

Scott v Ba
2024 NY Slip Op 35190(U)
February 15, 2024
Supreme Court, Bronx County
Docket Number: Index No. 25552/2018E
Judge: John A. Howard-Algarin
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NEW YORK SUPREME COURT - COUNTY OF BRONX

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX

Index No. 25552/2018E
Motion Calendar No.
Motion Date: November 7,
2023

-----x
JAMMOND SCOTT,

Plaintiff,

-against-

DECISION/ ORDER

Present:

Hon. John A. Howard-Algarin
Justice Supreme Court

MATAR BA, SAME DAY DELIVERY SERVICES
INC., STRUCTURAL PRESERVATION SYSTEMS,
LLC, ADVANCED CONSTRUCTION EQUIPMENT
CORP., EAST HARLEM PILOT BLOCK HDFC, and
ARCO MANAGEMENT CORP.,

Defendants.

-----x
ADVANCED CONSTRUCTION EQUIPMENT
CORP.,

Third-Party Plaintiff,

-against-

EAST HARLEM PILOT BLOCK HDFC,

Third-Party Defendants.

-----x
Recitation, as required by CPLR § 2219(a), of the papers considered in the review of this motion to dismiss the plaintiff's complaint:

<u>Papers</u>	<u>NYSCEF Doc. No(s).</u>
Notice of Motion, Affirmation in Support, Statement of Material Facts, Exhibits Thereto	129-150
Affirmation(s) in Opposition	152-166
Reply Affirmation	169

Motion decided as follows: Upon deliberation of the application of the defendant/ third-party plaintiff, ADVANCED CONSTRUCTION EQUIPMENT CORP. (hereinafter

“Advanced Construction”), by **NOTICE OF MOTION**, and all papers in connection therewith, for an Order, pursuant to CPLR § 3212, granting summary judgment to said defendant and dismissing plaintiff’s Complaint, and all cross-claims against it, on the grounds that there is no triable issue of fact as to the absence of liability against it herein, as a matter of law, said motion is **GRANTED**.

It is undisputed between the parties that this action stems from injuries allegedly sustained by plaintiff, on March 27, 2018, after a portion of a sidewalk shed erected at 2383 2nd Avenue collapsed on him when a delivery van owned by defendant, SAME DAY DELIVERY SERVICE INC. (hereinafter “Same Day”), and driven by defendant, MATAR BA (hereinafter “Matar Ba”), drove over the sidewalk curb and crashed into it. Relying on the Affidavit of its President, Adnan Raja (hereinafter “Raja”), plaintiff’s October 22, 2021, and February 18, 2022, deposition transcripts, and defendant Matar Ba’s February 10, 2023, deposition transcript in support of its application, Advanced Construction now seeks summary judgment on the grounds that it did not owe a duty to plaintiff because it did not launch a force or instrument of harm causing plaintiff’s injuries.

Plaintiff opposes the motion asserting that Advanced Construction has failed to make a *prima facie* showing that it did not create the dangerous condition that injured plaintiff by having negligently installed and maintained the sidewalk shed. Alternatively, plaintiff argues that the sidewalk shed failed to comply with all applicable rules and regulations that assure its fitness for its intended purpose. Defendant STRUCTURAL PRESERVATION SYSTEMS, LLC. (hereinafter “Structural Preservation”), opposes the motion on the general grounds that Advanced Construction has not met its *prima facie* burden of showing that it is free from negligence, and, alternatively, that a triable issue of fact exists based on the two violations issued to Advanced Construction for failing both to build the sidewalk shed according to plan and to perform periodic inspections. Defendants, ARCO MANAGEMENT CORP. (hereinafter “Arco”), and EAST HARLEM PILOT BLOCK HDFC (hereinafter “East Harlem”), join plaintiff and Structural Preservation’s arguments in opposition to the motion.

The background facts of this case are straight forward. Defendant-landlord, East Harlem, hired Advanced Construction to erect a sidewalk shed, which was installed on September 6, 2012. After its installation, Advanced Construction returned to the site on two occasions, in 2016 and 2017, to perform maintenance on the shed at East Harlem’s behest. Otherwise, the record reflects no evidence of any complaints or problems with the shed leading up to the day of incident. As alluded to above, the parties do not dispute that the contact between the plaintiff and the portion of the sidewalk shed that injured him occurred when an employee of Same Day delivery service, Matar Ba, temporarily lost control of the van he operated and the van mounted the sidewalk and collided with the sidewalk shed. That collision precipitated a partial collapsed of the shed, part of which came into contact with plaintiff purportedly causing him injury. This fact pattern warrants summary judgment for Advanced Construction herein.

