

Doukoure v 422 Fulton Owner, L.L.C.

2019 NY Slip Op 35026(U)

July 8, 2019

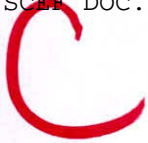
Supreme Court, Bronx County

Docket Number: Index No. 33672/2018

Judge: Lucindo Suarez

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.



Mtn. Seq. # 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 19

OMAR DOUKOURE,

Index No.: 33672/2018

Plaintiff,

- against -

DECISION and ORDER

422 FULTON OWNER, L.L.C., and
TRANSPARENT CONSTRUCTION LLC.,

Defendants.

PRESENT: Hon. Lucindo Suarez

The issue in Transparent Construction LLC.'s ("Transparent") motion to dismiss is whether it is a proper Defendant under Labor Law §§200, 240(1), 241(6), and whether it could be held liable under common-law negligence for Plaintiff's injuries. The court finds that Transparent sustained its *prima facie* burden with respect to its application to dismiss Plaintiff's Labor Law §§200, 240(1), 241(6), and related negligence claims.

Under Labor Law §§200, 240(1), or 241(6) a general contractor will be held liable if it was responsible for coordinating and supervising the entire construction project and was invested with a concomitant power to enforce safety standards and to hire responsible contractors. *See Kosovrasti v. Epic (217) LLC*, 96 A.D.3d 695, 948 N.Y.S.2d 260 (1st Dep't 2012); *see also Temperino v. DRA, Inc.*, 75 A.D.3d 543, 904 N.Y.S.2d 767 (2d Dep't 2010). In order to hold a general contractor absolutely liable for a violation of Labor Law §§200, 240(1), or 241(6) there must be a showing that it had the authority to supervise and control the work giving rise to these duties. *Id.*

Here, Plaintiff's injuries occurred while he was working on a construction site and he

tripped and fell on construction debris. Transparent contended that it could not be held liable under Labor Law §§200, 240(1), or 241(6) because its role at the construction site was limited to that of an expeditor to procure various New York City Department of Buildings permits. Further, Transparent argued that it was not contracted by the owner or the general contractor to perform any construction work at the subject construction site nor did it or its agents perform any work thereat on the day of loss or any time prior.

Transparent attached to its moving papers affidavits of Joseph P. Romano, a member of Transparent, who averred same. In addition, it attached its management services agreement with JRM Construction Management LLC. wherein Transparent's role was limited to providing consulting services, preparing applications and filing same with the New York City Department of Buildings to obtain permits for construction, and to provide strategic business advice.

In opposition, Plaintiff argued that the instant motion to dismiss is premature because discovery has not been conducted. Moreover, Plaintiff contended that Transparent has not proffered any documentary evidence to conclusively establish its defense as a matter of law. In addition, Plaintiff argued that it was undisputed that Transparent was the general contractor of the construction site because a billboard posted thereat listed Transparent as the general contractor.

The court finds Plaintiff's contentions unavailing. Transparent did provide sufficient documentary evidence to demonstrate that its role at the subject construction site was limited to providing expeditor services to procure various New York City Department of Building permits. This was evinced by Mr. Romano's affidavits and Transparent's management services agreement with JRM Construction Management LLC., which Mr. Romano was a signatory of. Plaintiff cannot avoid dismissal by speculating that discovery would provide some contradictory

evidence. *See Silverstein v. Westminster House Owners, Inc.*, 50 A.D.3d 257, 855 N.Y.S.2d 64 (1st Dep't 2008).

Likewise, Plaintiff's claim for common-law negligence must fail. Transparent established its *prima facie* burden that it was not responsible for creating the dangerous condition Plaintiff was injured by nor did it control the manner and means of Plaintiff's injury-producing work. *See Muqattash v. Choice One Pharm. Corp.*, 162 A.D.3d 499, 79 N.Y.S.3d 137 (1st Dep't 2018); *see also Cappabianca v. Skanska USA Bldg. Inc.*, 99 A.D.3d 139, 950 N.Y.S.2d 35 (1st Dep't 2012).

Therefore, the court finds that the documentary evidence presented conclusively established that Transparent was not responsible for coordinating and supervising the subject construction project nor was it invested with the power to enforce safety standards or hire responsible contractors. Thus, Plaintiff's Labor Law §§200, 240(1), 241(6) and related negligence claims are dismissed.

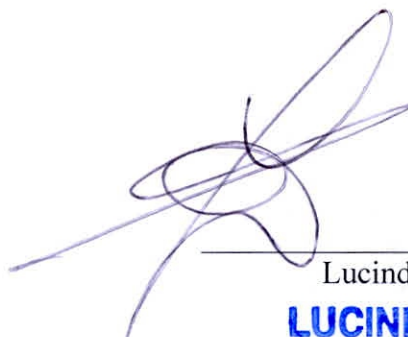
Accordingly, it is

ORDERED, that Transparent's motion to dismiss is granted; and it is further

ORDERED, that the Clerk of Court shall enter judgment accordingly.

This constitutes the decision and order of the court.

Dated: July 8, 2019



Lucindo Suarez, J.S.C.

LUCINDO SUAREZ, J.S.C.