

Pooler v Shawmut Design & Constr.

2022 NY Slip Op 33735(U)

November 1, 2022

Supreme Court, New York County

Docket Number: Index No. 160812/2016

Judge: Lyle E. Frank

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

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HOWARD POOLER,

Plaintiff,

- v -

SHAWMUT DESIGN AND CONSTRUCTION, COLUMBIA UNIVERSITY, COLUMBIA UNIVERSITY TEACHERS COLLEGE, STATEWIDE CONTRACTING GROUP, CORP., STATEWIDE DEMOLITION CORP.,

Defendant.

-----X

SHAWMUT DESIGN AND CONSTRUCTION, COLUMBIA UNIVERSITY, COLUMBIA UNIVERSITY TEACHERS COLLEGE

Plaintiff,

-against-

CURTIS PARTITION CORP.

Defendant.

-----X

INDEX NO. 160812/2016
MOTION DATE 07/19/2022, 07/19/2022
MOTION SEQ. NO. 004 005

DECISION + ORDER ON MOTION

Third-Party Index No. 595473/2018

The following e-filed documents, listed by NYSCEF document number (Motion 004) 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 167, 169, 170, 171, 172, 179, 181

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 005) 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 168, 173, 174, 175, 176, 177, 178, 180

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

This action arises out of an accident that occurred on January 31, 2014, in which plaintiff alleges that he tripped on hoses and electrical cords resting on a permanent staircase while working at 509 West 121st Street, New York, New York.

On the date of the incident, plaintiff was an employee of third-party defendant Curtis Partitions Corp. (Curtis) while working on, what is referred to as, the Bancroft Hall project. Defendant Shawmut Design and Construction (Shawmut) was retained by defendants Columbia University and Columbia University Teachers College to renovate the Bancroft Hall dormitory pursuant to a Construction Manager Agreement dated September 30, 2013. It is undisputed that Shawmut was the general contractor of the project.

Defendant Statewide Contracting Group (Statewide) was retained by Shawmut pursuant to a subcontract dated December 2, 2013. Statewide is specifically named as a subcontractor. Shawmut separately retained Curtis as a subcontractor for the same project.

On the date of the accident, plaintiff was instructed to begin working on framing work on the third-floor, and while he descended from the fourth floor to the third, he tripped and fell on hoses and electrical cords that were on the stairs. It is undisputed, that the hoses and electrical cords were owned and operated by Statewide as part of its duty to control the dust from the ongoing construction.

Motion 004- Statewide's Motion

Defendant, Statewide moves to dismiss the Labor Law¹ claims on the grounds that it is neither the owner of the subject premises or the general contractor of the subject project, thus the cited statutes do not apply. As to the Labor Law 200 claims, defendant contends that it neither controlled

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-*

¹ There is no opposition as to Statewide's motion to dismiss the Labor Law claims pursuant to Labor Law §240(1), accordingly that portion of the motion is granted without opposition.

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).

The issue before the Court, in this underlying motion is not whether the plaintiff has sufficiently pled violation of the Industrial Code but rather if this section applies to the movant, Statewide. Specifically, whether Statewide is a statutory agent for the purposes of the Labor Law.

“A subcontractor can be deemed an "agent" under [the Labor Law], and be held liable, if to it is delegated the supervision and control either over the specific work area involved or the work which gives rise to the injury.” (*Headen v Progressive Painting Corp.*, 160 AD2d 319, 320 [1st Dept 1990]).

The Court finds that Statewide has established that it is not a statutory agent for the purposes of Labor Law liability. No opposition has raised any triable issue of fact with respect to Statewide’s position that it was not delegated any authority over the work plaintiff was conducting nor any area of the worksite, including the area where the accident occurred. Notwithstanding the finding above, the Court does find that there is a question of fact with respect to plaintiff’s claims arising out of Labor Law §200.

It is undisputed that the hoses and electrical cords that allegedly caused plaintiff’s accident were operated, owned and controlled by Statewide. As such, there is a question of fact with respect to Statewide’s action or inaction and whether it was a proximate cause of plaintiff’s accident.

Motion 005- Curtis’s Motion

Curtis moves to dismiss the third-party complaint as against it on the basis that the Workers’ Compensation Law bars recovery, absent a grave injury and that the claims for

contractual indemnification and attorneys' fees are barred because there is no evidence that Curtis caused the underlying accident.

In support of its position, Curtis cites to language in the subcontract that provides in relevant part:

“To the full extent permitted by applicable law, Subcontractor agrees to defend, indemnify and hold harmless Owner, the Architect/Engineer, Contractor and anyone else required by the Contract Documents, from and against any and all claims, damages or loss [...] arising out of or resulting from any work of and caused in whole or in part by any act or omission of Subcontractor or those employed by it, or working under those employed by it at any level, regardless of whether or not caused in part by a party indemnified hereunder.”

The Court finds that there is no evidence that any action or inaction by Curtis caused the accident, thus there is no basis for liability on a contractual indemnification claim. Shawmut failed to substantively oppose the portion of motion that sought dismissal based on the Workers' Compensation Law, accordingly that portion is granted without opposition. The Court has reviewed third-party plaintiff's remaining contentions and finds them unavailing. Accordingly, it is hereby

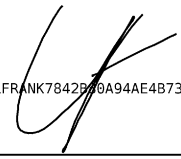
ORDERED that motion sequence 005 is granted in its entirety and the third-party complaint is dismissed; and it is further

ORDERED that the third-party action is severed from the main action and the main action remains; and it is further

ORDERED that motion sequence 004 is granted in part to the extent that the only remaining cause of action as against defendant Statewide arises out of Labor Law §200; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

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11/1/2022

DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE