

Simmonds v Perfetto Enters. Co., Inc.

2020 NY Slip Op 35751(U)

November 24, 2020

Supreme Court, Kings County

Docket Number: Index No. 508417/2019

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 73

Index No.: 508417/2019
Motion Date: 10/19/20
Mot. Seq. No.: 1

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AGNES SIMMONDS,

Plaintiffs,

-against-

DECISION/ORDER

PERFETTO ENTERPRISES CO., INC., NY SHERY
CONSTRUCTION CORP., THE BROOKLYN UNION GAS
COMPANY D/B/A NATIONAL GRID NY, CABLEVISION
SYSTEMS NEW YORK CITY CORPORATION,
DIFAZIO INDUSTRIES LLC, KEYSpan ENERGY
DELIVERY N.Y.C, VERIZON NEW YORK INC.
and TRI-CIRCLE ENTERPRISES, INC.,

Defendants.
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The following papers numbered 1 to 3 were read on this motion:

Papers:	Numbered:
Notice of Motion/Order to Show Cause	
Affirmations/Affidavits/Exhibits/Memo of Law.....	1
Answering Affirmations/Affidavits/Exhibits/Memo of Law.....	2
Reply Affirmations/Affidavits/Exhibits/Memo of Law.....	3

Upon the foregoing papers, the motion is decided as follows:

In this action to recover damages for personal injuries, the defendant, PERFETTO ENTERPRISES CO., INC., [hereinafter “Perfetto”] moves for an Order: 1) Dismissing all claims and cross-claims as to Perfetto pursuant to CPLR 3211(a)(1) based on documentary; 2) Pursuant to CPLR 3212, for summary judgment on the grounds that there are no triable issues of fact as to Perfetto’s liability; 3) Directing the Clerk of the Court to enter Judgment in favor of the moving defendant and to delete this defendant’s name from the caption of this action; and 4) For such other and further relief as this Court deems just and proper.

The plaintiff commenced this action claiming that on April 17, 2016, she was seriously injured when she fell exiting a commuter bus onto a roadway located between East 18th street and East 19th Street with an address known as 1810 Cortelyou Road, Brooklyn, New York. Plaintiff claims that defendant Perfetto performed work on the roadway in the area of the accident prior to the accident which created the dangerous and defective condition that caused her accident.

Perfetto claims it did not start work at the premises until approximately six (6) months after the alleged accident and did not have any employees, agents or servants onsite at the premises on the date of plaintiff alleged accident. In support of the motion, defendant Perfetto submitted the affidavit of Claudio M. Perfetto Jr., the Vice President of Perfetto at the time of the accident, who averred that Perfetto did not start work at the premises until on or about October 2016, approximately six (6) months after the alleged accident and that Perfetto did not have any employees, agents or servants onsite at the premises on April 17, 2016, the date of the alleged accident.

It is axiomatic that to succeed on a motion for summary judgment, the moving party must first “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” (*Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572, citing *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642; *see also* CPLR 3212[b]). If the movant makes such a showing, in order to defeat the motion “the burden shift[s] to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*Alvarez*, 68 N.Y.2d at 324, 508 N.Y.S.2d 923, 501 N.E.2d 572). If the

movant fails to make such a showing, the motion must be denied regardless of the sufficiency of the opposing papers” (*Vega*, 18 N.Y.3d at 503, 942 N.Y.S.2d 13, 965 N.E.2d 240 [internal quotation marks and alterations omitted]). In deciding a motion for summary judgment, the evidence must be viewed in the light most favorable to the party opposing the motion and all reasonable inferences must be drawn in that party’s favor (*see McNulty v. City of New York*, 100 N.Y.2d 227, 230, 762 N.Y.S.2d 12, 792 N.E.2d 162; *Boyd v. Rome Realty Leasing Ltd. Partnership*, 21 A.D.3d 920, 921, 801 N.Y.S.2d 340; *Erikson v. J.I.B. Realty Corp.*, 12 A.D.3d 344, 783 N.Y.S.2d 661).

Here, Mr. Perfetto’s affidavit, which demonstrated that Perfetto did not perform any work in the area of the accident until approximately 6 months after the accident, was sufficient to demonstrate Perfetto’s prima facie entitlement to summary judgment. Defendant VERIZON NEW YORK, INC. (“VERIZON”) and the plaintiff, the only parties that opposed the motion, failed to raise a triable issue of fact.

Accordingly, it is hereby

ORDERED that defendant Perfetto’s motion for summary judgment dismissing all claims and cross-claims is **GRANTED**. The other branches of the motion are **DENIED** as moot.

This constitutes the decision and order of this Court.

Dated: November 24, 2020



PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020