Perez v Hudson Design Architecture & Constr. Mgt., PLLC
2012 NY Slip Op 33708(U)
November 28, 2012
Supreme Court, Westchester County
Docket Number: 17987/10
Judge: Bruce E. Tolbert
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

P R E S E N T: HON. BRUCE E. TOLBERT, J. S. C.

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Gustavo Perez,
Plaintiff,

- against -

Hudson Design Architecture & Construction Management, PLLC, Hudson Design & Construction Management, PLLC, Hudson Design Architecture, PLLC, Michael Yavonditte and Nathalie Sucor,
Defendant.

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DECISION AND ORDER
Index # 17987/10

Sequence 4,5 & 6

FILED AND ENTERED ON 11/28 2012 WESTCHESTER COUNTY CLERK

The following documents numbered 1-69 were read on these Motions:

	DOCUMENTS NUMBERED
Defendants'(Yavonditte and Sucor)Motion for Summary Judgment, Affirmation and Exhibits (Sequence #4)	1 - 12
Plaintiff's Affirmation in Opposition and Exhibits	13 - 14
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FILED NOV 28 2012 TIMOTHY C. IDONI COUNTY CLERK COUNTY OF WESTCHESTER

The underlying lawsuit arises out of an incident which occurred on January 26, 2010. The Plaintiff was employed as an electrician by C.A. Ricci and was working on a construction project. The project was to a new guest house construction at a single family

residence owned by Michael Yavonditte, located in Garrison, New York. The property was not flat, and could be described as "hillside". The injury to the Plaintiff occurred during the period of time in which he was standing on a stepladder that was approximately four feet in height. The reason for this, was because he was removing a twelve foot ladder from the roof of his employer's van, with the help of another employee. The van was parked in the driveway, in a portion that was sloped ,uneven and broken up. The stepladder was positioned at the rear of the van. When his co-worker pushed the twelve foot ladder toward him, the Plaintiff was struck on the head and then he fell off the four foot stepladder. The injuries that occurred to Plaintiff are allegedly server and permanent, specific to his shoulder area.

The instant Decision and Order of this Court involves a substantial amount of motions supported by a quantum of paper, sizeable to a small dead forest, all of which stems from this aforementioned central fact pattern. We live in a litigious society where parties believe that less is more, rather than the reverse. This Court in its position, must dissect that which is relevant and pertinent to the case at bar, leaving behind emotion, and focusing on logistics. The sheer volume of paper submitted, in and of itself, required this Court to use a significant amount of time to make it ruling.

The first motion before this Court is Sequence #4 brought by the Defendants Michael Yavonditte and Nathalie Yavonditte s/h/a Nathalie Sucor, seeking Summary Judgment, based upon allegations that the Plaintiff has failed to set forth any actionable claims against these Defendants. These Defendants logically seek a Summary Judgment and the dismissal of the Complaint as against them.

In review of this Sequence, what is important to remember is that these Defendants are the homeowners. Plaintiff sued in a way that is taught in Torts in a law school class, on the theory of "sue everyone". However, it is this Court's job to look for liability and a nexus.

It is long settled law that Summary Judgment is designed to expedite cases from the trial calendar, claims that can be properly resolved as a matter of law. *See*, Andre v. Pomeroy, 35 NY2d 361 (1974) and Hantz v. Fishman 155 A.D. 2d 415 (2nd Dept. 1989). It is this Court's responsibility to weed out those cases that do not require judicial review in the spirit of judicial economy. Summary Judgment is an appropriate remedy that should be granted where there are no triable issues of fact. *See*, Suffolk County Department of Social Services v. James M., 83 N.Y. 2d 178 (1994).

It is well established that a proponent in a Summary Judgment Motion bears the burden of proving *prima facie* entitlement to judgment in its favor as a matter of law without the need for a trial. Alvarez v. Prospect Hospital, 68 NY2d 320(1986); *See Also*, Hartz Mountain Corp.v. Allou Distributors, Inc., 173 A.D. 2d 440 (2d Dept 1991). In this case the *prima facie* burden has been met by these Defendants. In this case the Defendants have substantiated that they are in fact entitled to Summary Judgment based upon the

exemption set forth in Labor Law Section 240 (1) and 241 (6) for the owners of one and two family dwellings. Moreover, it is apparent that there was no direction of these Defendants over the work by this Plaintiff. There is no proximate cause established in any way to direct liability to these Defendants for that which occurred to the Plaintiff on this date. There is no valid claim against these Defendants nor has Plaintiff substantiated anything in the opposition that either negates Defendants clear argument or even raises a question of fact.

Accordingly, Defendants' Motion (Sequence # 4) is **granted** in its entirety and the Complaint as and against them is **dismissed**.

The next portion of this Decision and Order pertains to Sequence #5 which is a Motion for Summary Judgment seeking dismissal of the Complaint, filed by the Defendant Hudson Design Architecture & Construction Management PLLC. This Defendant was the general contractor for the construction project. The Plaintiff was employed by the subcontractor C.A. Ricci Electrical Contractors, Inc. As indicated in the caption there are more than one "Hudson" entities. For this purpose, the Defendant herein noted is going to be named "Hudson 1". Again, it is clear that the "sue everyone" principal is yet again being applied. As set forth in these papers, it is established that this Defendant has not relationship to the two other Hudson Design entities that are listed herein as Defendants. The Plaintiff alleges that Hudson 1 was the "Construction Manager" for this construction, while Defendant contends that they were just the general contractor.

