Supreme Court of the State of New York
County of Kings

Index Number 510177/2022
Seqs. 002–003

Part LL1

PATRICIO MERCHAN,

Plaintiff,

against

JORDAN BOCK AND ARAN CONSTRUCTION INC.,

Defendants.

ARAN CONSTRUCTION INC.,

Third-Party Plaintiff,

against

ECUA CONTRACTORS CORP.,

Third- Party Defendant.

DECISION/ORDER

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

Papers Numbered

Notice of Motion and Affidavits Annexed	1
Order to Show Cause and Affidavits Annexed.	
Answering Affidavits	2
Replying Affidavits	3
Exhibits	Var.
Other	

Upon the foregoing papers, defendant Jordan Bock's motion for summary judgment (Seq. 002) and defendant/third-party plaintiff Aran Construction. Inc.'s motion for default judgment (Seq. 003) are decided as follows:

Procedural History and Factual Background

Plaintiff Patricio Merchan commenced this Labor Law action for injuries he claims to have sustained on March 5, 2022, after a slip and fall between floor joists at a construction site located at 10 Gilberts Path, Amagansett, New York. Mr. Bock owned the single-family home located at 10 Gilberts Path. Mr. Bock hired Aran Construction, Inc. (Aran) as the general contractor to perform renovations on the home. Aran hired sub-contractors, including third-party defendant ECUA Contractors Corp. (ECUA) to assist in the renovations. Plaintiff was employed by ECUA.

Mr. Bock submits an self-serving affidavit in support of his motion. Mr. Bock contends that his home is a vacation home and has never been used for any commercial purposes (Bock Aff. at 2–3). However, the commercial history of the property is still unclear. Mr. Bock does not submit any evidence evincing whether the property has ever been used for commercial purposes.

Mr. Bock states he visited the site sparingly during the construction and never instructed anyone on the means and methods of the work (Bock Aff. at 4). Mr. Bock states he never provided supplies and that he did not create and was not aware of any dangerous or defective conditions at the site. (Bock Aff. at 3).

Aran has withdrawn its motion for default judgment (Seq. 003) against ECUA (*see* Stipulation to Withdraw Default Motion). Discovery has not been completed and no party has been deposed, including Mr. Bock.

Analysis

On a motion for summary judgment, the moving party bears the initial burden of making a prima facie showing that there are no triable issues of material fact (*Giuffrida v Citibank*, 100 N.Y.2d 72, 81 [2003]). Once a prima facie showing has been established, the burden shifts to the non-moving party to rebut the movant's showing such that a trial of the action is required (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).

The plaintiff claims he was injured due to the defendants' violations of New York Labor Law §§ 200, 240 (1), and 241 (6). Mr. Bock moves for summary judgment on all three claims, alleging that he did not control the means and methods of the work or have notice of a defective condition as to the §200 claim and that the homeowners exemption applies to the §§ 240 (1) and 241 (6) claims against him.

Labor Law § 200

Labor Law § 200 is a codification of the common-law duty of landowners and general contractors to provide workers with a reasonably safe place to work" (*Pacheco v Smith*, 128 AD3d 926, 926 [2d Dept 2015]). Thus, claims for negligence and for violations of Labor Law § 200 are evaluated using the same negligence analysis (*Ortega v Puccia*, 57 AD3d 54, 61 [2d Dept 2008]). "[W]hen a claim arises out of alleged defects or dangers in the methods or materials of the work, recovery against the owner or general contractor cannot be had under Labor Law § 200 unless it is shown that the party to be charged had the authority to supervise or control the performance of the work." (*id.* at [internal citations omitted]).

Mr. Bock submits a self-serving affidavit contending that he never directed or controlled the work at the site in any manner nor did he have any actual or constructive notice of any sort of dangerous condition. Mr. Bock contends that he visited the site occasionally to see the progress of the construction (Bock Aff. at 4).

In opposition, plaintiff argues that there are significant material issues of fact necessitating the completion of discovery and depositions. Plaintiff states that the only evidence presented is Mr. Bock's self-serving affidavit which does not clear up all issues of fact.

A party should be afforded a reasonable opportunity to conduct discovery prior to the determination of a motion for summary judgment since further discovery may lead to relevant evidence *(Martinez v 305 W. 52 Condominium*, 128 AD3d 912 [2d Dept 2015]; *Pinella v Crescent St. Corp.*, 176 AD3d 985 [2d Dept 2019]). Accordingly, defendant's motion is denied as to plaintiff's Labor Law § 200 claim.

Labor Law § 240 (1) and 241 (6)

Labor Law contains an exemption for owners of one and two-family dwellings who

contract for but do not direct or control the work or have constructive notice of a defective condition. The homeowner's exemption requires satisfying two prongs: (1) the dwelling is a residence for only one or two families, and (2) the defendant did not direct or control the work or have notice of a defective condition (*Nai Ren Jiang v Shane Yeh*, 95 AD3d 970, 971 [2d Dept 2012]).

In this case, plaintiff was engaged in construction work at a residential property. Mr. Bock alleges that it was not then being used, nor going to be used, for any sort of commercial purposes. However, Mr. Bock acknowledges that neither he nor his family was using the property at the time of the accident. Further, Mr. Bock's affidavit alone is submitted in support of this claim. Plaintiff correctly argues that the full history and future use of the property, commercial or not, is still uncertain and cannot be ascertained without examinations before trial or other discovery.

There has been no opportunity to question Mr. Bock about his role and actions during the construction or about the previous or future intended use of the property. Since this information is exclusively in Mr. Bock's possession, it would be premature to grant summary judgment before discovery is complete (*see Martinez* 128 AD3d; *see Pinella* 176 AD3d).

Accordingly, this segment of defendant's motion is denied.

Conclusion

Accordingly, defendant's motion for summary judgment (Seq. 002) is denied.

Sequence 003 was withdrawn by a stipulation signed by all parties.

This constitutes the decision and order of the court.

July 24, 2024
DATE

DEVIN P. COHEN
Justice of the Supreme Court

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