

Celentano v New York Univ. Sch. of Medicine

2021 NY Slip Op 33156(U)

December 15, 2021

Supreme Court, Queens County

Docket Number: Index No. 718393/2018

Judge: Pam Jackman Brown

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**NEW YORK STATE SUPREME COURT
COUNTY OF QUEENS - IAS Part 19**

SHORT FORM ORDER

**Present: HONORABLE PAM JACKMAN BROWN
Justice**

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RALPH CELENTANO,

Plaintiff,

-against-

**Index #718393/2018
Mot Seq #: 002**

**NEW YORK UNIVERSITY SCHOOL OF MEDICINE,
NEW YORK UNIVERSITY, NYU HOSPITALS CENTER,
NYU LANGONE HOSPITALS and SKANSKA USA
BUILDING, INC.,**

Defendants.

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SKANSKA USA BUILDING, INC.,

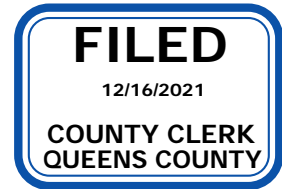
Third-party Plaintiff,

-against-

CURTIS PARTITION CORPORATION,

Third-party Defendant.

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Recitation, as required by CPLR § 2219(a), of the following e-filed papers numbered read on motion 002 e-filed by Defendant requesting an Order (1) Pursuant to CPLR § 3212 granting Defendants NEW YORK UNIVERSITY SCHOOL OF MEDICINE, NEW YORK UNIVERSITY, NYU HOSPITALS CENTER, and NYU LANGONE HOSPITALS summary judgment dismissing Plaintiff's Complaint and all cross-claims against it; (2) Pursuant to CPLR § 3212 granting Defendants NEW YORK UNIVERSITY SCHOOL OF MEDICINE, NEW YORK UNIVERSITY, NYU HOSPITALS CENTER, and NYU LANGONE HOSPITALS summary judgment on their cross-claims against Defendant SKANSKA USA BUILDING, INC.; and (3) Granting such other, further, and different relief as this Honorable Court may deem just, proper and equitable; and the cross motion of Third-Party Defendant, seeking an Order, pursuant to CPLR §3212(a), et. seq., granting summary in favor of Curtis dismissing the Complaint of plaintiff, Ralph Celentano, the Third-Party Complaint of third-party plaintiff, Skanska USA Building, Inc., as well as any and all cross-claims and/or third-part claims against Curtis on the grounds that there exists no triable issue of fact as to Curtis' liability and it is entitled to judgment as a

matter of law; and (b) Granting Curtis such other, further and different relief as this Court may deem just and proper.

	PAPERS E-FILED NUMBERED	
	Papers	Exhibits
Notice of Motion, Affirmation/Affidavit in Support (Defendant NYU Entities)	63-65	66-78, 80-83
Affirmation/Affidavit in Opposition, Notice of Cross Motion, Memorandum of Law (Defendant Curtis)	84-87	-
Affirmation/Affidavit in Partial Opposition to Motion and in Partial Opposition to Cross Motion Memorandum of Law (Defendant Skanska)	90,94-95,97	91-93,96
Affirmation/Affidavit in Opposition to Motion and Cross Motion and Affidavit of Service (Plaintiff)	98,100	99
Reply Affirmation (Defendant Curtis)	101	-
Reply Affirmation (Defendant NYU Entities)	102	-

Upon the papers listed above, both motions are decided in accordance with this Decision/Order.

Plaintiff commenced the underlying action by filing a Summons and Complaint on July 17, 2018, to recover from alleged injuries that he sustained during an alleged workplace accident that occurred on July 19, 2018. Plaintiff was employed by Third Party Defendant, Curtis Corporation (hereinafter referred to as “Defendant Curtis”) a subcontracting company contracted to work for Skanska USA Building Inc. (hereinafter “Defendant Skanska”). Defendant Skanska entered into an agreement with Defendant NYU Langone Hospitals, NYU School of Medicine, Defendant NYU Hospitals Center, and Defendant New York University (all hereinafter referred to as Defendant NYU Entities”) to complete construction work. Plaintiff was working inside one of Defendant NYU Entities’ buildings located at 341 E. 25th Street, New York, NY (hereinafter referred to as “The Premises”), when his foot allegedly got caught on rolled tape on the floor. Plaintiff was carrying tools and a ladder up the stairs from the second floor to the sixth floor. He allegedly went to turn the corner when he felt a pop in his knee. He claims his heel got stuck on luminescent tape that was supposed to be adhered to the floor. Plaintiff claims, because of the rolled tape, he sustained injuries.

The Court now turns to the instant motion in chief filed by Defendant NYU Entities. Defendant NYU Entities moves for summary judgement asking the Court to dismiss Plaintiff’s Complaint and any remaining cross claims against Defendant NYU Entities. They also request that the Court grant summary judgement on their cross-claims against Defendant Skanska Building.

In an application for summary judgment, movant must show prima facie entitlement to judgment as a matter of law by producing sufficient admissible evidence demonstrating the absence of any material factual issues (*CPLR 3212 [b]; Alvarez v. Prospect Hosp.*, 68 NY2d 320, 324, 501 N.E.2d 572, 508 N.Y.S.2d 923 [1986]). Failure

to make such a showing requires denying the motion, regardless of the sufficiency of any opposition (*Vega v. Restani Constr. Corp.*, 18 NY3d 499, 503, [2012]). The opposing party overcomes the movant's showing only by introducing "evidentiary proof in admissible form sufficient to require a trial of material questions" (*Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]).

Defendant NYU Entities submitted the transcript of Sergio Mencia (hereinafter referred to as "Mencia"), who is the Tenant Coordinator of the building located on The Premises. He is employed by Defendant NYU Entities. Mencia testified that he does "rounds" every morning to check for fire safety issues. Although he testified that he did not see anything while he completed his rounds, he did not testify as to the time that he completed his "rounds"

Norman Pearson (hereinafter referred to as "Pearson") testified as the witness for Defendant Curtis. He testified that although he was in the building when the alleged accident occurred, he was not present to witness the accident. When asked about any complaints presented to him about the condition of the work site, Pearson replied "Not that I remember". Pearson's memory of the date and surrounding circumstances of the alleged accident were very vague as he could not remember the majority of the details pertaining to the date and time in question absent the accident report. The majority of the testimony taken from Pearson was in the form of hypothetical questions which does not give any weight to knowledge.

Further, there was testimony provided by Bruce Redden (hereinafter referred to as "Redden") who works for Defendant Skanska, stating that there was no lifting of the tape the morning Plaintiff went into work. However, the testimony provided did not specify the time Redden performed his walk through. The Court has nothing before it providing what time Redden comes to work and performs his daily walk through when he is on site. The alleged accident occurred at approximately 7:52 a.m. Although there was testimony regarding the usual walk through that was performed by the supervisor staff, there was no testimony regarding any activity between the time the initial inspection was conducted and the time of the alleged accident. Further, Redden stated he only looked at the tape. He did not do anything else to ensure that it was not loose. Redden testified that he does not know exactly how the injury occurred. He stated that he can only guess what happened on the day and time in question. This leaves a question of fact.

Defendant NYU Entities provided a report from James W. Fordham (hereinafter referred to as "Fordham"), a professional engineer. Despite Fordham's report, the condition of the work site after the alleged incident nor the subsequent review and analysis of the work site by a specialist cannot accurately reflect the condition of the stairway on the date and time in question. Further, Fordham reviewed pictures and the work site in 2020, nearly two years after the alleged accident. Therefore, his observation was not based on the condition of the work site on the day and time of the alleged

accident and has not credible weight to the sum and circumstances of the underlying matter.

Within the EBTs, it was testified multiple times that the elevators were not in working condition on the day in question, were often not reliable and out of service. Construction workers within the building were required to travel throughout the building via the staircase. It is not clear who was responsible for the stairway and the suspected cause of the injury which appears to be the tape on the floor. Plaintiff argues that the tape was the cause of the injury. Further, multiple individuals claimed to have walked through the area that morning but did not see the tape lifted that allegedly caused the injury. Curiously, Defendant Skanska believed the tape did not cause the injury.


The only person that has actual knowledge of the condition at the time and place where the alleged accident occurred is Plaintiff. It is undisputed that no one else was in the stairway with Plaintiff when he was injured. Further, as each Defendant had employees monitoring the work site, it is unclear as to who had the responsibility of ensuring that The Premises was safe and clear. Therefore, Defendant NYU Entities failed to sustain its burden to show there is no issue of fact for the motion seeking summary judgement. Accordingly, the motion is denied.

The Court now turns to the cross motion filed by Defendant Curtis. Defendant Curtis within the cross-motion requests the Court dismiss the pending claim against them. Defendant Curtis argues Defendant Skanska is responsible for indemnification of Defendant Curtis. In reviewing the contract between Defendant Skanska and Defendant Curtis, in order for indemnification of Defendant Curtis to occur, there must be a determination that Defendant Curtis was not negligent. Curtis stated that they did not inspect the staircase but provided testimony of Redden who was involved in monitoring the work site. Given the conflicting testimony and the uncertainty of the workplace condition immediately prior to the time the alleged accident occurred, the cross motion is denied.

Accordingly, Defendant NYU Entities' motion for summary judgment is denied. Further, Defendants Curtis' cross motion is also denied.

This constitutes the Decision and Order of the Court determining motion sequence # 002.

Dated: December 15, 2021
Jamaica, NY



Hon. Pam Jackman Brown, JSC