France v Munro Gen. Constr. Inc.
2019 NY Slip Op 33545(U)
November 25, 2019
Supreme Court, Kings County
Docket Number: 506925/2016
Judge: Loren Baily-Schiffman
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At an IAS Part 65 of the Supreme Court of the State of New York, County of Kings at a Courthouse Located at 360 Adams Street, Brooklyn, New York on the 25th day of November, 2019.

PRESENT: HON. LOREN BAILY-SCHIFFMAN
JUSTICE

JUSTIN FRANCE,
Plaintiff,
- against -

MUNRO GENERAL CONSTRUCTION INC., and THREE PARK AVENUE BUILDING CO., L.P.

Defendants.

Index No.: 506925/2016

Motion Seq. # 15

DECISION & ORDER

As required by CPLR 2219(a), the following papers were considered in the review of this motion:

	PAPERS NUMBERED
Notice of Motion, Affidavits, Affirmation and Exhibits	1
Building Co.'s Affirmation in Opposition and Exhibits	2
Munro's Affirmation in Opposition and Exhibits	3
Munro's Memorandum of Law	4
Plaintiff's Reply Affirmation, and Exhibits	5

Upon the foregoing papers Plaintiff, Justin France ("Plaintiff"), move this Court for an Order pursuant to CPLR § 4404(a) granting Plaintiff judgment notwithstanding the verdict of the jury and granting such other and further relief as this Court deems just and proper. Additionally, in Plaintiff's Affirmation in Support, "the plaintiff requests that this Court... grant the plaintiff a new trial on liability."

Procedural History

This is a personal injury action that emerges from Plaintiff allegedly slipping on the stairs between the 24th and 23rd floors of 3 Park Avenue, New York, NY. Plaintiff was an HVAC worker working on a project at 3 Park Avenue. Munro General Construction Co. ("Munro") was the general contractor on the project and Three Park Avenue Building Co. ("Building Co.") is the

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owner of the building in question. Plaintiff's theory of the case is that Munro was doing sheetrock work on the 23rd floor of 3 Park Avenue which caused sheetrock dust to migrate into the staircase and Plaintiff slipped on the sheetrock dust. Additionally, the staircase in this building was not pressurized Plaintiff argues that as a result, the sheetrock dust from the 23rd floor was sucked by air into the staircase. Under Plaintiff's theory, Building Co. was responsible for cleaning and maintaining the staircase in question, but failed to properly do so.

The action was brought under Labor Law §241(6), Labor Law § 200 and common-law negligence. A jury trial was held in this Court on June 19, June 21, June 27, June 28 and July 1, 2019. This Court charged the jury on Labor Law §241(6) and crafted a jury instruction combining Labor Law § 200 with common-law negligence. Moreover, the Verdict Sheet for this trial did not include separate Labor Law § 200 and common-law negligence questions.

Question #1 of the Verdict Sheet asked "DID THE DEFENDANT, MUNRO GENERAL CONSTRUCTION INC., VIOLATE LABOR LAW §241(6)?" to which the jury unanimously voted "NO." The jury accordingly proceeded to question #3 of the Verdict Sheet which asked, "DID DEFENDANT, THREE PARK AVENUE, VIOLATE LABOR LAW §241(6)?" to which the jury unanimously answered "NO." The jury then proceeded to question #5 of the Verdict Sheet, which asked "WAS DEFENDANT, MUNRO GENERAL CONSTRUCTION INC., NEGLIGENT?" to which the jury unanimously answered "NO." The jury accordingly proceeded to question #7 which asked "WAS DEFENDANT, THREE PARK AVENUE BUILDING CO., L.P., NEGLIGENT?" to which the jury answered "NO" with one dissenting juror.

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Discussion

Plaintiff contends that this Court should grant judgment notwithstanding the verdict, because (a) the verdict was against the weight of the evidence and (b) the Court erred by merging Labor Law § 200 with common-law negligence and not charging them separately. For a court to conclude as a matter of law that a jury verdict is not supported by sufficient evidence, it is necessary to first conclude that there is simply no valid line of reasoning and permissible inferences which could possibly lead rational people to the conclusion reached by the jury on the basis of the evidence presented at trial. ***Killon v Parrotta, 28 NY3d 101, 107 (2016); Cohen v Hallmark Cards, Inc., 45 NY2d 493, 499 (1978).*** "[I]n any case... that the evidence is such that it would not be utterly irrational for a jury to reach the result it has determined... the court may not conclude that the verdict is as a matter of law not supported by the evidence." ***Cohen v Hallmark Cards, Inc., 45 NY2d 493, 499 (1978).*** The defendants argue that there was sufficient evidence for the jury to find that there was no sheetrock dust on the staircase in question. Moreover, as the sole witness of the alleged accident was Plaintiff, Building Co. argues that Plaintiff's credibility is an issue for the jury.

In the instant case, the determination of the jury was not "utterly irrational" requiring judgment in favor of Plaintiff as a matter of law. The jury may have believed that sheetrock dust could not or did not travel to the stairway in question as Plaintiff argued, or that even if did travel to the stairs it did not or could not have caused the accident. Moreover, Plaintiff testified that he never saw sheetrock dust on the stairs he fell on, although after his fall he saw the dust on himself. **Transcript p. 256-258.** Additionally, this Court precluded expert testimony about static

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and the friction coefficient of sheetrock dust and held that it was a question of fact for the jury to determine. **Transcript p. 18-19.**

Turning to the issue of the jury charges and Verdict Sheet, Plaintiff argues that the charges and Verdict Sheet are incorrect, because they merge Labor Law § 200 and common-law negligence. A court may vary the jury charges from the Pattern Jury Instructions, so long as the charges "adequately convey the sum and substance of the applicable law to be charged." ***Phillips v United Artists Communications, 201 AD2d 634, 635 (2nd Dept. 1994).*** The defendants maintain that the Court did not err in deviating from the Pattern Jury Instructions and submitting one question on the Verdict Sheet that encompassed Labor Law § 200 and common-law negligence. Plaintiff cites ***Zalduono v City of New York, 141 AD2d 816 (2nd Dept. 1988)*** to support his position that combining Labor Law § 200 and common-law negligence was in error. However, ***Zalduono*** addresses a trial-court charge that merged Labor Law § 200 with Labor Law § 241(6). In this case, the Court explicitly charged those two provisions separately and asked two separate questions about them on the Verdict Sheet. Furthermore, ***Zalduono*** parenthetically refers to common-law negligence as "codified in Labor Law § 200 [1]." ***Id at 816.*** It is well settled that "Labor Law § 200 is a codification of the common-law duty of property owners and general contractors to provide workers with a safe place to work" and "[l]iability under the statute is therefore governed by common-law negligence principles." ***Chowdhury v Rodriguez, 57 AD3d 121,127-128 (2nd Dept. 2008).*** Therefore, the jury charges this Court read adequately conveyed the legal standard applicable to common-law negligence and Labor Law § 200 and the Court did not err in merging the jury charge and Verdict Sheet questions. Accordingly, it is HEREBY:

ORDERED that Plaintiff's motion is denied in its entirety.

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The parties' remaining contentions are without merit.

This is the Decision and Order of the Court.

ENTER,

LOREN BAILY-SCHIFFMAN
JSC

HON. LOREN BAILY-SCHIFFMAN

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