

Morales-Soto v Metropolitan Exposition Servs., Inc.
2020 NY Slip Op 30674(U)
March 6, 2020
Supreme Court, New York County
Docket Number: 157156/2012
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH

PART IAS MOTION 32

Justice

-----X

INDEX NO. 157156/2012

IRIS MORALES-SOTO,

MOTION DATE N/A, N/A, N/A

Plaintiff,

MOTION SEQ. NO. 007 008 009

- v -

METROPOLITAN EXPOSITION SERVICES, INC,
BUSINESS JOURNALS, INC.,

DECISION + ORDER ON
MOTION

Defendant.

-----X

METROPOLITAN EXPOSITION SERVICES, INC

Third-Party
Index No. 590612/2013

Third-Party Plaintiff,

-against-

BUSINESS JOURNALS, INC.

Third-Party Defendant.

-----X

METROPOLITAN EXPOSITION SERVICES, INC

Second Third-Party
Index No. 595015/2014

Second Third-Party Plaintiff,

-against-

NEW YORK CONVENTION CENTER OPERATING
CORPORATION, NEW YORK CONVENTION CENTER
DEVELOPMENT CORPORATION

Second Third-Party Defendants.

-----X

BUSINESS JOURNALS, INC.

Third Third-Party
Index No. 595042/2014

Third Third-Party Plaintiff,

-against-

NEW YORK CONVENTION CENTER OPERATING
CORPORATION, NEW YORK CONVENTION CENTER
DEVELOPMENT CORPORATION

Third Third-Party Defendants.

-----X

METROPOLITAN EXPOSITION SERVICES, INC

Fourth Third-Party
Index No. 595770/2017

Fourth Third-Party Plaintiff,

-against-

YON DESIGN, INC.,

Fourth Third-Party Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 007) 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 194, 196, 199, 200, 203, 206, 207, 208, 209, 210, 219, 220

were read on this motion to/for

JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 008) 161, 162, 163, 164, 165, 166, 193, 195, 197, 204, 211, 212, 213, 214, 221

were read on this motion to/for

JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 009) 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 198, 201, 202, 205, 215, 216, 217, 218, 222, 223

were read on this motion to/for

JUDGMENT - SUMMARY

The summary judgment motions sequence numbers 007, 008, and 009 are consolidated for disposition. For the reasons that follow, all are denied.

Background

This action arises out of an injury sustained by plaintiff, Iris Morales Soto, on September 20, 2011. On the day of the incident, plaintiff was working at the Moda Trade Show, a clothing event at the Jacob K. Javits Convention Center. At 4:45pm, 15 minutes before the scheduled end of the event, plaintiff was sitting in her employer's booth while track lighting was being dismantled from above the adjacent booth. The track lighting fell and struck plaintiff. The movants here are the New York Convention Center Operating Corporation and New York Convention Center Development Corporation (which operate the Javits Center, where the accident occurred),

Business Journals, Inc., (which produced the event at the Javits Center), and Metropolitan Exposition Services, Inc. (which supplied the lights for the event).

Motion Sequence No. 007

The second third-party defendants / third third-party defendants New York Convention Center Operating Corporation and New York Convention Center Development Corporation (collectively the “Javits Center”) moved for summary judgement for full contractual indemnification from BJI, and for summary judgment to dismiss BJI’s breach of contract counterclaim (NYSCEF Doc. No. 141).

Motion Sequence No. 008

The defendant / third party plaintiff / second third-party plaintiff / fourth third-party plaintiff Metropolitan Exposition Services, Inc. (“Metropolitan”) moved for summary judgment to dismiss all claims against it on the grounds that it did not install the light fixtures and did not control the electricians who were dismantling the light fixture when it fell (NYSCEF Doc. No. 162).

Motion Sequence No. 009

The defendant / third-party defendant / third third-party plaintiff Business Journals, Inc. (“BJI”) moved for summary judgment because it claims that it did not supervise the electricians, it did not owe a duty to the plaintiff, did not have constructive notice of the alleged dangerous condition, and did not create the condition (NYSCEF Doc. No. 169).

Discussion

To be entitled to the remedy of summary judgment, the moving party “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case” (*Winegrad v New York Univ.*

Med. Ctr., 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such a prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id.*). When deciding a summary judgment motion, the court views the alleged facts in the light most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492, 955 NYS2d 589 [1st Dept 2012]).

Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court's task in deciding a summary judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d'Amiante Du Quebec, Ltee*, 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], *affd* 99 NY2d 647, 760 NYS2d 96 [2003]).

BJI's Motion for Summary Judgment

BJI's motion for summary judgment argues that, although it produced the event, it "did not hire, direct, control or supervise the work performed by the electricians in the Javits Center" (NYSCEF Doc. No. 170). BJI argues that the agreement between it and the Javits Center (NYSCEF Doc. No. 185) indicates that the Javits Center "reserves the exclusive right to supply the labor utilized within the center." However, section 15A of the agreement (the section from which BJI quotes) fully reads that the Javits Center "reserves the exclusive right to supply the labor utilized within the Center to perform any of the services described in Exhibit A." (Emphasis added). Exhibit A of the agreement reads "Contractor and exhibitor [here, BJI] must hire Javits labor to perform the following tasks...". As such, to the extent that BJI relies on the agreement to prove

that it did not hire the electricians, its argument is not entirely accurate because, according to the contract, it did hire the electricians. Even if the electricians were Javits Center employees, BJI still agreed to hire these particular electricians for the trade show.

BJI has not proven that it had no control over the electricians or their work in the event space during the hours of the event. BJI's vice present of operations, Sharon Lalloway, testified that if the electricians were taking the lights down prior to the end of the event, BJI would inform the foreman about it and get them to stop (NYSCEF Doc. No. 184 at 46). Ms. Lalloway also testified that Curiosity Works, the floor manager of the show, "should" notify BJI if they saw the electricians dismantling lights while an exhibitor was still in the booth, or next to the booth (*id.* at 54). Because persons "should" be reporting to BJI if they witnessed the electricians acting inappropriately, a jury could find that BJI had control over them.

Taking BJI's argument to its logical conclusion, BJI essentially argues that if the electricians were to start breaking down the lights at noon instead of 4:45pm, BJI would have been powerless to stop them. BJI has also not proven that it did not hire the electricians.

Therefore, there is a triable issue of fact as to who was in control of the electricians at the time of the accident and BJI's motion for summary judgment is denied.

The Javits Center's Motion for Summary Judgment

The Javits Center moves for summary judgment dismissing BJI's counterclaim and for contractual indemnification from BJI (NYSCEF Doc. No. 142). The Javits Center references the agreement between it and BJI, which indicates that Javits is entitled to indemnification from BJI except that "such indemnification shall not be effective to the extent that damage or injury results from the sole negligence, gross negligence or willful misconduct of the [Javits Center]" (NYSCEF Doc. No. 150). As explained above, this court finds that there is a triable issue of fact with respect

to who was in control of the electricians on the day of the incident. BJI may have hired the electricians, but they were “Javits labor” according to the contract. Because there is a triable issue of fact as to who is responsible for the electricians, and that party could possibly be the Javits Center, its motion for summary judgment is denied.

This court denies the Javits Center’s request for summary judgment on BJI’s breach of contract claim for the same reasons. Because the jury must determine who is the culpable party, this court cannot determine as a matter of law whether the contract was breached.

Metropolitan’s Motion for Summary Judgment

Metropolitan, which supplied the lights, moves for summary judgment claiming that it has no connection with installing or dismantling the lights. Metropolitan relies on the deposition transcript of its witness, Leonardo Servedio, to support its claim that it provided the lights but did not install them (NYSCEF Doc. No. 165 at 10). Mr. Servedio testified that the light fixtures were installed by “electricians at the Javits Center” and Metropolitan “did not hire the electricians” (*id.* at 22).

BJI opposes and argues that Metropolitan was responsible for hiring the electricians to install the lights. BJI’s witness, Sharon Lalloway, testified that “Metropolitan would hire labor through the Javits Center to install the booth. The lights, as part of the booth package, were installed by the electricians at the Javits Center. That goes for dismantle too” (NYSCEF Doc. No. 184). This court also notes there is no mention of which party is responsible for the installation and dismantling of the lights in the contract between Metropolitan and BJI (NYSCEF Doc. No. 154). If there is a contract between Metropolitan and Javits Center, it has not been submitted on this motion.

There is conflicting testimony as to who hired the electricians to install and dismantle the lights. Because there is a triable issue of fact as to who hired the electricians to install and dismantle the lights remains, and Metropolitan's motion for summary judgment is denied.

Accordingly, it is hereby

ORDERED that motions sequenced 007, 008, and 009 are denied.

3/6/2020

DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: