

**Anastasio v Port Auth. of N.Y. & N.J.**

2020 NY Slip Op 35630(U)

April 30, 2020

Supreme Court, Bronx County

Docket Number: Index No. 31677/2017E

Judge: Lucindo Suarez

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

Mtn. Seq. 2

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VICTOR ANASTASIO,

Index No.: 31677/2017E

Plaintiff,

- against -

**DECISION and ORDER**

PORT AUTHORITY OF NEW YORK AND NEW  
JERSEY,

Defendant.

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PRESENT: Hon. Lucindo Suarez

The issues in Defendant’s motion to dismiss Plaintiff’s complaint are whether New York or New Jersey law applies and whether Defendant has met its *prima facie* burden to warrant a dismissal of Plaintiff’s common law negligence claim. This court finds New Jersey law applies and Defendant has met its *prima facie* burden.

Plaintiff, a resident of New York, Richmond County, was injured while inspecting and repairing an elevator located in Terminal B of Newark Airport. The airport located in New Jersey is on land owned by Defendant Port Authority of NY and NJ. Plaintiff alleges he slipped while exiting an elevator pit via a wall-mounted ladder. This court previously determined and was thereafter affirmed that New York is the proper forum to bring this action. In addition, this court previously dismissed Plaintiff’s causes of action sounding in Labor Law §§200, 240 and 241. The only remaining cause of action for this court to determine is common-law negligence. While this court determined the proper forum, it did not determine which State law should apply. The court now answers this question.

Under New York's choice of law rules, where the parties share a common State of domicile, an analysis will determine which State's law, that of the common domicile or that of the situs, has the predominant interest. *Aviles v. Port Auth. of N.Y. & N.J.*, 202 A.D.2d 456, 15 N.Y.S.2d 668 (1st Dep't 1994). Here, it is undisputed that Defendant is a bi-state agency with dual domiciles, thus the parties share a common domicile. Therefore, where the laws in conflict deal with regulation of standards of conduct, the *lex loci delicti* will generally predominate, in the interest of deferring to that jurisdiction for protection of reasonable expectations with regard to similar future conduct. *Id.* The question then arises whether the law governing liability for negligence at the worksite is a rule of conduct. *Id.* This court determines that common law negligence inherently establishes a safety standard of worksite conduct. Therefore, this court finds that since the incident occurred in New Jersey and the parties share the same State of domicile, New Jersey law applies.

Under New Jersey law, as a general rule, a landowner has a non-delegable duty to use reasonable care to protect invitees against known or reasonably discoverable dangers. However, an owner is not responsible for harm which occurs to an employee as a result of the very work which the employee was hired to perform. A landowner, of course, will not escape liability if the landowner retains control over the manner and means by which the work is to be performed, [or] where the work constitutes a nuisance *per se* or where one knowingly engages an incompetent contractor. *Dawson v. Bunker Hill Plaza Assocs.*, 289 N.J. Super. 309, 673 A.2d. 847 (App. Div. 1996).

Plaintiff worked for KONE, a company that provided elevator maintenance and repair services at Newark Liberty International Airport. KONE contracted with Defendant to provide services including cleaning up oil from a piston jack in the pit of the Airport. On the date of his

injury, Plaintiff was performing the very same service he was contracted for. Prior to completing the oil clean up, he exited the pit for his lunch break, via wall-mounted ladder when he slipped and fell from the second or third rung. Plaintiff now asserts a claim for common law negligence against Defendant in that the oil was a slipping hazard and that the space between the pit's wall and the ladder was insufficient for his foot to be fully placed on the ladder.

The record is devoid of any indication that KONE is an incompetent contractor. KONE was previously hired by Defendant and in fact, Mr. Grassi, a supervisor for the Defendant testified that KONE is a responsible company and has been the Defendant's contractor for a number of years.

As for Plaintiff's second point of contention, Defendant provided this court with pictures indicating the space between the ladder and the wall as well as an expert affidavit. It is clear from the pictures attached and the documentary evidence provided that there was sufficient space between the ladder and the wall for Plaintiff's foot. Plaintiff's own purported expert indicated that there was more space than usually required between the wall and the ladder.

Plaintiff concedes that Defendant did not control the manner and means of his work. The clean-up of the oil in the elevator pit was the required task contracted for between KONE and the Defendant. Therefore, this court finds that Defendant had no duty to protect an employee of KONE, an independent contractor, from the very hazard created by doing the contracted work. In addition, this court finds that the mere act of cleaning up oil is regularly part of routine elevator maintenance work and is not a nuisance *per se*. See *Majestic Realty Associates, Inc. v. Toti Contracting Co.*, 153 A.2d 321 (N.J. 1959). As such, this court finds that Defendant has met its *prima facie* burden and Plaintiff's complaint is dismissed.

Accordingly, it is

ORDERED, that Defendant's motion to dismiss is granted and Plaintiff's complaint is dismissed in its entirety.

This constitutes the decision and order of the court.

Dated: April 30, 2020

Lucindo  
Suarez

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Lucindo Suarez, J.S.C.