Dept 1995] [worker was "special employee" of defendant, so that her personal injury action against defendant was barred by Workers' Compensation Law; worker was placed with defendant to perform receptionist duties and her work was directed and controlled exclusively by defendant's employees]). Plaintiff has failed to overcome the motion and raise an issue of fact requiring a trial on this issue. Thus, the complaint must be dismissed as against Metropolitan Data Corp.

Further, while this court previously found that Bright Star Messenger Center, LLC had failed to establish its entitlement to summary judgment as plaintiff's general employer, it is now clear from the record that the discrepancy as to the name of plaintiff's employer in the documentary evidence submitted in support of the prior motion was due to the fact that Bright Star Messenger Center, LLC was simply the new name registered with the New York Secretary of State for Bright Star Couriers, LLC pursuant to a change of name, that Workers' Compensation had not corrected their records as to this entity, and that Bright Star Messenger Center LLC was in fact

plaintiff's general employer. Consequently, the court has searched the record and awards Bright Star Messenger Center, LLC summary judgment dismissing the complaint as against it based on its defense of the bar of the Workers' Compensation Law.

With regard to defendant Metropolitan Museum of Art, the court finds that this defendant has not made a *prima facie* case for dismissal. Issues of fact exist as to whether the Metropolitan Museum of Art was negligent and breached a duty to plaintiff. It appears from the record that the Museum's employees had placed the boxes on top of the file cabinets in the sub-basement, thereby creating the condition that caused the accident, and either knew or should have known that the plaintiff would be required to accomplish the task he was hired to perform, to retrieve these boxes and bring their contents to his employer's offices, without proper equipment or any assistance.

Accordingly, it is

ORDERED that the motion is granted to the extent that defendants Bright Star Messenger Center, LLC and Metropolitan Data Corp. are granted summary judgment and the complaint as against them is severed and dismissed.

The motion is denied with regard to the Metropolitan Museum of Art.

This constitutes the decision and order of the court.

Dated: August 6, 2019

ENTER:



Hon. Debra Silber, J.S.C.

Hon. Debra Silber
Justice Supreme Court