

Ansioso v Cross Country Constr., LLC

2023 NY Slip Op 31225(U)

April 18, 2023

Supreme Court, New York County

Docket Number: Index No. 158460/2018

Judge: John J. Kelley

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JOHN J. KELLEY PART 56M

Justice

-----X

ANTONIO ANSIOSO,

Plaintiff,

- v -

CROSS COUNTRY CONSTRUCTION, LLC, VNO 225
WEST 58TH STREET, LLC, LENDLEASE (US)
CONSTRUCTION, INC., LENDLEASE (US)
CONSTRUCTION LMB, INC., and WOODWORKS
CONSTRUCTION CO, INC.,

Defendants.

-----X

INDEX NO. 158460/2018
MOTION DATE 01/18/2023
MOTION SEQ. NO. 012

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 012) 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 152, 153, 156, 158, 159, 160, 161, 162, 163, 164, 165, 166, 170

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

In this action to recover damages for personal injuries for common-law negligence and violations of Labor Law §§ 200, 240(1), and 241(6), arising from a construction site accident, the defendants Country Construction, LLC (CCC), VNO 225 West 58th Street, LLC (VNO), Lendlease (US) Construction. Inc. (Lendlease, Inc.), Lendlease (US) Construction LMB, Inc. (Lendlease LMB), and Woodworks Construction Co., Inc. (Woodworks) (collectively the defendants), move pursuant to CPLR 3212 for summary judgement dismissing the complaint insofar as asserted against them. The plaintiff opposes the motion. The motion is granted to the extent that the defendants are awarded summary judgment dismissing (1) the complaint in its entirety insofar as asserted against CCC, Lendlease, Inc., and Woodworks, (2) the Labor Law § 241(6) cause of action as against VNO and Lendlease LMB, and (3) the Labor Law § 200 and common-law negligence causes of action that were premised upon the means and methods of the plaintiff's work as against VNO and Lendlease LMB. The motion is otherwise denied.

The facts relevant to this action, and the legal standards applicable both to summary judgment motions and to the plaintiff's claims against the various defendants, were set forth in great detail in this court's April 18, 2023 order disposing of Motion Sequence 011. The crux of the action is that the plaintiff, while transporting an electric pallet jack loaded with concrete bags weighing nearly 5,000 pounds, was compelled to walk backwards down a wet and corroded ramp with the pallet jack situated immediately up the ramp from him. As the plaintiff proceeded slowly down the ramp, he attempted to apply the brakes on the pallet jack, which allegedly failed and caused the pallet jack to continue rolling down the ramp. Upon reaching the bottom of the ramp, the pallet jack crushed the plaintiff's left foot and pinned him against a stationary pallet jack that had been parked at the bottom of the ramp, thus causing him to sustain personal injuries.

In support of their motion, the defendants submitted the pleadings, and the deposition transcripts of the plaintiff, Lendlease LMB's general superintendent, James Fallon, and CCO's former construction supervisor, James J. Costigan. In addition, they submitted the deposition transcripts of Woodworks' general foreman, Octavio Goncalves, CCO's pickup foreman, Thomas Canty, CCO's cleanup foreman, Thomas Zangara, and CCO's general carpentry foreman, Darren McCallion. The defendants also submitted the trade contract agreements between Lendlease LMB and Woodworks and between Lendlease LMB and CCO, as well as the construction management agreement between VNO and Lendlease LMB. Finally, the defendants submitted the March 12, 2018 witness statement of non-party Port Morris's employee, Brandon Morgenstern. In opposition, the plaintiff submitted the pleadings, his deposition transcript, and the deposition transcripts of McCallion, Costigan, and Fallon. The plaintiff also submitted the expert affidavit of licensed professional engineer, Vincent A. Ettari. The relevant expert opinions were set forth in great detail in this court's April 18, 2023 order determining Motion Sequence 011.

For the same reasons set forth in this court's April 18, 2023 order deciding Motion Sequence 011, the court grants the defendants' summary judgment to the extent of dismissing (1) the complaint insofar as asserted against CCC, Lendlease Inc., and Woodworks, (2) the Labor Law § 241(6) cause of action in its entirety, and (3) the Labor Law § 200 and common-law negligence causes of action, insofar as assert against VNO and Lendlease LMB, that were premised upon the means and methods of the plaintiff's work. The court finds that the defendants have established their prima facie entitlement to judgment as a matter of law dismissing the above-mentioned causes of action insofar as asserted against the various identified defendants, and that the plaintiff failed to raise a triable issue of fact in opposition.

In light of the foregoing, it is

ORDERED that the motion of the defendants Country Construction, LLC, VNO 225 West 58th Street, LLC, Lendlease (US) Construction, Inc., Lendlease (US) Construction LMB, Inc., and Woodworks Construction Co., Inc., for summary judgment dismissing the complaint insofar as asserted against them is granted to the extent that summary judgment is awarded

- (1) to the defendants Country Construction, LLC, Lendlease (US) Construction, Inc., and Woodworks Construction Co., Inc., dismissing the complaint in its entirety insofar as asserted against them, and the complaint is dismissed in its entirety insofar as asserted against Country Construction, LLC, Lendlease (US) Construction, Inc., and Woodworks Construction Co., Inc.; and,
- (2) to the defendants VNO 225 West 58th Street, LLC, and Lendlease (US) Construction LMB, Inc., dismissing the Labor Law § 241(6) cause of action insofar as asserted against them, and the Labor Law § 241(6) cause of action is dismissed insofar as asserted against VNO 225 West 58th Street, LLC, and Lendlease (US) Construction LMB, Inc.; and,
- (3) to the defendants VNO 225 West 58th Street, LLC, and Lendlease (US) Construction LMB, Inc., dismissing, insofar as asserted against them, so much of the Labor Law § 200 and common-law negligence causes of action as were premised upon the means and methods of the plaintiff's work, and so much of the Labor Law § 200 and common-law negligence causes of action as were premised upon the means and methods of the plaintiff's work is dismissed insofar as asserted against VNO 225 West 58th Street, LLC, and Lendlease (US) Construction LMB, Inc.,

and the motion is otherwise denied; and it is further,

ORDERED that, on the court's own motion, the action is severed against the defendants Country Construction, LLC, Lendlease (US) Construction, Inc., and Woodworks Construction Co., Inc.; and it is further,

ORDERED that the Clerk of the court shall enter judgment dismissing the complaint insofar as asserted against the defendants Country Construction, LLC, Lendlease (US) Construction Inc., and Woodworks Construction Co., Inc.; and it is further,

ORDERED that the remaining parties shall appear for a pretrial settlement conference before the court on May 25, 2023, at 10:00 a.m.

This constitutes the Decision and Order of the court.

4/18/2023
DATE


JOHN J. KELLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: