

Ruiz v Parkchester S. Condominium, Inc.

2019 NY Slip Op 35054(U)

August 7, 2019

Supreme Court, Bronx County

Docket Number: Index No. 31690/2018

Judge: Lucindo Suarez

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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 19

Mtn. Seq. # 2

ABRAHAM RUIZ,

Plaintiff,

Index No.: 31690/2018

- against -

PARKCHESTER SOUTH CONDOMINIUM, INC.,
ABU SHAKOOR, SITA NAWAL, JOSEPH MILETO,
XINOS CONSTRUCTION CORP. and L&D
BUILDERS CORP.,

Defendants.

DECISION and ORDER

PARKCHESTER SOUTH CONDOMINIUM, INC.,
ABU SHAKOOR, SITA NAWAL, JOSEPH MILETO,

Third-Party Plaintiffs,

- against -

ROCK GROUP NY CORP.,

Third-Party Defendant.

PRESENT: Hon. Lucindo Suarez

The issue in Defendant L&D Builder Corp’s. (“L&D”) motion for summary judgment is whether it made a *prima facie* showing that Plaintiff’s complaint and cross-claims asserted against it should be dismissed. The court finds that L&D established its *prima facie* burden for a dismissal of Plaintiff’s complaint and all cross-claims as non-movants failed to raise any triable issues of fact with respect to same.

This action was commenced by Plaintiff for injuries he allegedly sustained while he was working on a construction site located at 1490 East Avenue Bronx, New York (“subject premises”). On the day of loss, Plaintiff purportedly fell off a sidewalk bridge-type scaffold to

the concrete below causing him to sustain injuries.

Here, L&D contended that it should be dismissed from this matter as: (1) L&D did not perform any work at the subject premises; (2) L&D was not contracted with nor was it otherwise hired or retained to perform any work at the subject premises; and (3) L&D was not involved in any way with the work allegedly being performed at the time of loss. L&D buttressed its arguments by attaching the affidavit of L&D's Vice President, Louis Bieler, who averred same.

In opposition, all the non-movants proffered similar arguments positing that the instant motion should be denied as it was prematurely made since discovery just commenced and limited discovery has been interchanged. Non-movants argued that discovery could yield information tying L&D in some manner to Plaintiff's injury-producing work. In addition, Plaintiff in his opposition attached an unverified printout of a work permit data form from the New York City Department of Buildings' ("DOB") website. Said document provided that the DOB issued a work permit to L&D's Vice President, Louis Bieler, to perform interior alterations to 1480 East Avenue Bronx, New York ("adjacent premises").

Plaintiff argued that DOB's work permit demonstrated that L&D was the general contractor for construction, renovation and/or demolition work done at the adjacent premises. Therefore, he reasoned that since the scaffold/sidewalk bridge that he fell from extended from 1480 East to 1490 East it could be possible that L&D was involved with his injury-producing work.

The court finds non-movants' argument with respect to discovery is unavailing. They cannot avoid summary judgment by speculating that discovery will provide the necessary evidence to demonstrate that L&D was involved with Plaintiff's injury-producing work, and the mere fact that depositions have not been held is an insufficient ground to excuse the deficiencies

in non-movants' proof. *See Baxter St. Condominium v. LPS Baxter Holding Co., LLC*, 126 A.D.3d 417, 5 N.Y.S.3d 52 (1st Dep't 2015).

Moreover, even if the court were to consider the unverified DOB work permit it limited L&D's scope of work to interior alterations to the adjacent premises. The permit did not authorize L&D to do any exterior work to the adjacent premises, which undermines Plaintiff's theory that L&D could possibly be involved with his injuries. Thus, it appears that the permit further supports L&D's averments.

Therefore, the court finds that Plaintiff does not possess a factual basis to assert Labor Law §§200, 240(1), and 241(6) claims against L&D nor do the co-defendants have viable cross-claims for contribution, common law indemnification or contractual indemnification against same requiring a dismissal of Plaintiff's complaint and co-defendants' cross-claims.

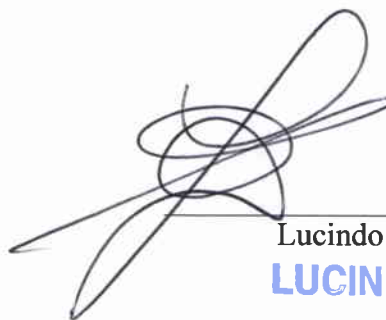
Accordingly, it is

ORDERED, that L&D's motion for summary judgment 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: August 7, 2019



Lucindo Suarez, J.S.C.

LUCINDO SUAREZ, J.S.C.