

DeCayette v 50 Lex Dev., LLC

2022 NY Slip Op 34841(U)

September 26, 2022

Supreme Court, Kings County

Docket Number: Index No. 523486/2018

Judge: Odessa Kennedy

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This opinion is uncorrected and not selected for official publication.

P R E S E N T :

HON. ODESSA KENNEDY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 2

RANDY DECAYETTE,

Index No.: 523486/2018

Plaintiff(s)

-against-

ORDER

50 LEX DEVELOPMENT, LLC and TISHMAN
CONSTRUCTION CORPORATION OF NEW YORK,

Defendant(s)

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this Motion:

Papers	NYSCEF Document No.
Motion Sequence No. 004	
Notice of Motion, Affirmation in Support	78, 79, 80, 81, 82, 83, 84, 85, 86, 87
Opposition	90, 91
Reply	103

Upon oral argument and review of the foregoing papers, Defendant's, motion for an Order pursuant to CPLR § 3212 granting Defendant's summary judgment, on the issue of liability under Labor Law § 200 and 241(6) and for common law negligence is GRANTED.

DISCUSSION

In order to prevail on a motion for summary judgment, the moving party must establish its cause of action or defense sufficiently to warrant the court as a matter of law in directing judgment in its favor. *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851 (1985); *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980). Absent such a prima facie showing, the motion must be denied, regardless of the sufficiency of the opposing papers. *Alvarez v Prospect Hospital*, 68 N.Y.2d 320, 324 (1986). However, “[o]nce the movant makes the required showing, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of a material issue of fact that precludes summary judgment and requires a trial”. *Dallas-Stephenson v. Waisman*, 39 A.D.3d 303, 306 (1st Dept 2007), citing *Alvarez*, 68 N.Y.2d at 324.

Defendants are Entitled to Dismissal of Plaintiff’s Claims Under Labor Law § 200 and for Common Law Negligence

The Court finds Defendant’s have met their burden with regard to their motion seeking dismissal of plaintiff’s claims under Labor Law §200 and for Common Law Negligence .

New York Labor Law §200 is a codification of the common law duty imposed on an owner or general contractor to provide workers with a safe place to work. *Rizzuto v. L.A. Wenger Contracting Co.*, 91 N.Y.2d 343, 352, 693 N.E.2d 1068 (1998); *Comes v. New York State Elec. & Gas Corp.*, 82 N.Y.2d 876, 877, 631 N.E.2d 110 (1993); *Lombardi v. Stout*, 80 N.Y.2d 290, 294, 604 N.E.2d 117 (1992); *Ferrero v. Best Modular Homes, Inc.*, 33 A.D.3d 847, 850, 823 N.Y.S.2d 477, 480 (2006); *Brown v. Brause Plaza, LLC*, 19 A.D.3d 626, 628, 798 N.Y.S.2d 501, 502

(2005); Everitt v. Nozkowski, 285 A.D.2d 442, 443, 728 N.Y.S.2d 58, 60 (2001); Giambalvo v. Chem. Bank, 260 A.D.2d 432, 433, 687 N.Y.S.2d 728, 729 (1999).

Cases involving Labor Law §200 fall into two broad categories: namely, those where workers are injured as a result of a dangerous or defective premises condition at a worksite, and those involving the manner in which the work is performed. These two categories should be viewed in the disjunctive. Ortega v. Puccia, 57 A.D.3d 54, 866 N.Y.S.2d 323 (2nd Dept. 2008).

This matter does not involve a claimed defective premises conditions. The plaintiff was in the process of installing sheet rock while working on a ladder. He stated that the ladder was not defective. There is simply no allegation of a defective or dangerous premises condition which would lead to a violation of Labor Law §200. Similarly, the claims and evidence do not support a claim for negligence in this matter.

This matter also does not lend itself to a finding of liability against the owner or construction manager under Labor Law §200 as neither of those entities directed, controlled or supervised the plaintiff's work activities. An owner's duty to provide a safe workplace does not extend to injuries arising from a defect in the contractor's own...methods or through the negligent acts of the contractor occurring as a detail of the work. Schwind v. Meil Lany Constr. Mgmt. Corp., 95 A.D.3d 1196, 945 N.Y.S.2d 151 (2nd Dept. 2012). He was provided with the ladder by his employer. In addition, plaintiff received all of his work instructions from his supervisors, Mike or Moe.

Accordingly, as the plaintiff's accident did not result from a defective ladder or premises condition and since the defendants did not direct, control or supervise the means, manner or methods of plaintiff's work, the plaintiff's claims for common law negligence and pursuant to Labor Law §200 must be dismissed. *See*, Paulino v.

Hearts Service Co., Inc., 28 A.D.3d 362 (1st Dept. 2006); Urbano v. Rockefeller Ctr. N., Inc., 91 A.D.3d 549 (1st Dept. 2012).

Defendants are Entitled to Dismissal of Plaintiff's Claims Under Labor Law §241(6)

The instant record establishes that the requisite predicate evidence does not exist to support the plaintiff's claims under Labor Law § 241(6). This statute is a "hybrid" provision that reiterates the standard of care and authorizes the promulgation of specific rules by the Board of Standards and Appeals (now the commissioner of the Department of Labor). Ross v. Curtis-Palmer Hydro-Electric Co., 81 N.Y.2d 494, 601 N.Y.S.2d 49 (1993); Long v. Forest-Fehlhaber, 55 N.Y.2d 154, 159, 448 N.Y.S.2d 132, 134 (1982).

To prevail on a claim under Labor Law § 241(6), the plaintiff must plead and prove a violation of a specific section of the New York State Industrial Code that mandates compliance with concrete safety specifications. See Schuler v. Kings Plaza Shopping Center & Marina, Inc., 294 A.D.2d 556, 743 N.Y.S.2d 141 (2nd Dept. 2002) (plaintiff failed to allege any specific violations of the Industrial Code); Mendoza v. Marche Libre Assocs., 256 A.D.2d 133, 681 N.Y.S.2d 517 (1st Dept. 1998) (*NYCRR 23-2.1(b)* relates to general safety standards); Greenwood v. Shearson, Lehman & Hutton, 238 A.D.2d 311, 312, 656 N.Y.S.2d 295, 296 (2nd Dept. 1997) (*12 NYCRR 23-1.5* relates to general safety standards); Vernieri v. Empire Realty Co., 219 A.D.2d 593, 598, 631 N.Y.S.2d 378, 382 (2nd Dept. 1995).

In opposition, plaintiff argues that there is a question of fact as to whether the defendants violated Industrial Code Sections 23-1.7(a) and 23-1.21.

Plaintiff claims that the defendants violated Section 23-1.21, which provides regulations for ladders and ladderways. At the time of the claimed accident, plaintiff was using a 6-foot A-frame ladder. He confirmed that he inspected the ladder prior

to using it in the closet area, and that there were no defects with the ladder. There were no broken portions of the ladder. Plaintiff had previously used the same ladder without any problems. Nevertheless, plaintiff argues that because an expert did not inspect the ladder, it is not clear whether any defects were present. Plaintiff has failed to raise anything more than mere speculation as to whether there was a violation of Industrial Code Section 23-1.21.

Similarly, plaintiff fails to raise a question of fact as to whether defendants violated Industrial Code Section 23-1.7(a), which pertains to “overhead hazards”. Nevertheless, this section does not apply as plaintiff was not working in an area or passing through an area that was “normally exposed to falling material or objects”. The object which allegedly fell and struck him, the piece of sheetrock, was the item plaintiff was in the process of installing at the time of the claimed accident.

Accordingly, dismissal of plaintiff’s Labor Law 241(6) claim is warranted.

WHEREFORE it is hereby:

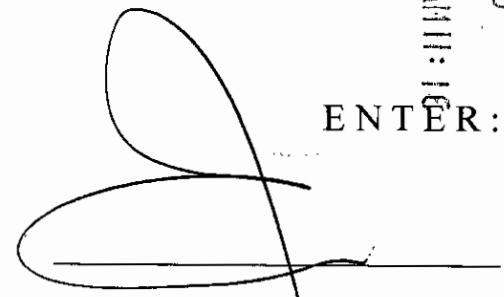
ORDERED that Defendant’s Motion for Summary Judgement the issue of liability under Labor Law § 200, 241(6) and common law negligence is GRANTED in its entirety.

This constitutes the Order of the Court.

Dated: September 26, 2022

KINGS COUNTY CLERK
FILED
2022 OCT -3 AM 11:16

ENTER:



HON. ODESSA KENNEDY