

Fernandez v 5462 125th Realty LLC

2023 NY Slip Op 34953(U)

November 28, 2023

Supreme Court, Kings County

Docket Number: Index No. 511601/2020

Judge: Francois A. Rivera

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 28th day of November 2023

HONORABLE FRANCOIS A. RIVERA

-----X
TOMAS MARTINEZ FERNANDEZ,

Plaintiff,

- against -

5462 125TH REALTY LLC, THE JAY GROUP INC.,
HILLSIDE CONSULTING LLC and PRESTIGE
CONSTRUCTION NY LLC,

Defendants.
-----X

ORDER

Index No.: 511601/2020

Recitation in accordance with CPLR 2219(a) of the papers considered on the notice of motion of plaintiff Tomas Martinez Fernandez (hereinafter plaintiff), filed on August 26, 2022 under motion sequence number one, for an order pursuant to CPLR 3212, granting summary judgment in the plaintiff's favor on the issue of liability as to Labor Law § 241(6) claim as asserted against defendants 5462 125h Realty LLC (hereinafter Realty LLC) and Prestige Construction NY LLC (hereinafter Prestige) and pursuant to Labor Law § 200 and common law negligence as against Prestige.

- Notice of Motion
- Affirmation in Support
 - Exhibits A-I
- Memorandum of Law in Support
- Reply Affirmation¹
- Affirmation in Opposition
- Reply Affirmation in Further Support of Motion
- Statement of Material Facts
- Counter Statement of Material Facts

¹ The moving defendants filed a separate motion for summary judgment under motion sequence number two to which plaintiff served opposition and a reply affirmation prior to the moving defendants serving their opposition to the plaintiff's motion under motion sequence number one.

Recitation in accordance with CPLR 2219(a) of the papers considered on the notice of motion of the defendants Realty LLC, Prestige and The Jay Group Inc.² (hereinafter collectively the moving defendants) filed on August 29, 2022, under motion sequence number two, for an order pursuant to CPLR 3212, granting summary judgment in the moving defendants' favor on the issue of liability and dismissing the complaint with prejudice as to all claims asserted against the moving defendants.

- Notice of Motion
- Statement of Material Facts
- Affirmation in Support
 - Exhibits A-I
- Memorandum of Law in Support
- Affirmation in Opposition
- Counterstatement of Material Facts
- Reply Affirmation
- Amended Statement of Material Facts
- Counter Statement of Material Facts

BACKGROUND

On July 6, 2020, plaintiff commenced the instant action for damages for personal injury by filing a summons and complaint with the Kings County Clerk's office (KCCO). The plaintiff's complaint and evidentiary submissions allege, among other things, that on or about August 9, 2019, while acting within the scope of his employment during the construction of a premises located in New York, New York (hereinafter the subject premises) he was injured when he was struck in the back by a dangerous, defective and improperly operated concrete polishing machine that struck a sharp, temporary projection in the floor, causing him to fall to the ground, striking a cluster of rebar protruding from the floor, and sustain serious physical injuries. Realty LLC, as the owner of the subject premises, and Prestige, the general contractor for the construction work at the subject premises allegedly failed to provide the plaintiff with a safe place to work and failed to offer proper equipment and/or safety devices to prevent him from being injured at the worksite

² All of the plaintiff's claims as asserted against The Jay Group Inc. were discontinued as reflected in this Court's Interim Order dated June 22, 2023.

in violation of various provisions of the Labor Law. The complaint also alleges that the defendants' acts, and omissions breached a duty of care to the plaintiff which proximately caused the subject accident and the plaintiff's injuries.

On August 24, 2020, the moving defendants interposed and filed a joint answer with cross claims with the KCCO.

On June 22, 2023, this Court heard oral argument of motion sequence number one and motion sequence number two and issued an Interim Order granting leave to the parties to submit a statement of material facts in support of their respective motions for summary judgment and adjourned the motions for continued oral argument in accordance with the terms of that Interim Order.

LAW AND APPLICATION

Here, the plaintiff now seeks summary judgment in motion sequence number one for Labor Law § 241(6) for the purported violations of Industrial Code sections §§ 23-1.5(c)(3), 23-1.7(e)(2) and 23-9.2(a) as against 5462 Realty and Prestige as well as Labor Law § 200 and the common law as against Prestige. However, this Court finds that the plaintiff has not met his burden of proof on these claims as there are questions of material facts remaining such that it cannot grant summary judgment to the plaintiff as a matter of law.

Likewise, the moving defendants now seek summary judgment in motion sequence number two for the dismissal of plaintiff's Labor Law § 241(6) cause of action for the purported violations of Industrial Code sections §§ 23-1.5(c)(3), 23-1.7(e)(2) and 23-9.2(a) as asserted against 5462 Realty and Prestige as well as the plaintiff's Labor Law § 200 cause of action and the common law claims as asserted against Prestige. However, as there are questions of material facts remaining this Court finds that the moving defendants have not met their burden of proof as to

such claims and therefore cannot grant summary judgment to the moving defendants as a matter of law.

There has been no appearance on behalf of named defendant Hillside Consulting LLC.

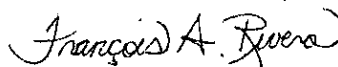
CONCLUSION

The motion of plaintiff Tomas Martinez Fernandez for an order pursuant to CPLR 3212, granting summary judgment in the plaintiff's favor on the issue of liability as to Labor Law § 241(6) claim as asserted against defendants 5462 125h Realty LLC (hereinafter Realty LLC) and Prestige Construction NY LLC (hereinafter Prestige) and pursuant to Labor Law § 200 and common law negligence as against Prestige is denied.

The motion by defendants Realty LLC, Prestige and The Jay Group Inc. for an order pursuant to CPLR 3212, granting summary judgment in their favor on the issue of liability and dismissing the complaint with prejudice as to all claims asserted against them is denied.

The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.

HON. FRANCOIS A. RIVERA
J.S.C.