

Fuller v KFG Land I, LLC
2020 NY Slip Op 33984(U)
December 4, 2020
Supreme Court, New York County
Docket Number: 158511/2016
Judge: Kathryn E. Freed
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. KATHRYN E. FREED **PART** **IAS MOTION 2EFM**

Justice

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INDEX NO. 158511/2016

ELBERT FULLER and LYDIA SEALES,

Plaintiffs,

MOTION SEQ. NO. 004

- v -

KFG LAND I, LLC,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 125, 126

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER.

In this personal injury action, defendant KFG Land I, LLC moves, pursuant to CPLR 2221(d), for reargument of that branch of its motion for summary judgment seeking to dismiss plaintiff's Labor Law section 200 and common law negligence claims. Plaintiff opposes the motion. After consideration of the parties' contentions, as well as a review of the relevant statutes and case law, the motion is decided as follows.

By order entered July 8, 2019, this Court granted defendant's motion for summary judgment to the extent of dismissing plaintiff's claims pursuant to Labor Law sections 200, 240(1), and 241(6). Doc. 107. However, this Court denied that branch of defendant's motion seeking dismissal of plaintiff's common law negligence claim on the ground that defendant failed to establish that it did not create or have actual or constructive notice of the condition which caused plaintiff's alleged injury. This Court also denied plaintiff's cross motion seeking summary judgment on its Labor Law section 240(1) claim and discovery sanctions.

Defendant now moves to reargue the denial of that branch of its motion which sought dismissal of plaintiff's common law negligence claim.¹

Although generally an out-of-possession owner is not liable for injuries resulting from the condition of leased premises, "an owner may be held liable in common-law negligence and under Labor Law § 200 if it had control over the work site and either created the dangerous condition that caused the accident or had actual or constructive notice of the dangerous condition that caused the accident" (*Azad v 270 5th Realty Corp.*, 46 AD3d 728 [2nd Dept 2007], quoting *Keating v Nanuet Board of Education*, 40 AD3d 706 [2nd Dept 2007]; *Dirschneider v Rolex Realty Company, LLC*, 157 AD3d 538 [1st Dept 2018]).

Morgan v Am. Home Assur. Co. Inc., 2019 NY Slip Op 33132[U], *4 (Sup Ct, NY County 2019).

Here, Article XII of the lease between defendant, as owner, and KFG Operating I, LLC ("tenant") required tenant, inter alia, to "maintain the [premises] in a good, safe and working condition" and to "make any and all necessary repairs" to the premises. Doc. 34. It also provided that tenant "assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the [premises]." Doc. 34. Since defendant had no control over the work site, this Court should have granted it summary judgment dismissing plaintiff's common law negligence claim.

Therefore, in light of the foregoing, it is hereby:

¹ Although defendant's notice of motion seeks reargument of this Court's denial of the branch of its motion seeking summary judgment dismissing its Labor Law section 200 claim and its common law negligence claim, this Court dismissed the claim pursuant to Labor Law section 200 and thus that branch of the instant motion is moot.

ORDERED that the motion of defendant for leave to reargue the branch of its motion for summary judgment seeking to dismiss plaintiff's claim for common law negligence is granted; and it is further

ORDERED that, upon reargument, this Court vacates that portion of its prior order, entered July 18, 2019, which denied the branch of defendant's motion seeking to dismiss plaintiff's common law negligence claim, and grants defendant's motion for summary judgment as to the said cause of action; and it is further

ORDERED that plaintiff's claim for common law negligence is dismissed and, as a result, the complaint is dismissed in its entirety as against defendant, with costs and disbursements to defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the branch of the motion seeking reargument of defendant's motion to dismiss plaintiff's Labor Law section 200 claim is denied as moot; and it is further

ORDERED that, within 20 days of entry of this order, defendant is to serve a copy of this order, with notice of entry, on plaintiff's attorney, as well as on the Clerk of the Court and the Clerk of the General Clerk's Office; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that this constitutes the decision and order of the court.

12/4/2020

DATE

CHECK ONE:

X

CASE DISPOSED

GRANTED

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DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

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KATHRYN E. FREED, J.S.C.

NON-FINAL DISPOSITION

X

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☐

OTHER

☐

REFERENCE