

Guozhong Chen v Serota Wading Riv., LLC
2024 NY Slip Op 35022(U)
June 14, 2024
Supreme Court, Queens County
Docket Number: Index No. 713567/2020
Judge: Mojgan C. Lancman
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HONORABLE MOJGAN C. LANCMAN

IAS Part 20

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GUOZHONG CHEN,

Index No.: 713567/2020

Plaintiff,

Motion Seq. No.: 2

-against-

Motion Date: 5.1.2024

SEROTA WADING RIVER, LLC and EUNHAE NAILS & SPA, INC.,

Motion Cal. No.: 9

Defendants.

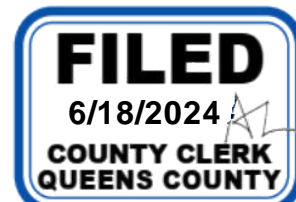
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EUNHAE NAILS & SPA, INC.,

Third-Party Plaintiff,

-against-

YALE REMODELING, LLC,

Third-Party Defendant.



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The e-filed documents listed by NYSCEF document numbers 72-86 were read on the motion of the third-party defendant, Yale Remodeling, LLC (“Yale”) for an Order, *inter alia*, granting summary judgment in its favor and dismissing the third-party complaint.

I. Factual Background

The plaintiff, Guozhong Chen (the “Plaintiff”), commenced this action on August 20, 2020, to recover damages for personal injuries allegedly sustained in a construction-related accident that occurred on June 10, 2020 (the “Accident”), at the premises located at 6273 Route 25A, Wading River, New York. On or about December 16, 2020, defendant Eunhae Nails & Spa, Inc. commenced a third-party action seeking contribution and indemnification from Yale, which claims that it was the Plaintiff’s employer at the time of the accident.

Presently before the Court is Yale’s motion for summary judgment and the dismissal of the third-party complaint. Yale contends that it is entitled to this relief because (1) the Plaintiff was employed by Yale on the date of the Accident, (2) the Plaintiff received workers’ compensation benefits for his injuries that arose from the Accident, and (3) because the Plaintiff did not suffer a grave injury as defined by the Workers’ Compensation Law.

In support of this motion, Yale has submitted, *inter alia*, the Plaintiff's Bill of Particulars, the transcript of the Plaintiff's deposition, the transcript of Domg Yu's deposition on behalf of Yale, and the workers' compensation file. The submissions establish that the Plaintiff was employed by Yale on the date of the accident; that the Plaintiff's alleged injury is a fractured wrist requiring surgery; that the Plaintiff received workers' compensation due to the injury; that Yale's workers' compensation insurance carrier paid benefits to the Plaintiff; and that the Plaintiff has since returned to work in a different field.

II. Discussion

The familiar standards applicable to summary judgment motions are set forth below.

"Summary judgment is designed to expedite all civil cases by eliminating from the Trial Calendar claims which can properly be resolved as a matter of law" (*see Andre v Pomeroy*, 35 NY2d 361, 364 [1974]).

The "function of summary judgment is issue finding, not issue determination" (*see Assaf v Ropog Cab Corp.*, 153 AD2d 520, 544 [1st Dept 1989]). The role of the Court in deciding a summary judgment motion is to make determinations as to the existence of *bona fide* issues of fact and not to delve into or resolve issues of credibility (*see Vega v Restani Constr. Corp.*, 18 NY3d 499 [2012]). The facts must be viewed in the light most favorable to the non-moving party (*see Sosa v 46th Street Development LLC*, 101 AD3d 490 [1st Dept 2012]). If there is any doubt as to the existence of a triable issue of fact, the motion must be denied (*see Rotuba Extruders v Ceppos*, 46 NY2d 223 [1978]).

To be entitled to the "drastic" remedy of summary judgment, the movant "must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case" (*Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). The failure to make a *prima facie* showing of entitlement to summary judgment requires the denial of the motion, regardless of the sufficiency of the opposing papers (*see id.*; *see also Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]).

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 (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). If no genuine issue of material fact exists, the grant of summary judgment is proper (*see Kornfeld v NRX Technologies, Inc.*, 62 NY2d 686 [1984]).

"In general, workers' compensation benefits are the exclusive remedy of an employee against an employer for any damages sustained from injury or death arising out of an in the course of employment" (*Paguy v Cup of Tea, LLC*, 165 AD3d 964, 965 [2d Dept 2018]; *see Workers' Compensation Law* § 11). "A finding by the Worker's [*sic*] Compensation Board ... that an injury is compensable is, until set aside, a final and conclusive determination which bars an action at law" (*Dupkanicova v James*, 17 AD3d 627, 627 [2d Dept 2005] [internal citations and quotation marks omitted]; *see O'Conor v Midiria*, 55 NY2d 538, 541 [1982]). "[D]eterminations by the Workers'

Compensation Board as to all questions of fact ... are final” (*Calhoun v Big Apple Wrecking Corp.*, 162 AD2d 574, 575 [2d Dept 1990]).

Although an employer’s liability for an on-the-job injury is generally limited to workers’ compensation benefits, “when an employee suffers a ‘grave injury’ the employer may also be liable to third parties for indemnification or contribution” (*Skrok v Grand Loft Corp.*, 218 AD3d 702, 705 [2d Dept 2023]; *see* Workers’ Compensation Law § 11). The statute provides that a “grave injury” is only one or more of the following:

“death, permanent and total loss of use or amputation of an arm, leg, hand or foot, loss of multiple fingers, loss of multiple toes, paraplegia or quadriplegia, total and permanent blindness, total and permanent deafness, loss of nose, loss of ear, permanent and severe facial disfigurement, loss of an index finger or an acquired injury to the brain caused by an external physical force resulting in permanent total disability” (Workers’ Compensation Law § 11 [1]).

Here, Yale has established its *prima facie* entitlement to summary judgment by showing that the Plaintiff’s only alleged injury is a fractured wrist and that the Plaintiff’s bill of particulars contained no allegations that the Plaintiff claims a total loss of use of one of the enumerated body parts (*see Fleischman v Peacock Water Co., Inc.*, 51 AD3d 1203, 1205 [3d Dept 2008]; *Schuler v Kings Plaza Shopping Center and Marina, Inc.*, 294 AD2d 556, 559 [2d Dept 2002]; *Hilbert v Sahlen Packing Co.*, 267 AD2d 939, 939 [4th Dept 1999]).

A triable issue of fact is not raised relative to Yale’s motion. Preliminarily, this motion is unopposed. Where a party fails to oppose some or all matters advanced on a motion for summary judgment, the facts as alleged in the movant’s papers may be deemed admitted as there is, in effect, a concession that no question of fact exists (*see Kuehne & Nagel, Inc. v Baiden*, 36 NY2d 539 [1975]; *Madeline D’Anthony Enter., Inc. v Sokolowsky*, 101 AD3d 606 [1st Dept 2012]; *Argent Mtge. Co., LLC v. Mentasana*, 79 AD3d 1079 [2d Dept 2010]). Further, by failing to oppose the motion, the non-moving parties are also deemed to have acquiesced in the relief sought herein (*see Flake v Van Wagenen*, 54 NY 25 [1873]; *Mixon v TBV, Inc.*, 76 AD3d 144 [2d Dept 2010]).

Thus, Yale’s motion is granted, and the third-party complaint is dismissed.

III. Conclusion

Accordingly, it is hereby:

ORDERED, that the motion is granted; and it is further

ORDERED, that the third-party action is dismissed; and it is further

ORDERED, that the caption of this action is amended to read as follows and that the Clerk of the Court shall amend his or her records accordingly:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
GUOZHONG CHEN,

Plaintiff,

Index No.: 713567/2020

-against-

SEROTA WADING RIVER, LLC and EUNHAE
NAILS & SPA, INC.,

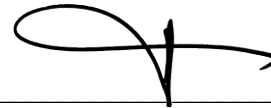
Defendants.

-----X
; and it is further

ORDERED, that Yale shall serve a copy of this Order with Notice of Entry upon all parties
by August 16, 2024.

This constitutes the Decision and Order of the Court.

Dated: Jamaica, New York
June 14, 2024



MOJGAN C. LANCMAN, J.S.C.

