

Flores v Broome Prop. Owner JV, LLC

2019 NY Slip Op 33877(U)

December 5, 2019

Supreme Court, Queens County

Docket Number: 712982/18

Judge: Bruce M. Balter

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At I.A. S. Part 42 of the Supreme Court of the State of New York, held in and for the County of Queens, at the Courthouse thereof, located at 25-10 Courthouse Square, Long Island City, New York, 11101 on the 5th day of December, 2019.

PRESENT: Hon. Bruce M. Balter
Justice of the Supreme Court

Motion Calendar Date: 10/31/19
Motion Calendar #: 16
Motion Sequence #: 2
Index No. ~~705983/2014~~

YELSON LAINES FLORES, X

Plaintiff,

DECISION AND ORDER

-against-

Index #
712982/18

BROOME PROPERTY OWNER JV, LLC, TRITON CONSTRUCTION COMPANY, LLC, PLAZA CONSTRUCTION GROUP, INC., PLAZA CONSTRUCTION, LLC, RENZO PIANO BUILDING WORKSHOP, INC., AND COPPER SERVICES, LLC,
Defendants.

FILED
DEC 16 2019
COUNTY CLERK
QUEENS COUNTY

Defendants BROOME PROPERTY OWNER JV, LLC, TRITON CONSTRUCTION COMPANY, LLC, PLAZA CONSTRUCTION GROUP, INC., and PLAZA CONSTRUCTION, LLC, move for an Order pursuant to CPLR §3212, dismissing Plaintiff's Complaint in its entirety under the doctrine of collateral estoppel based on the Workers' Compensation Board's prior determination that Plaintiff did not have a work-related accident. Plaintiff submits an Affirmation in Opposition and Defendants submit a reply. The Court has carefully considered the oral arguments presented to the Court on October 31, 2019.

FACTS AND PROCEDURAL HISTORY

Plaintiff commenced his action by filing a Summons and Complaint in the Supreme Court, Queens County on August 22, 2018. According to the Complaint, Plaintiff YELSON LAINES FLORES alleges he was "lawfully working on the premises located at 100 Varick Street, New York, New York. He further alleges that while he was on these premises "he was caused to trip and fall while performing labor law protected work". Plaintiff also alleges he "was caused to be injured as a result of height related risks and due to Defendants failure to provide adequate and proper protection against the hazards of falling. Finally, he alleges that Defendants failed to provide him with a "safe place to work" and violated sections 200, 240(1), and 241(6) of the New York Labor Law.

Defendants filed an Answer to the initial Summons and Complaint on or around October 11, 2018 on behalf of BROOME PROPERTY OWNER N, LLC, TRITON CONSTRUCTION COMPANY, LLC, and PLAZA CONSTRUCTION, LLC. Subsequently, Defendants interposed an Amended Answer on behalf of all of the Defendants we had answered for, along with Defendant PLAZA CONSTRUCTION GROUP, INC. In the Answer, "Defendants" denied all material allegations of negligence. Subsequently, the actions against Co-Defendants RENZO PIANO BUILDING WORKSHOP, INC., AND COPPER SERVICES, LLC, were discontinued by stipulation.

In Plaintiff's Bill of Particulars, he alleges that the accident occurred on July 13, 2018 at approximately 2:30 PM at 100 Varick Street, New York, NY. He alleges violations of Labor Law 240(1), 241(6), and 200. Under his claim pursuant to Labor Law 241(6), he alleges violations of Industrial Code sections 23-1.7(d) ("slipping hazards"); 23-1.7(e) ("tripping hazards"); and 23.2.1 ("maintenance and housekeeping"). Although a Preliminary Conference was held, depositions have not been conducted to date.

Plaintiff commenced his claim for Workers' Compensation benefits by filing a C-3 employee claim form with the State of New York, Workers' Compensation Board. Plaintiff claims he was "working" when the accident occurred and tripped on "debris/construction materials". In response to Plaintiff's claim for Workers' Compensation benefits, Zurich denied his claim for benefits on the grounds that, *inter alia*, he did not have a work-related accident. On March 7, 2019, a full hearing was conducted before the Workers' Compensation Board on the issue of whether Plaintiff was entitled to receive Workers' Compensation benefits by proving that his "accident occurred in the course of, and arose out of his employment". See *Matter of Bond v. Suffolk Transportation Services*, 68 A.D.3d 1341 (2009). Plaintiff was represented at this hearing by attorney Ryan Rayder of William Schwitzer's office, the same attorneys representing Plaintiff in the present case.

