

Rivera v City of New York
2022 NY Slip Op 34352(U)
June 7, 2022
Supreme Court, Richmond County
Docket Number: Index No. 153363/2018
Judge: Thomas P. Aliotta
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND: PART C2

-----X
SHAMEL RIVERA,

Plaintiff,

-against-

CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF SANITATION, THE DEMATTEIS
ORGANIZATION and LEON D. DEMATTEIS
CONSTRUCTION CORP and OFFICE OF MENTAL
HEALTH AND HYGIENE,

Defendants.
-----X

LEON D. DEMATTEIS CONSTRUCTION CORP.,

Third Party Plaintiff,

-against-

ISLAND ACOUSTICS LLC.,

Third Party Defendant.
-----X

Recitation, as required by CPLR 2219(a) of the following papers numbered "1" through
"8" were considered on the 1st day of June 2022:

	Papers Numbered
MS_004 Notice of Motion by CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF SANITATION, and OFFICE OF MENTAL HEALTH AND HYGIENE, Statement of Material Facts, Affirmation and Exhibits	1, 2
Plaintiff's Affirmation in Opposition, Statement of Material Facts and Exhibits	3
Reply Affirmation with Exhibits	4
MS_005 Plaintiff's Notice of Motion, Statement of Material Facts, Affirmation and Exhibits	5, 6

Affirmation in Opposition by THE DEMATTEIS ORGANIZATION and LEON D. DEMATTEIS CONSTRUCTION CORP., Statement of Material Facts and Exhibits7

Plaintiff’s Reply Affirmation.....8

Upon the foregoing papers and after oral argument, the motion by defendants, CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF SANITATION, and OFFICE OF MENTAL HEALTH AND HYGIENE (MS_004) and the motion by plaintiff (MS_005), each seeking an order of summary judgment in their favor, are decided as follows:

This is an action for personal injuries arising out of an accident that occurred while plaintiff was in the course of his employment with the third-party defendant, Island Acoustics LLC. Plaintiff slipped and fell on an accumulation of snow and ice inside the premises known as 777 Seaview Avenue, Staten Island, New York. The area where plaintiff’s accident occurred was exposed to the weather elements since construction of the exterior walls was not yet completed.

Defendants, CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF SANITATION, and OFFICE OF MENTAL HEALTH AND HYGIENE, seek an order granting summary judgement dismissing the complaint and all cross-claims against it on the grounds that they did not own the building/premises located at 777 Seaview Avenue, Staten Island, New York. In support, the City submits the deed, together with affidavits attesting to the fact that the City was deeded only Parcels A and B for the purposes of operating a park, but not the portion of the premises or building known as 777 Seaview Avenue. Additionally, the City neither operated the premises nor contracted for any of the work being performed at the time of plaintiff’s accident. According to the contract produced in discovery, the Dormitory Authority of the State

of New York was the owner of the project and the property. Plaintiff has opposed the motion arguing that the Real Property Transfer Tax Form [not the deed] is vague thereby creating a question of fact for determination by the jury.

Plaintiff seeks summary judgment on his cause of action pursuant to Labor Law § 241[6] and Industrial Code § 23-1.7[d], against defendants, THE DEMATTEIS ORGANIZATION and LEON D. DEMATTEIS CONSTRUCTION CORPORATION (“DeMatteis”), but not the City. The Industrial Code § 23-1.7[d] states as follows:

“Slipping hazards. Employers shall not suffer or permit any employee to use a floor, passageway, walkway, scaffold, platform or other elevated working surface which is in a slippery condition. Ice, snow, water, grease and any other foreign substance which may cause slippery footing shall be removed, sanded or covered to provide safe footing.”

Plaintiff also seeks summary judgment on the issue of comparative negligence. In opposition, DeMatteis does not dispute the presence of ice and snow but argues that even if summary judgment is granted as to defendant’s negligence, said determination does not establish as a matter of law that plaintiff was free of comparative negligence. In reply, plaintiff acknowledges that pursuant to *Rodriguez v. City*, 31 NY3d 312 [2018], a plaintiff may be awarded partial summary judgment on the issue of the defendant’s negligence while reserving the question of comparative negligence for determination by a jury. Plaintiff has not moved to strike the defense of comparative negligence even though he is arguing that he was not comparatively at fault for the happening of his accident and entitled to summary judgment on this issue as well.

Accordingly, after oral argument, it is hereby

ORDERED, that motion sequence 004 by defendants, CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF SANITATION, and OFFICE OF MENTAL HEALTH AND

HYGIENE, seeking an order pursuant to pursuant to CPLR § 3212 granting summary judgment is granted; and it is further

ORDERED, that this action, together with all cross-claims, is dismissed as against defendants, CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF SANITATION, and OFFICE OF MENTAL HEALTH AND HYGIENE, only; and it is further

ORDERED, that motion sequence 005 by plaintiff seeking seeking an order pursuant to CPLR § 3212 finding negligence against defendants, THE DEMATTEIS ORGANIZATION and LEON D. DEMATTEIS CONSTRUCTION CORPORATION, on the Labor Law § 241[6] and Industrial Code § 23-1.7[d] claim is granted; and it is further

ORDERED, that motion sequence 005 by plaintiff is denied as to the affirmative defense of comparative negligence; and it is further

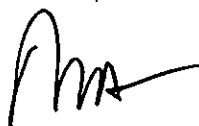
ORDERED, that the affirmative defense of comparative negligence and any apportionment of liability is referred to the trial court for determination by a jury; and it is further

ORDERED, that the Clerk shall enter judgment accordingly.

This constitutes the decision and order of the Court.

Dated: June 7 , 2022

ENTER:



HON. THOMAS P. ALIOTTA, J.S.C.