

Lopez v Franciosa Props., LLC

2020 NY Slip Op 35509(U)

March 16, 2020

Supreme Court, Bronx County

Docket Number: Index No. 20049/2019

Judge: Lucindo Suarez

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

Mtn. Seq. # 2

OSCAR LOPEZ,

Index No.: 20049/2019

Plaintiff,

- against -

DECISION and ORDER

FRANCIOSA PROPERTIES, LLC, ARTHUR
FRANCIOSA, FRANCIOSA COMPLEX, LLC, GREEN
CASTLE A. MGMT. CORP., FUSCO TRUST, and
CONTI'S CUSTOM CAKES, INC. d/b/a
CONTI'S PASTRY SHOPPE,

Defendants.

PRESENT: Hon. Lucindo Suarez

At issue is whether Defendant Fusco Trust made a *prima facie* showing that Plaintiff's complaint should be dismissed pursuant to CPLR §3212. This court finds that Fusco Trust established its *prima facie* burden for a dismissal as Plaintiff failed to raise any triable issues of fact to preclude same.

Fusco Trust seeks to be dismissed from this action as it alleges that it is not a proper Defendant under Plaintiff's Labor Law claims or related common law negligence claim. Labor Law §§240 and 241 imposes a nondelegable duty upon an owner, general contractor or their agents to conform to the requirement of those Labor Law provisions. *See Russin v. Louis N. Picciano & Son*, 54 N.Y.2d 311, 429 N.E.2d 805, 445 N.Y.S.2d 127 (1981). Moreover, an owner may be liable under the common law or under Labor Law §200 for a dangerous condition arising from either the condition of the premises or the means and methods of the work. *See Maggio v. 24 W. 57 APF, LLC*, 134 A.D.3d 621, 24 N.Y.S.3d 1 (1st Dep't 2015).

Here, Fusco Trust submits an affidavit from its trustee, Angela Fusco, averring the

following: (1) that it was the owner of 786 Morris Park Avenue and it attached a deed evincing ownership over same; (2) that Fusco Trust had no ownership interest in 784 Morris Park Avenue; (3) that on the day of loss there was no construction work taking place at 786 Morris Park Avenue nor did Fusco Trust engage the construction services of Plaintiff or his employer; and (4) that Fusco Trust did not supervise or control the means and methods of Plaintiff's injury-producing work nor did it supply any of Plaintiff's work materials.

Moreover, Fusco Trust relies upon the affidavit of Arthur Franciosa, a member of Franciosa Properties LLC., the owner of 784 Morris Park Avenue who averred the following: (1) that there was no joint construction project occurring between the properties located at 784 and 786 Morris Park Avenue; and (2) that Franciosa Properties LLC. was the entity that retained Plaintiff's employer solely to perform construction work at 784 Morris Park Avenue and it attached a check representing the payment it provided to Plaintiff's employer for said work. Therefore, Fusco Trust argues that because it established that it was not the owner of 784 Morris Park Avenue, its general contractor or agent no liability can be imputed against it.

In opposition, Plaintiff contends that his affidavit establishes that Fusco Trust is a proper Defendant under the Labor Law as it was the fee simple owner of 786 Morris Park Avenue the location where he set up his ladder to complete stucco work to the exterior wall of 784 Morris Park Avenue. In addition, Plaintiff argues that the instant summary judgment motion is premature due to the nascent stage of discovery in this matter.

This court finds that the public policy guiding the Labor Law is to impose liability upon an owner or contractor who has failed to provide any safety devices for workers at a building worksite, and the absence of such devices is the proximate cause of injury to a worker. *See Zimmer v. Chemung County Performing Arts, Inc.*, 65 N.Y.2d 513, 482 N.E.2d 898, 493

N.Y.S.2d 102 (1985). Thus, based on the language of the statute and its purpose as articulated by the New York State Legislature, an owner or contractor under these circumstances is absolutely liable in damages for injuries sustained by such worker. *Id.*

Therefore, this court finds that Plaintiff failed to produce any evidence to raise triable issue of fact that 786 Morris Park Avenue was a “worksite” for the purposes of the Labor Law. Plaintiff did not contest that Franciosa Properties LLC.’s was the entity that retained his employer to exclusively perform construction work at its property, 784 Morris Park Avenue. Furthermore, Plaintiff’s affidavit also tacitly conceded that at the time of loss he was installing stucco only to the exterior wall of 784 Morris Park Avenue. His affidavit did not aver he was completing any construction work at 786 Morris Park, that his employer was contracted to perform same or that anyone from Fusco Trust supervised or controlled his injury producing-work. In addition, Plaintiff failed to demonstrate that Fusco Trust had any notice actual or otherwise that the concrete in the rear of 786 Morris Park Avenue was slippery. As such, this court finds that Plaintiff’s sole act of setting up his ladder on 786 Morris Park Avenue to allow him to gain access to the exterior wall of 784 Morris Park Avenue to complete construction work thereat cannot give rise to a Labor Law claim against Fusco Trust.

Moreover, even if Defendant Conti’s Custom Cakes, Inc. d/b/a Conti’s Pastry Shoppe who operated out of 786 Morris Park Avenue provided Plaintiff with the ladder he fell from that standing alone is insufficient to create an agency relationship. *See Blake v. Neighborhood Hous. Servs. of NY City, Inc.*, 1 N.Y.3d 280, 803 N.E.2d 757, 771 N.Y.S.2d 484 (2003). Therefore, this court finds that Fusco Trust is not a proper Defendant under the Labor Law as it established that it was not the owner of 784 Morris Park Avenue, its general contractor or agent.

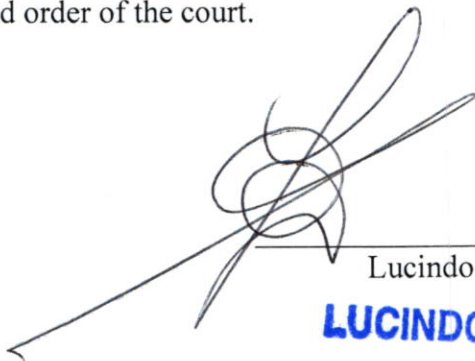
Accordingly, it is

ORDERED, that Defendant Fusco Trust's summary judgment motion seeking the dismissal of Plaintiff's complaint 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: March 16, 2020



Lucindo Suarez, J.S.C.

LUCINDO SUAREZ, J.S.C.