At the hearing, Plaintiff testified on his own behalf. He testified that he was no longer working due to an accident that occurred on July 13, 2018. At the time, he claimed he was working for DYDI Construction and his supervisors were Jose Diaz and Andres Avila. Although Plaintiff was directed to provide a pay stub, he failed to do so. Plaintiff testified he was working at 100 Varick Street on the accident date. He testified that he was injured when he was bringing down some sheet rock and slipped between some residue of construction. Plaintiff claimed he injured his neck, shoulder, both knees and back. He alleged that he told his supervisors about the accident right after it occurred, who sent him to the hospital, although he did not go to the hospital until four days later. Jose Pena was present when the accident occurred and Plaintiff allegedly spoke to him following the occurrence. Plaintiff denied he was supposed to sign in when he got to the job site, but admitted there was a sign sheet at 100 Varick. When he wouldn't sign in, he claims he would advise Andres he was on site. He did not recall receiving a phone message from Mr. Pena in which he denied ever witnessing his accident. Finally, he claims he advised a doctor at the hospital that he was carrying sheet rock and slipped on "part of the construction". Paul Smith, a Risk Manager for Triton Construction, testified at the hearing. He was asked to investigate the alleged accident involving Plaintiff. Following the

accident, he spoke with the Site Safety Manager Raj and noted on a sign-in sheet that Plaintiff was not working on the day of the alleged accident. Numerous statements from Plaintiff's employer and one co-worker were then taken, although none of them were aware of the alleged accident. Jamie "Andres" Avila also testified at the hearing. He was the foreman, who had supervised Plaintiff when he had previously worked for the company. All employees were required to sign in and he had his own list of employees working at the site. According to his records, Plaintiff was not present at 100 Varick Street on the accident date as he had previously been removed from the site. He denied that Plaintiff ever called him to report the accident and he did not learn of it until a few months before the hearing. Finally, Jose Diaz never told him about an accident involving Plaintiff.

Alleged eyewitness Jose Pena also testified at the hearing. He also denied having any knowledge of the alleged accident, nor did he know anything about it or speak to Plaintiff after it allegedly occurred. Finally, Plaintiff's hospital records were submitted for the Administrative Judge's review. The hospital records indicate Plaintiff did not go for treatment until four days after the alleged accident and did not mention a slip and fall, contrary to his testimony before the Worker's Compensation Board set forth above. Based on the testimony of Plaintiff, Jose Pena, Paul Smith, Jaime "Andres" Avila, and the medical records, the Administrative Law Judge found that Plaintiff "did not injure (himself) at work" on July 13, 2018. Instead, he did not find Plaintiff to be "direct and credible" and noted that his testimony was contradicted by the medical records, as well as by all three witnesses who testified. As a result, the Workers' Compensation claim was disallowed. In response to this decision, counsel for Plaintiff took exception, arguing that Plaintiff was "legitimately injured on a construction site while within the scope of his employment". An appeal was then taken by Plaintiff of the decision denying him benefits to the Workers' Compensation Board Panel. In its decision, the Panel summarized all of the testimony taken at the hearing referred to above. Although the Panel noted that Plaintiff would be afforded a presumption that his accident "occurred in the course of employment" and thus "arose out of that employment for purposes of his Workers' Compensation claim", they held that this presumption "cannot be used to show that an accident occurred". Instead, a credibility determination must be made and the Board is not bound to credit the testimony of Plaintiff in deciding this issue. The Panel's decision also states that "The Board" is "the sole arbiter of a witnesses' credibility" and was thus able to determine this issue. In light of all the above, the Board Panel concurred with the Workers' Compensation Law Judge in disallowing the claim and found that "Plaintiff's testimony as to the alleged accident was incredible, as it was contradicted by the employer witnesses' testimony and medical records". It was further noted that the decision was based upon a review of the record and based on a "preponderance of the evidence".

In opposition to the motion, Plaintiff orally argued at the motion should be denied as Plaintiff had moved to re-open the Worker's Compensation decision filed on July 24, 2019, based on "new evidence. The application was made on August 27, 2019, requesting reconsideration. The application was subsequently denied as it was deemed untimely pursuant to Workers Compensation Law §23, and as such, was denied.

STATUTORY AUTHORITY AND APPLICABLE CASE LAW

The doctrine of collateral estoppel precludes a party from re-litigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party or those in privity, whether or not the tribunals or causes of action are the same. See *Ryan v. New York Telephone Company*, 62 N.Y.2d 494 (1984)). "The doctrine of collateral estoppel is based on the notion that it is not fair to permit a party to re-litigate an issue which has previously been decided against him in a proceeding in which he had a fair opportunity to fully litigate the point". See *Gilberg v. Barbieri*, 53 N.Y.2d 285 (1981).

In order to successfully invoke the doctrine of collateral estoppel, two requirements must be met. "First, the issue in the second action must be identical to an issue which was raised, necessarily decided, and material to the first action. Second, the party to be precluded must have had a full and fair opportunity to litigate the issue in the earlier action." See *Kim v. Goldberg, Weprin, Finkel, Goldstein, LLP*, 120 AD.3d 18, 987 N.Y.S.2d 338 (1st Dept. 2014)). "The party seeking the benefit of collateral estoppel has the burden of demonstrating the identity of issues in the present litigation and the prior determination, whereas the party attempting to defeat its application has the burden of establishing the absence of a full and fair opportunity to litigate the issue in the prior action". See *Kaufman v. Eli Lilly & Co.*, 65 N.Y.2d 449 (1985)).

Numerous Courts have held that the determination of an administrative agency regarding "whether an accident actually occurred" or whether an accident occurred in the course of employment are identical to, and thus dispositive of, claims in a subsequent personal injury lawsuit. See *Bergman v. City of New York*, 64 N.Y.2d 1011 (1985); See also *Ridge v. Gold*, 115 A.D.3d 1263 (4th Dept. 2014), *aff'd* 23 N.Y.3d 1010 (2014).

Finally, "the doctrines of *res judicata* and collateral estoppel are applicable to give conclusive effect to quasi-judicial determinations of administrative agencies when determinations are rendered pursuant to the adjudicatory authority of an agency to decide cases brought before its tribunals by employing procedures substantially similar to those used in a Court of law". See *Lee v. Jones*, 230, A.D.2d 435, 659 N.Y.S.2d 549 (3rd Dept. 1997). The doctrine of collateral estoppel has consistently and uniformly been deemed applicable to determinations made by the Workers' Compensation Board, whose primary role is to determine whether a worker's injuries occurred in the course of his or her employment (see *Ryan*, *supra*). "The doctrine of collateral estoppel will permit any discrete factual issues necessarily decided in a prior action to be given preclusive effect, regardless of the overall legal context (see *Lee*, *supra*).

The doctrine of collateral estoppel, a narrower species of *res judicata*, precludes a party from re-litigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party or those in privity, whether or not the tribunals or causes of action are the same. See *Ryan v. New York Tel. Co.*, *supra*, at 500, 478 N.Y.S.2d 823, 467 N.E.2d 487. The only elements that need be established are, first, that the identical issue was necessarily decided in the prior action and is decisive

in the present one and, second, that the party to be precluded had a full and fair opportunity to contest the prior determination. See *D'Arata v. New York Cent. Mut. Fire Ins. Co.*, 76 N.Y.2d 659, 664, 563 N.Y.S.2d 24,564 N.E.2d 634).

It is the party seeking the benefit of collateral estoppel who has the burden of demonstrating the identity of the issues in the present litigation and the prior determination; whereas the party attempting to defeat its application has the burden of establishing the absence of a full and fair opportunity to litigate the issue in the prior action (see Kaufman, supra). It should first be noted that "an award of compensation by the Workers' Compensation Board constitutes a legal finding that the employee's injuries arose out of and in the course of his employment and this finding is binding and conclusive, unless vacated or modified by direct proceedings before the Board. See *Irrizarry v. Minnesota Mining & Manufacturing Corp.*, 91 A.D.2d 558 (1st Dept. 1982). Conversely, where a worker is denied benefits as it is determined the accident did not "arise out of and in the course of employment", this determination is also binding (see *Irrizarry*, supra).

ANALYSIS

Firstly, there can be no question that the issue of whether he had a work-related accident is "identical" and/or decisive of his claims in the present case. As Plaintiffs entire Complaint is based on allegations that he was injured at work, while in the course of his employment, and that Defendants violated New York State Labor Law by failing to provide him with a "safe place to work" or provide proper safeguards for his work, Plaintiff will now be unable to prove any of his claims at trial based on the findings of the Worker's Compensation Board. As the issue of whether he was injured at work will inevitably need to be decided in favor of Plaintiff in order for him to prevail on any of his allegations in the present case, Defendants have clearly met their burden in showing an identity of issue which has necessarily been decided in the prior action and is decisive of the present action.

It is also clear that Plaintiff cannot meet his burden in showing that he did not have a "full and fair opportunity" to litigate the issue of whether he had a work-related accident at Defendants' premises. This is because Plaintiff was given every opportunity to litigate his claim for Workers' Compensation benefits before the Workers' Compensation Board and had attorneys who appeared on his behalf to litigate the issue of his entitlement to receive Workers' Compensation benefits. Specifically, in his case to obtain Workers' Compensation benefits, Plaintiff was given a full trial at which he was able to testify regarding how his accident occurred; present witnesses, including fact witnesses and medical experts; introduce documents in support of his claim, including his own hospital records; and cross-examine witnesses produced on behalf of his employer. However, after a full trial before an administrative law judge, it was determined that Plaintiff did not have a work-related accident. As a result, he was found not to be entitled to Workers' Compensation benefits pursuant to Workers' Compensation Law Section 21. Plaintiff was then also given an opportunity to appeal this decision, which was also denied by a panel of judges. Based on all of the above, there can be no question that Plaintiff was given a "full and fair opportunity to litigate" the issue of whether his injuries arose out of the

course of his employment and cannot meet his burden on this issue so as to show that the doctrine of collateral estoppel is not applicable to the present case.

It is clear that the decision of the Workers' Compensation Board is entitled to collateral estoppel effect as Courts of this State have routinely held that "quasi-judicial" determinations of administrative agencies, such as the Workers' Compensation Board, are entitled to collateral estoppel effect. As such, Plaintiff should not be given another opportunity to litigate the issue of whether he had a work-related accident based on the doctrine of collateral estoppel. Courts of this State have found the doctrine of collateral estoppel may be used to prevent the re-litigation of issues previously determined by the Workers' Compensation Board or other quasi-judicial authority, when the issue involves "whether an accident occurred". It is clear that prior determinations by administrative agencies that an accident did not occur, did not occur in the course of employment, or did not occur in the manner alleged by Plaintiff, were entitled to preclusive effect, thus preventing Plaintiff from litigating any portion of his or her personal injury case.

In the present case, a review of the testimony and submissions to the Workers' Compensation Board leave no doubt that the central issue at the hearing was whether Plaintiff was injured in the course of his employment at Defendant's premises. As this issue has now been fully litigated and decided, with no opportunity for a further appeal, against Plaintiff, he cannot re-litigate this issue in the case at bar. As each and every one of his claims will require a showing that he was "lawfully working" at Defendant's premises when he was injured, summary judgment is thus proper under the doctrine of collateral estoppel as he cannot prove any of his claims at trial.

In *Ridgepoles v. American Museum of Natural History*, 297 A.D.2d 728 (2nd Dept. 2002), Defendants moved to dismiss Plaintiffs claims under Labor Law §240(1) based upon a prior Workers' Compensation decision that Plaintiff was standing on the ground, not on a ladder, when he fell. In affirming the lower Court's decision, the Appellate Division, Second Department noted that "Defendant satisfied its burden of proving that the identical issue that is dispositive of the Plaintiffs Labor Law §240(1) cause of action was necessarily decided in a Workers' Compensation proceeding and the Plaintiff failed to sustain his burden of establishing that he did not have a full and fair opportunity to litigate the issue in a prior proceeding." As Plaintiff would not be able to prevail on a claim under Labor Law 240(1) where he could not offer evidence that he was standing on a ladder. the Court found that the issues were identical and the finding was dispositive of his claim under Labor Law 240(1). Defendant was thus granted summary judgment, dismissing the Labor Law §240(1) claim.