Advanced Construction has established that it was not at fault for the accident in question. See Reeves v Wilson, 214 AD3d 1013 (2nd Dept. 2023) (stating that “[a] defendant moving for summary judgment in a negligence action has the burden of establishing, *prima facie*, that he or she was not at fault in the happening of the subject accident”). The proximate cause of plaintiff’s alleged injuries in this matter was Matar Ba losing control of his vehicle and crashing into the sidewalk shed. See Haibi v 790 Riverside Dr. Owners, Inc., 156 AD3d 144, 147 (1st Dept. 2017) (stating that “the issue of proximate cause may be decided as a matter of law where only one conclusion may be drawn from the established facts”).

The Second Department decision in Rodriguez v Hernandez, 37 AD3d 809 (2nd Dept 2007), is instructive in this regard. In that case, following a two-car motor vehicle collision, the plaintiff lost control of his vehicle and collided with a sidewalk shed erected in connection with a school construction project. As a result of the incident, the sidewalk shed collapsed and a pole stored on top of the shed fell through the windshield of the plaintiff’s vehicle and pierced his leg. In reversing the trial court’s denial of summary judgment, the Appellate Division held:

Even if the City¹ and the SCA² improperly erected a sidewalk shed and permitted it to be used for the storage of construction materials, they were nevertheless entitled to summary judgment dismissing the causes of action asserted against them because they established that the proximate cause of the accident was the plaintiff’s loss of control of his vehicle . . . and that the sidewalk shed merely furnished the condition for the occurrence, not the cause.

Id. at 810 (internal punctuation omitted); citing Stein v Pat Noto, Inc., 226 AD2d 624, 625 (2nd Dept 1996). Given the facts in the matter at bar, the same result must obtain here.

Neither do the two municipal violations proffered by Structural Preservation raise a question of fact sufficient to defeat summary judgment herein. In this regard, there simply is no admissible evidence, by way of expert testimony or otherwise, to suggest that the cited violations are in any way probative of the fact that negligence by Advanced Construction served as a proximate cause to Scott’s injuries herein. See Kalnit v 141 East 88th Street, LLC, 210 AD3d 531, 532 (1st Dept 2022); citing Igbodudu-Edwards v Board of Mgrs of the Parkchester N Condominium, Inc., 105 AD3d 448, 449 (1st Dept 2013). Stated otherwise, absent specific evidence competently identifying a nexus between the subject of the violations and the cause of plaintiff’s injuries, this Court declines to speculate along those lines.

¹ City of New York.

² School Construction Authority.

The remainder of the arguments in opposition are without merit, and all cross-claims and counterclaims asserted against Advanced Construction must fail for the reasons set forth hereinabove.

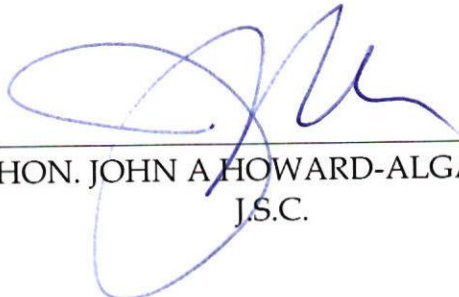
Accordingly, it is:

ORDERED that defendant, ADVANCED CONSTRUCTION EQUIPMENT CORP.'s, Motion for summary judgment, dismissing the amended complaint and all cross-claims, as to liability, indemnification and contribution, on the grounds that there are no triable issues of fact as to its liability, as a matter of law, is hereby **GRANTED in its entirety**;

ORDERED that defendant, ADVANCED CONSTRUCTION EQUIPMENT CORP., shall serve a copy of this Order with Notice of Entry within thirty (30) days of entry of this Order.

The forgoing constitutes the Decision and Order of the Court.

Dated: February 15, 2024



HON. JOHN A HOWARD-ALGARIN
J.S.C.