Bras v Liro Group
2019 NY Slip Op 32772(U)
September 17, 2019
Supreme Court, New York County
Docket Number: 157303/2016
Judge: Lyle E. Frank

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LYLE E. FRANK** **PART 52**

Justice

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LUIS CARLOS BRAS,

Plaintiff,

- v -

THE LIRO GROUP, LIRO HOLDINGS, INC.,THE CITY OF NEW YORK

Defendant.

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INDEX NO. 157303/2016

MOTION DATE 9/10/2019

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, the motion by defendants, The Liro Group and Liro Holdings, Inc. ("Liro") for summary judgment is granted in all respects.[1]

Facts

The facts of the case are mostly not in dispute. Liro was employed as the construction manager by the New York City Department of Parks and Recreation ("City") on an overall reconstruction project at Battery Park, which included replacing the granite stones of the Verrazano Monument within the park. The City hired the general contractor to perform the work, Professional Pavers Corporation ("PPC"), who was plaintiff's employer. PPC then hired, with the City's approval, approximately 15 subcontractors for the Battery Park project. The plaintiff's direct supervisor at the time of the accident, Joe Foley, was an owner of PPC. In

[1] The Court would like to thank Amanda Gerstman for her assistance in this matter.

addition, an eyewitness to plaintiff's accident, Carlos Dominguez, was also employed by PPC at the time of the accident

On the day of the subject accident, the plaintiff was working on lifting and placing a block of granite for the Verrazano Memorial with Mr. Foley and Mr. Dominguez. At some point, he pulled on a pallet, his right leg slipped forward, the pallet struck plaintiff in the legs, causing plaintiff to fall to the ground. Prior to the accident, but while the work was ongoing to place the block of granite, a representative of Liro ordered Mr. Foley verbally to stop work at the site, but the work continued nonetheless, on orders of Joe Foley. A written stop work order was completed after the accident. The ground was made of gravel where the accident occurred, which was the permanent ground for the location. There is nothing in the record that would show the presence of a foreign substance on the ground at the time of the plaintiff's fall. Prior to the work being performed on the date of the accident, Javier Torres from Liro, who spoke Spanish, discussed with plaintiff how to perform the work, such as positioning of straps.

Discussion

Labor Law Section 241(6)

It is well settled law that for there to be liability pursuant to Labor Law Section 241(6), there must be a violation shown of the Industrial Code. *See e.g., Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 N.Y.2d 494, 601 N.Y.2d 49 (1993) (§241(6) imposes a non-delegable duty upon owners and general contractors and their agents for violation of the statute); The Court agrees with Liro that there has simply been no evidence to show that an Industrial Code violation existed here. The Court agrees that Section 23-1.5 is too general in nature to trigger §241(6) liability. *See Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 878 [1993] (in order to trigger a liability claim under Labor Law §241 (6) claimant must demonstrate that his injury was

caused by violation of a specific safety regulation related to a plaintiff's work and which imposed an affirmative duty upon to project owner, general contractor or their agents); *see also Hawkins v City of New York*, 275 AD2d 634, 635 [1st Dept 2000] (holding that Section 23-1.5 is insufficiently specific to sustain a Labor Law §241(6) claim).

The other two Industrial Code Sections plaintiff relies on are 23-1.7(d) and 23-1.7(e), which deal with slipping and tripping hazards. As such, plaintiff would have had to provide some evidence of either a tripping or slipping hazard for these Industrial Code Sections to apply. Plaintiff has failed to do so. The record clearly shows that the plaintiff lost his balance as a result of the work that he was performing. While his right foot may have slipped at the time of the accident, it is telling that he only lost his footing after he was struck by the pallet. The plaintiff has provided no expert affidavits to show that the flooring that the plaintiff was standing on at the time of the accident created a slipping or tripping hazard for the work plaintiff was performing.

Labor Law and Negligence Liability of Liro

As to the remaining causes of action, the Court agrees with Liro that it simply did not have sufficient oversight of the location to be liable to the plaintiff under the Labor Law. The case law is abundant that in order to be liable under the Labor Law, the construction manager must have had oversight of the injury causing activity. *See Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 353 [1998] (without controlling the injury producing work, a construction manager cannot be held liable under Labor Law). General oversight is insufficient. The record is abundant and unequivocal that at the time of the plaintiff's accident, the plaintiff's work was being directed and supervised by his employer, PPC, and not Liro.

Moreover, Liro simply cannot be said to have supervised the work of the plaintiff when at the time of the accident, a verbal stop work order had been issued by Liro and it was disregarded. *See Burkowski v Structure Tone, Inc.*, 40 AD3d 378, 381 [1st Dept 2007] (no Labor Law liability where defendant construction manager did not tell subcontractor or its employees how to perform subcontractor's work); *Alonzo v Safe Harbors of the Hudson House. Dev. Fund Co.*, 104 AD3d 446, 449 [1st Dept 2013] (general level of supervision found not enough to hold defendant liable for plaintiff's injuries where defendant was responsible for making sure the work was going according to schedule, and where its superintendent regularly inspected the work and has the authority to stop work). While there is some evidence in the record that a representative of Liro, Javier Torres, gave some recommendations to the plaintiff on how to perform the work, the Court agrees with Liro that as a matter of law, the work was performed and overseen by PPC.

The City's Cross-Claims

Finally, the Court disagrees with the City that the City's cross claims should survive this summary judgment motion.[2] The contract between the City and Liro is clear that the indemnity that existed in the contract was for the Liro's negligence. As discussed, Liro did not supervise the work that led to the plaintiff's injury, and thus there is no evidence to show that Liro was negligent. As such, the contractual indemnity clause is not triggered as a matter of law, and the cross-claim by the City against Liro for contractual indemnity must be dismissed.

Accordingly, it is hereby

[2] The City's opposition papers do not mention the issue of common law indemnity. Thus, this claim is deemed dismissed without opposition.

ORDERED that the motion for summary judgment of defendants THE LIRO GROUP and LIRO HOLDINGS, INC. is granted, and the complaint and all cross claims are dismissed against them; and it is further

ORDERED that the claims against defendant the City of New York are severed, and the balance of the action shall continue; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

9/17/2019
DATE

LYLE E. FRANK, J.S.C.

HON. LYLE E. FRANK J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
	X	GRANTED		DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE