

**Dugan v Port Auth. of N.Y. & N.J.**

2019 NY Slip Op 34187(U)

October 22, 2019

Supreme Court, Bronx County

Docket Number: 23098/2012E

Judge: Paul L. Alpert

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: PART IA-29

-----X Index No.: 23098/2012E  
Christopher Dugan and Kathleen Dugan

Plaintiffs

-against-

**DECISION/ORDER**

Port Authority of New York and New  
Jersey, V.R.H. Construction Corp., and  
JFK International Air Terminal LLC.,

Defendants.

-----X  
Recitation, as required by CPLR §2219(a), of the papers considered in the review of the motion  
as indicated below:

<b>Papers</b>	<b>Numbered</b>
<b>Motion to Reargue by VRH Construction Corp.....</b>	<b>1</b>
<b>Affirmation in Opposition by Christopher Dugan and Kathleen Dugan.....</b>	<b>2</b>
<b>Affirmation in Opposition by JFK International Air Terminal, LLC.....</b>	<b>3</b>
<b>Reply Affirmation by VRH Construction Corp.....</b>	<b>4</b>

*Upon the foregoing cited papers the decision on this Order to Show Cause are decided as follows:*

On March 5, 2019, this court denied the defendant VRH Construction Corp.’s (hereinafter “VRH”) motion for summary judgment to dismiss the plaintiff’s claims under Labor Law §§ 200 and 241 (6). VRH now moves to reargue the court’s decision claiming the court misapprehended the facts and the law. The plaintiff and the defendant JFK International Air Terminal, LLC ( hereinafter “JFK” ) oppose the motion.

VRH argues that since the court found that JFK did not delegate any authority to supervise or control the plaintiff’s work to VRH, it cannot be held liable for the plaintiff’s

injuries under Labor Law §§ 200 and 241 (6). VRH also claims that the court misapprehended the law when it applied the analysis applied in *Espinal v. Melville Snow Contractors, Inc.*, 98 NY2d 1356 (2002) and denied the motion for summary judgment for the claim under Labor Law § 200.

A motion seeking leave to reargue is addressed to the court's sound discretion and is granted only if it is shown that the court overlooked or misapprehended the facts or the law or was otherwise mistaken in its earlier decision; the motion does not allow re-argument of issues previously decided, or consideration of arguments different from those originally entertained (see, CPLR § 2221; William P. Pahl Equipment Corp. v. Kassis, 182 AD2d 22, 588 NYS2d 8, [1<sup>st</sup> Dept. 1992], *leave to appeal dismissed in part and denied in part*, 80 NY2d 1005, 592 NYS2d 665, 607 NE2d 812, *re-argument denied*, 81 NY2d 782, 594 NYS2d 714, 610 NE2d 387).

The court grants the defendant's motion to reargue and upon reargument adheres to its decision in all respects. The court did not overlook or misapply the law in denying the motion to dismiss the plaintiff's claim under the Labor Law § 241 (6). Labor Law § 241 (6) applies to all contractors, owners and agents. In the contract between JFK and VRH, JFK is designated as the owner and VRH is designated as the contractor. The court denied the defendant's motion to dismiss the plaintiff's claim under Labor Law § 241 (6) for the same reasons it denied JFK's motion for summary judgment. The court found that there was a question of whether the area where the plaintiff's injury occurred was a "working area" under 12 NYCRR 23-1.7 (e) (2) or if it was an area of stored debris under 12 NYCRR 23-2.1 (b) making VRH potentially liable for violating Labor Law § 241 (6).

The court was correct in its earlier decision denying that portion of defendant's motion seeking dismissal of the Labor Law § 200 claim. A further analysis of this claim which was omitted from the original decision is appropriate:

Labor Law § 200 is a codification of the common law duty imposed on an owner or general contractor to provide construction site workers with a safe place to work ( *Prevost v. One City Block, LLC.*, 155 AD3d 531 [2017] ). “Claims for personal injury under the statute and common law fall into two broad categories: those arising from an alleged defect or dangerous condition existing on the premises and those arising from an alleged defect or dangerous condition existing on the premises and those arising from the manner in which the work was performed” ( *Cappabianca v. Skanska USA Bldg. Inc.*, 99 AD3d 139 [ 2012 ] ). “Where an existing defect or dangerous condition caused the injury, liability attaches if the owner or general contractor created the condition or had actual or constructive notice of it” ( *Id.* at 144 ).

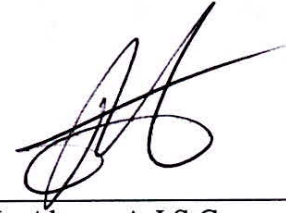
The court applied the holding in *Espinal* when it denied the defendant's motion to dismiss the plaintiff's claim under Labor Law. The court in *Espinal* determined that a contractor is potentially liable in tort to third persons where a contracting party, in failing to exercise reasonable care in the performance of its [contractual duties], launches a force or instrument of harm that results in the plaintiff's injury. In the record before the court the testimony given by Mr. Edge raises a question as to whether VRH's actions launched a force or instrument of harm that created the dangerous condition or had actual or constructive notice of the condition that resulted in the plaintiff's injury. VRH could be liable under Labor Law § 200 and the common law negligence claim since Labor Law § 200 is a codification of the common law duty imposed on an owner or general contractor to provide construction site workers with a safe place to work

(*Prevost v. One City Block, LLC.*, 155 AD3d 531 [2017]; see also *Wade v. Bovis Lend Lease LMB, Inc.*, 102 AD3d 476 [ 2013 ] ).

Accordingly, the defendant's motion to reargue is granted and upon reargument the court adheres to its earlier decision in all respects.

This constitutes the decision and order of the court.

Dated: October 22, 2019



Hon. Paul L. Alpert, A.J.S.C.

HON. PAUL L. ALPERT  
A.J.S.C.