The incident occurred while unloading a ladder to be used on the job. There is no connection between this Defendant and either the loading or unloading of this ladder. It is an incredibly broad based principal of proximate cause that Plaintiff seeks to attach to this Defendant. Regardless of whether this Defendant was acting as a general contractor, which this Court does believe is accurate, or even to extrapolate that this Defendant was the construction manager on this project, still leaves this Court to ponder what is the nexus? The citing of Labor Law provisions that are inapplicable or irrelevant to do not create liability where one does not exist.

This Court like the other Civil Trial Parts in this jurisdiction, preside over an array of negligent matters both on trial and on paper. What is remarkable to this Court, is that quite often litigants are unable to discern that liability may not lie, rather what occurred is just an accident. Although, the fact that an injury occurred, the proximate cause as related to the questionable negligence is not substantiated. Certainly, not in relation to this Defendant. The alleged negligence complained of must have caused the occurrence of the accident from which the injuries flow. Rivera v. City of New York, 11 N.Y. 2d 856 (1962). The course of action chosen by Mr. Perez as to the unloading of this ladder, was of free choice and not directed by anyone, specifically this Defendant. Plaintiff's employer, Mr. Ricci clearly affirms that this method of removal was chosen by the Plaintiff.

This court must search evidentiary facts sufficient to defeat a Motion for Summary Judgment. It is interesting that issue finding, rather than issue determination, is the

standard of review of a motion for Summary Judgment and the mere existence of a material issue of fact should lead to the denial of the motion. *See*, Downing v. Schreiver, 176 A.D. 2d 781 (2nd Dept. 1991).Once this burden is met, the party opposing Summary Judgment, which herein is the Plaintiff, must establish, through admissible evidence, the existence of material issues of fact to preclude Summary Judgment. Zuckerman v. City of New York, 49 NY2d 557 (1980). To defeat Summary Judgment the opponent must present evidentiary facts sufficient to raise a triable issue of fact, and averments merely stating conclusions of fact or of law, are insufficient. Mallard Construction Corp. v. County Federal Savings and Loan Assn., 32 NY2d 285 (1973). *See Also*, Indig v. Finkelstein, 23 N.Y. 2d 728 (1968).

Although this Court is supposed to draw all reasonable inferences in favor of the non-moving party, in this case such is not possible. *See*, Rizzo v. Lincoln Diner Corp., 215 A.D. 2d 546 (2nd Dept. 1995). In this case, Plaintiff's submission attempts to raise triable issues of fact. The Plaintiff makes a very vague attempt to find this Defendant negligent in providing a "safe place" to work, specifically under Labor Law Section 200, 240(1) and 241(6). Although this attempted application of the law is creative, this Court finds that the fact pattern as set forth finds these statutes inapplicable. The irrelevance of these Labor Law Sections is clear. There are no questions of fact that require and interpretation of these statutes pertaining to this fact pattern. It is clear to this Court that they are in fact inapplicable. Not every worker that falls at a construction site gives rise to the extraordinary protection protections fo Labor Law Section 210(1). *See*, Narducci v. Manhasset Bay Association, 96 N.Y. 2d 259 (2001). Clearly, ordinary risks and dangers of a construction site are those not envisioned as recovery under the Labor Law. *See*, Rodriquez v. Margaret Tietz Center for Nursing Care, Inc. 84 N.Y. 2d 441 (1994).

This Court would be remiss in its duties if it were to create proximate cause, when deciding this motion and cannot ignore certain facts as presented. The evidence as to the cause of this accident which injured Plaintiff is undisputed, the question as to whether any act or omission by this Defendant was a proximate cause thereof, in this instance is one for the Court and not for a jury. *See*, Rivera v. City of New York, 11 N.Y. 2d 856 (1962).

It is this Court' strong opinion that Plaintiff has wholly failed to meet burden in opposing Defendant's motion. The Plaintiffs have wholly failed to establish anything which would require this Court's rejection of Defendants' Summary Judgment Motions based upon the hard fact that no triable issues of fact were raised.

Accordingly, this Motion (Sequence # 5) is **granted** in its entirety in favor of Defendant Hudson Design Architecture & Construction Management, PLLC and the Complaint as and against them is **dismissed**. As to the other "Hudson" Defendants the matter is **dismissed** as well, as to they were pled as a branch of the aforementioned Defendant, Hudson 1.

This Court is mindful that there was an incident that caused some injury to Plaintiff.

However, this Court is further mindful that accidents happen, that which are not the "fault" of anyone and therefore that which bear no liability.

Whether it was carelessness or just a random accident by the Plaintiff, there is nothing to form the causal connection upon both of these two Defendants, upon which they should bear a burden under the law. *See Also*, Rodriguez v. Hernandez, 37 A.D. 3d 809 (2nd Dept. 2007).

Plaintiff also filed a motion, a Cross-Motion (Sequence # 6), seeking Summary Judgment against the Hudson Defendants. This portion of this matter was reviewed in its entirety. However, for the reasoning set forth within this instant Decision and Order, there is no other option but for Plaintiff's Cross-Motion to be **denied** in its entirety.

The foregoing constitutes the **ORDER** of this Court.

Dated: White Plains, NY
November 28, 2012

Bruce E. Tolbert

Honorable Bruce E. Tolbert, J.S.C.

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