

Navia v Unique Constr. & Home Improvement Inc.

2024 NY Slip Op 33180(U)

September 5, 2024

Supreme Court, New York County

Docket Number: Index No. 158732/2022

Judge: Lynn R. Kotler

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYNN R. KOTLER PART 08

Justice

INDEX NO. 158732/2022
MOTION DATE 02/14/2024
MOTION SEQ. NO. 005

WILLIAM PINO NAVIA,

Plaintiff,

- v -

UNIQUE CONSTRUCTION & HOME IMPROVEMENT INC., PHILIPS BRYANT PARK LLC, SKYLINE RESTORATION INC., ANDAMIO SCAFFOLDING LLC, EVEREST SCAFFOLDING INC., TRISTATE-SAFETY CORP,

Defendant.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 167, 168, 169, 170, 171

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER)

Upon the foregoing documents, it is ORDERED that this motion is granted for the reasons that follow.

Defendant Unique Construction & Home Improvement, Inc. ("Unique") moves for summary judgment dismissing the complaint and upon dismissal, amending the caption to remove Unique from this case. Plaintiff and co-defendants Tristate-Safety Corp., Andamio Scaffolding has submitted an affirmation in support of Unique's motion, arguing that it is premature.

In this action, plaintiff alleges that on September 12, 2022, he sustained injuries while working for third-party defendant Frank & Monserrat Restoration Inc. ("F&M") at 40 West 40th Street, New York, New York (hereinafter the "premises"). According to the complaint, plaintiff fell from an elevated "height/ladder". F&M has been held in default in this proceeding (see decision/order dated 4/3/2024).

Unique has submitted two affidavits from Inderjeet Singh, Director of Operations for Unique, who states that Unique did not employ plaintiff on the date of his accident, and did not have any employees, agents, or representatives at the premises for almost a year prior to plaintiff's accident. Singh further states that upon his review of photographs produced by plaintiff showing the scene of his accident, none of the pipe scaffolding, plans, sidewalk bridge or fire escape was installed by or belonged to Unique. Unique further points to its mechanics lien against the property for unpaid work performed in favor of Philips Bryant Park LLC on June 9, 2020, as proof that due to this nonpayment, Unique withdrew all permits and stopped work at the premises by September 28, 2021. For all these reasons, Unique moves for summary judgment dismissing plaintiff's complaint against it.

Tristate argues that Unique's motion is premature because its discovery demands are outstanding and that depositions have not yet been completed. Plaintiff also maintains that discovery is premature but further argues that Unique has not met its burden of proof by merely submitting two self-serving affidavits and not providing work logs, daily logs, progress reports or any other documents reflecting the work it performed.

Discussion

On a motion for summary judgment, the proponent bears the initial burden of setting forth evidentiary facts to prove a prima facie case that would entitle it to judgment in its favor, without the need for a trial (CPLR 3212; *Winegrad v. NYU Medical Center*, 64 NY2d 851 [1985]; *Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]). If the proponent fails to make out its prima facie case for summary judgment, however, then its motion must be denied, regardless of the sufficiency of the opposing papers (*Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]; *Ayotte v. Gervasio*, 81 NY2d 1062 [1993]).

Granting a motion for summary judgment is the functional equivalent of a trial, therefore it is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue (*Rotuba Extruders v. Ceppos*, 46 NY2d 223 [1977]). The court's function on these motions is limited to "issue finding," not "issue determination" (*Sillman v. Twentieth Century Fox Film*, 3 NY2d 395 [1957]).

A motion for summary judgment is premature pursuant to CPLR § 3212(f) when it appears from affidavits submitted in opposition to the motion "that facts essential to justify opposition may exist but cannot be stated..." Here, apart from broadly claiming that discovery is outstanding, including depositions, neither opponent to Unique's motion has pointed to what particular facts would enable them to successfully oppose the motion. There are no work logs, daily logs, and progress reports when Unique stopped work at the premises almost a year before plaintiff's accident. Moreover, plaintiff claims that he fell from an elevated height or ladder. Neither plaintiff nor Tristate have explained what information Unique would have in its possession which would support a theory of liability on these facts.

Otherwise, the court finds that Unique has met its burden on this motion. Unique has come forward with admissible evidence that it is not a statutory labor law defendant and cannot otherwise be held liable under the Labor Law or common-law negligence principles. In turn, none of the parties have raised a triable issue of fact sufficient to defeat the motion. Accordingly, Unique's motion is granted in its entirety.


Conclusion

In accordance herewith, it is hereby

ORDERED that Defendant Unique Construction & Home Improvement, Inc.'s motion for summary judgment is granted and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that the Clerk is directed to amend the caption to remove Defendant Unique Construction & Home Improvement, Inc. from the caption.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly rejected and this constitutes the decision and order of the court.

<u>9/5/2024</u> DATE		 LYNN R. KOTLER, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE