

Becerra v LRC Constr. LLC
2022 NY Slip Op 35175(U)
October 13, 2022
Supreme Court, Bronx County
Docket Number: Index No. 30395/2017E
Judge: Lucindo Suarez
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 19

Mtn. Seq. # 4

MAGALI BECERRA,

Index No.: 30395/2017E

Plaintiff,

- against -

DECISION and ORDER

LRC CONSTRUCTION LLC, WP NORTH TOWER LLC,
BLUEGATE PARTNERS, LLC, and LCOR 55 BANK
STREET,

Defendants.

	<u>PAPERS NUMBERED</u>
Defendants LRC Construction LLC's, WP North Tower LLC's, and LCOR 55 Bank Street's Notice of Motion, Affirmation in Support, Memorandum of Law in Support, Statement of Material Facts, Exhibits	1, 2, 3, 4, 5
Plaintiff's Notice of Cross-Motion, Affirmation in Opposition/Support, Counter Statement of Material Facts, Memorandum of Law in Opposition/Support, Exhibits	6, 7, 8, 9, 10
Defendants LRC Construction LLC's, WP North Tower LLC's, and LCOR 55 Bank Street's Reply Memorandum of Law, Response to Counter Statement of Material Facts, Affirmation in Opposition to Cross-Motion, Memorandum of Law in Opposition to Cross-Motion	11, 12, 13, 14
Plaintiff's Reply Affirmation	15

Upon the enumerated papers; and due deliberation; this court finds:

The issue in Defendants LRC Construction LLC's, WP North Tower LLC's, and LCOR 55 Bank Street's (collectively "Defendants") summary judgment motion is whether they established their entitlement to dismissal of the complaint. In addition, the issue in Plaintiff's cross-motion is whether she demonstrated her entitlement to judgment as to liability on the Labor Law §§240(1), 241(6), and 200 claims.

This court holds there are triable issues of fact the precludes summary judgment on the Labor Law §240(1) claim. Moreover, Defendants demonstrated their entitlement to dismissal of the Labor Law §§241(6) and 200 claims. Lastly, Defendants established their entitlement for dismissal of the complaint only as to Defendant LCOR 55 Bank Street.

According to Plaintiff, on the day of the accident she was employed by non-party Saint Francis Group, Ltd. ("Saint Francis") for a construction project involving the erection of a new residential apartment building located at 55 Bank Street White Plains, New York ("construction site"). The construction site was owned by Defendant WP North Tower LLC who hired Defendant LRC Construction LLC to serve as the general contractor. Defendant LRC Construction LLC retained Saint Francis to install sheetrock and taping throughout the construction site. Plaintiff testified that on the day of the accident she was working in an apartment on the 13th floor installing insulation and collecting garbage. She claims that the accident occurred as she was bending down to pick up garbage when a large piece of sheetrock that had been left leaning against a wall fell on top of her resulting in injuries.

This court finds with respect to the Labor Law §240(1) claim the record presents triable issues of fact as to whether Plaintiff's injuries flowed directly from the application of the force of gravity to the sheetrock, whether the elevation differential was *de minimis*, and whether the weight of the sheetrock panel could generate a significant amount of force as it fell. *See Padilla v. Touro Coll. Univ. Sys.*, 204 AD3d 415, 166 N.Y.S.3d 152 (1st Dep't 2022).

In addition, Plaintiff cites Industrial Codes 12 NYCRR §§23-1.7(e)(2) and 23-2.1(a)(1) in support of the Labor Law §241(6) claim abandoning all other predicates not raised in his legal arguments. *Burgos v. Premier Props. Inc.*, 145 A.D.3d 506, 42 N.Y.S.3d 161 (1st Dep't 2016); *see also 87 Chambers, LLC v. 77 Reade, LLC*, 122 A.D.3d 540, 998 N.Y.S.2d 15 (1st Dep't 2014). This court finds Industrial Code 12 NYCRR §23-1.7(e)(2) is not applicable because the accident was not caused by an accumulation of dirt or debris, scattered tools or materials, or a sharp projection. *See Ali v. Sloan-Kettering Inst. for Cancer Research*, 176 A.D.3d 561, 112 N.Y.S.3d 14 (1st Dep't 2019). Likewise, since the accident occurred in an apartment unit rather

than in a passageway, hallway, stairway, or other walkway 12 NYCRR §23-2.1(a)(1) does not apply. *Kuylen v. KPP 107th St., LLC*, 203 A.D.3d 465, 160 N.Y.S.3d 866 (1st Dep't 2022).

Furthermore, Defendants demonstrated their *prima facie* burden for dismissal of the Labor Law §200 claim. In opposition, Plaintiff did not proffer evidence that Defendants supervised or controlled the injury-producing work. Likewise, Plaintiff failed to produce evidence to suggest that Defendants created or that they possessed actual/constructive notice of the dangerous condition that led to the accident. Therefore, the Labor Law §200 claim must be dismissed.

Lastly, this court finds Defendants established their *prima facie* burden for dismissal of the complaint only as to Defendant LCOR 55 Bank Street as it was uncontroverted that Defendant LCOR 55 Bank Street sold its interest in Defendant WP North Tower LLC, prior to the date of the accident. *See Matter of 91st St. Crane Collapse Litig.*, 112 A.D.3d 477, 976 N.Y.S.2d 376 (1st Dep't 2013). Furthermore, Plaintiff did not establish that Defendant LCOR 55 Bank Street was an agent of Defendant WP North Tower LLC as there was no evidence to demonstrate that Defendant LCOR 55 Bank Street was delegated the authority to supervise and control the injury-producing work. *See Blake v. Neighborhood Hous. Servs. of NY City, Inc.*, 1 N.Y.3d 280, 803 N.E.2d 757, 771 N.Y.S.2d 484 (2003).

Accordingly, it is

ORDERED, that Defendants' summary judgment motion is granted in part; and it is further

ORDERED, that the Labor Law §§241(6) and 200 claims are dismissed; and it is further

ORDERED, that the complaint is dismissed only as to Defendant LCOR 55 Bank Street; and it is further

ORDERED, that Plaintiff's cross-motion for summary judgment is denied.

This constitutes the decision and order of the court.

Dated: October 13, 2022

Hon.

LUCINDO SUAREZ, J.S.C.

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