

Rodriguez v Accord Enter. Corp.
2023 NY Slip Op 35183(U)
September 27, 2023
Supreme Court, Richmond County
Docket Number: Index No. 151682/2019
Judge: Orlando Marrazzo, Jr.
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

-----X
JOHN RODRIGUEZ and MARIA RODRIGUEZ,

Plaintiffs,

-against-

ACCORD ENTERPRISE CORP., CONSOLIDATED
EDISON COMPANY OF NEW YORK, INC., SAFECO
CONSTRUCTION CORP., CITY OF NEW YORK, NEW
YORK CITY DEPARTMENT OF TRANSPORTATION,
and NEW YORK CITY DEPARTMENT OF PARKS AND
RECREATION,

Defendants.
-----X

Part C-2

Present:

Hon. Orlando Marrazzo

DECISION AND
ORDER

Index No:151682/2019

Motion Seq. 002

The following e-filed documents, listed by NYSCEF as (Motion 2) document numbers 62-80 were marked fully submitted on August 3, 2022.

Defendant Accord Enterprise Corporation (herein Accord) moves for an order granting summary judgment pursuant to CPLR 3212, dismissing the complaint and any crossclaims against it, alleging there are no triable issues of fact or law as to Accord's liability in this action. Plaintiff and co-defendant City of New York oppose the motion. For the reasons below, Accord's motion is granted, and the Complaint and all crossclaims are dismissed as to Accord.

This action is for personal injuries allegedly sustained by the plaintiff on July 27, 2016 when he stepped off the curb in the roadway in front of 155 Memphis Avenue, Staten Island, NY and was caused to trip and fall due to a depressed, incomplete/unpaved portion of the roadway.

Accord moves for summary judgment alleging that contrary to the assertions in the complaint, they do not and did not own operate, maintain or control the area where the construction was, and the evidence demonstrates that Accord did not perform any excavation or repair work at the plaintiff's alleged accident location.

In support of their motion, Accord attaches portions of the deposition testimony of the plaintiff. Plaintiff testified that the accident occurred as he was walking from his house to his car, which was parked in front of 155 Memphis Avenue. While doing so, he stepped off the sidewalk into the roadway. He further testified there were a pile of rocks in the roadway that he had to step over. His foot then went into a ditch in the roadway, causing him to fall.

In further support of their motion Accord attaches the deposition testimony of Rogerio Furtado, the sole owner of Accord Enterprises. Mr. Furtado testified his company was hired by Safeco directly and Accord did not have an independent contract with the City of New York. He also testified that he personally performed the work at Memphis Avenue between 2014 and 2016. Mr. Furtado testified as to the two-page contract between Safeco and Accord which specifically stated that Accord was hired as a subcontractor to frame and pour concrete on locations assigned by Safeco. The locations were given to Accord verbally and the only record of the job was the invoice that Accord sent to Safeco. Furtado testified that the only work Accord performed was the framing and pouring of concrete. Any excavation work of the sidewalks or curbs that were to be replaced would be done by Safeco prior to Accord framing or pouring the concrete.

This was further confirmed in the deposition testimony of Albert Pretto, the owner of Safeco. Pretto testified that on the day work was performed in front of 155 Memphis the only thing that Accord did was to pour concrete for the curbs. When asked who would do the

excavation work, Pretto, replied, “Safeco.” When asked if Accord would excavate also, he replied, “no.”

To prevail on a motion for summary judgment, the movant must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient admissible evidence to demonstrate the absence of any material issues of fact (*Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Jacobsen v New York City Health and Hospitals Corp.*, 22 NY3d 824 [2014]; *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]). The movant's initial burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party (*Jacobsen*, 22 NY3d at 833). If the moving party fails to make its *prima facie* showing, the court is required to deny the motion, regardless of the sufficiency of the non-movant's papers (*Winegrad v New York Univ. Med. Center*, 4 NY2d 851, 853 [1985]).

However, if the moving party meets its burden, the burden shifts to the party opposing the motion to establish, by admissible evidence, the existence of a factual issue requiring a trial of the action, or to tender an acceptable excuse for the failure to do so (*Zuckerman*, 49 NY2d at 560; *Jacobsen*, 22 NY3d at 833; *Vega v Restani Construction Corp.*, 18 NY3d 499, 503 [2012]). Summary judgment is a “drastic remedy” and will only be granted in the absence of any material issues of fact (*id.*).

Defendant Accord has met its *prima facie* burden for summary judgment through pleadings and depositions presented in support of their motion that they did not cause or create the condition that was allegedly responsible for the accident. Plaintiff and co-defendant City

have failed to raise a triable issue of fact.

Accordingly, it is.

ORDERED that defendant Accord's motion for summary judgment dismissing Complaint and all crossclaims (002) is granted.

This constitutes the decision and order of the Court.

A handwritten signature in black ink, appearing to read 'Orlando Marrazzo', written over a horizontal line.

Hon. Orlando Marrazzo, J.S.C.

Dated: September 27, 2023