In the case at Bar, Plaintiffs Summons and Complaint and Bill of Particulars specifically allege he was injured while lawfully working at Defendant's premises at 100 Varick Street in the course of his employment . However, the Workers' Compensation Board concluded after a full trial that he was not employed and/or insured at these premises. A full review of the Workers' Compensation hearing transcript makes it clear that the main issue that was litigated was whether Plaintiff had an accident which "arose out of and in the course of his employment"

at Defendants' premises. As the issue of whether he was injured while working at Defendants' premises is a basic, necessary element and a prerequisite to prove all of his claims in his personal injury lawsuit, this issue is clearly "identical" to one that was already litigated before the Workers' Compensation Board or, at a minimum, is dispositive of the claim. As a result, Plaintiff cannot re-litigate the issue of whether his accident occurred at work based on the doctrine of collateral estoppel.

In the present case, a full review of the Workers' Compensation trial transcript leaves no doubt that Plaintiff was given a full and fair opportunity to litigate the issue of whether his injuries arose in the course of his employment at Defendant's premises at the Workers' Compensation hearing. This transcript is proof that Plaintiff had competent counsel to represent him at the hearing as his attorney was from the same firm as in his personal injury case. Further, Plaintiff was given the opportunity to testify on his own behalf; call witnesses on his own behalf had he chosen to do so; had the opportunity to cross-examine witnesses from his employer; and could introduce documents like the annexed hospital record. In light of all of the above, it is clear that Plaintiff was given his "day in Court" at this prior hearing.

Finally, there is no basis to find that any new evidence would be submitted at the trial of this action other than what was exchanged or identified in the Workers' Compensation case. Instead, Plaintiff has not identified any witnesses in the lawsuit that would be different than those who already testified before the Workers' Compensation Board in his testimony, nor on this issue, it must be noted that the lone eyewitness identified by Plaintiff, Jose Pena, testified at the Workers' Compensation hearing and denied having any knowledge of the alleged accident. As there is no possible new evidence which would somehow change the earlier result and Plaintiff was given more than a full and fair opportunity to litigate the issue of whether he had a work-related accident, he cannot possibly meet his burden in proving he did not have a full and fair opportunity to litigate his claim of whether he had a work-related accident. It must also be noted that Plaintiff's counsel at the Workers' Compensation hearing is from the same firm as Plaintiff's counsel in the present case.


CONCLUSION

As Plaintiff claims in his Complaint that he was injured while working at the premises owned and operated by Defendants and failed to provide him with a safe place to work, this finding of law by the Workers' Compensation Board must be given preclusive effect under the doctrine of collateral estoppel in the present case. This is because, in order to prove any of his claims in the present case, he must first show that he had a work-related accident at Defendants' premises. This issue is thus "identical to an issue which was raised, necessarily decided, and material" to the claim that was already decided by the Workers' Compensation Board. Further, as set forth more fully below, Plaintiff had a "full and fair opportunity to litigate the issue" of whether he had a work-related accident before the Worker's Compensation Board as there was a full trial of this issue in the earlier action before the Worker's Compensation Board, at which Plaintiff was able to testify, call witnesses, introduce documents, and cross-examine witnesses. As both elements of the doctrine of collateral estoppel have been met, Plaintiffs Complaint must

be dismissed in its entirety as he will be unable to prove any of his claims at trial.

Accordingly, Defendants BROOME PROPERTY OWNER JV, LLC, TRITON CONSTRUCTION COMPANY, LLC, PLAZA CONSTRUCTION GROUP, INC., and PLAZA CONSTRUCTION, LLC, move for an Order pursuant to CPLR §3212, dismissing Plaintiff's Complaint in its entirety under the doctrine of collateral estoppel based on the Workers' Compensation Board's prior determination that Plaintiff did not have a work-related accident is GRANTED. This constitutes the Decision and Order of this Court.

ENTER:



BRUCE M. BALTER, J.S.C.
**HON. BRUCE M. BALTER
JUSTICE SUPREME COURT**

**FILED
DEC 16 2019
COUNTY CLERK
QUEENS COUNTY**