

Depumarejo v 319 Schermerhorn Prop. Owner, LLC
2022 NY Slip Op 33291(U)
September 29, 2022
Supreme Court, New York County
Docket Number: Index No. 160196/2017
Judge: Lyle E. Frank
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

-----X

MANUEL DEPUMAREJO,
Plaintiff,

INDEX NO. 160196/2017

MOTION DATE N/A, N/A

MOTION SEQ. NO. 002 003

- v -

319 SCHERMERHORN PROPERTY OWNER, LLC, PARK
DEVELOPERS & BUILDERS, INC., PARK PREMIUM
ENTERPRISE, INC., HORIZON GROUP LLC, BRITT
REALTY DEVELOPMENT CORP., BRITT REALTY
LLC, RED HOOK CONSTRUCTION GROUP-LL, LLC,

DECISION + ORDER ON
MOTION

Defendant.

-----X

319 SCHERMERHORN PROPERTY OWNER, LLC
Plaintiff,

Third-Party
Index No. 595213/2019

-against-

RED HOOK CONSTRUCTION GROUP II, LLC,
Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 88, 89, 90, 91, 92,
93, 94, 95, 96, 123, 124, 126, 127, 128, 129, 134

were read on this motion to/for JUDGMENT - SUMMARY .

The following e-filed documents, listed by NYSCEF document number (Motion 003) 97, 98, 99, 100, 101,
102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122,
125, 130, 131, 132, 133

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER .

Defendants, 319 Schermerhorn Property Owner LLC, Britt Realty LLC and Red Hook
Construction Group-II, LLC, move for partial summary judgment to dismiss plaintiff's claims

pursuant Labor Law §§200, 241(6) and common-law negligence¹. For the reasons set forth below, both motions for partial summary judgment are granted.

Background

On October 10, 2016, the date of plaintiff's alleged injury, while employed by Red Hook, plaintiff reported to work at a construction site at 319 Schermerhorn Street in Brooklyn. After plaintiff signed in, he reported to the 21st floor of the site. It is undisputed that plaintiff was alone on the 21st floor, there were no other employees or any supervisors present.

At the time of his accident, plaintiff was moving beams, that were 11 feet by 6 inches and weighed 40-60 pounds each. These beams were stacked on the floor and were stacked on top of one another. Plaintiff was attempting to take one beams off the top of a stack beams and place it on a cart. Plaintiff alleges when he lifted the top beam off the stack, the lower beams on the stack shifted and hit him below the knee near the shin. Plaintiff then fell backward and the beam he had attempted to lift also hit him.

Summary Judgment Standard

It is a well-established principle that the "function of summary judgment is issue finding, not issue determination." *Assaf v Ropog Cab Corp.*, 153 AD2d 520, 544 [1st Dept 1989]. As such, the proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law. *Alvarez v Prospect Hospital*, 68 NY2d 320, 501 [1986]; *Winegrad v New York University Medical Center*, 64 NY 2d 851 [1985]. Courts have also recognized that summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a

¹ Defendants do no move to dismiss plaintiff's claims pursuant to Labor Law §240.

motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted.

Labor Law § 200

It is well-settled law that an owner or general contractor will not be found liable under common law or Labor Law § 200 where it has no notice of any dangerous condition which may have caused the plaintiff's injuries, nor the ability to control the activity which caused the dangerous condition. *See Russin v Picciano & Son*, 54 NY2d 311[1981]; *see also Rizzuto v Wenger Contr. Co.*, 91 NY2d 343, 352 [1998]; *Singleton v Citnalta Constr. Corp.*, 291 AD2d 393, 394 [2002].

Moreover, "General supervisory authority at a work site for the purpose of overseeing the progress of the work and inspecting the work product is insufficient to impose liability for common-law negligence and under Labor Law § 200." (*Dos Santos v STV Engrs., Inc.*, 8 AD3d 223, 224, [2004], *lv denied*, 4 NY3d 702, 790 [2004]).

Defendants have established that neither party controlled the means or methods of plaintiff's injury causing conduct. Specifically, it is undisputed that plaintiff was unsupervised by his employer at the time of the incident. Moreover, defendants have established a lack of notice of a dangerous or defective condition, as plaintiff has failed to identify a defect or dangerous condition. Accordingly, plaintiff's claims pursuant to common-law negligence and under Labor Law § 200 are dismissed as against the moving defendants.

Labor Law §241(6)

It is well settled law that for there to be liability pursuant to Labor Law Section 241(6), there must be a violation shown of the Industrial Code. *See e.g., Ross v Curtis-Palmer Hydro-*

Elec. Co., 81 NY2d 494 [1993] (§241(6) imposes a non-delegable duty upon owners and general contractors and their agents for violation of the statute).

Plaintiff alleges in his supplemental bill of particulars that the defendants violated Industrial Code 12 NYCRR § 23-2.1², specifically titled Maintenance and Housekeeping and specifically deals with the storage of material and equipment. This section provides:

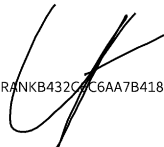
- (1) All building materials shall be stored in a safe and orderly manner. Material piles shall be stable under all conditions and so located that they do not obstruct any passageway, walkway, stairway or other thoroughfare.
- (2) Material and equipment shall not be stored upon any floor, platform or scaffold in such quantity or of such weight as to exceed the safe carrying capacity of such floor, platform or scaffold. Material and equipment shall not be placed or stored so close to any edge of a floor, platform or scaffold as to endanger any person beneath such edge.

Based on the testimony defendants have established that the beams were not stored, within the meaning of the Industrial Code. The undisputed testimony is that the workers systematically moved from floor to floor and the beams were used to form the concrete floor for each floor then placed on a cart and moved to another floor. The Court agrees with defendants and does not find that the subject beams were stored within the meaning of the code nor were the beams in a walkway or other thoroughfare. Plaintiff has failed to rebut this prima facie showing. Accordingly, it is hereby

ORDERED that plaintiff's claims pursuant to Labor Law § 241(6) are dismissed as against 319 Schermerhorn Property Owner LLC, Britt Realty LLC and Red Hook Construction Group-II, LLC; and it is further

² While plaintiff's Bill of Particulars lists various Industrial Code violations, plaintiff only disputes the dismissal of this specific alleged violation.

ORDERED that plaintiff's claims, pursuant to common-law negligence and under Labor Law § 200, are dismissed as against 319 Schermerhorn Property Owner LLC, Britt Realty LLC and Red Hook Construction Group-II, LLC.


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9/29/2022
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE