

Ramos v S & G Commercial Finishes, LLC
2013 NY Slip Op 32276(U)
September 23, 2013
Sup Ct, NY County
Docket Number: 109223/11
Judge: Anil C. Singh
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. ANIL C. SINGH
SUPREME COURT JUSTICE
Justice

PART 61

Index Number : 109223/2011
RAMOS, MAYRA
vs
S & G COMMERCIAL FINISHES
Sequence Number : 002
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____
Answering Affidavits — Exhibits _____ | No(s). _____
Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is *decided in accordance with the annexed memorandum opinion.*

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 9/23/13

ANIL C. SINGH, J.S.C.
HON. ANIL C. SINGH
SUPREME COURT JUSTICE

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
 DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

-----X
MAYRA RAMOS,

Plaintiff,

DECISION AND
ORDER

-against-

S & G COMMERCIAL FINISHES, LLC and
GRAYROSE CARPET SERVICE, INC.,

Index No.
109223/11

Defendants.

-----X

HON. ANIL C. SINGH, J.:

Defendant S&G Commercial Finishes, LLC (“S&G”) moves for summary judgment pursuant to CPLR 3212, contending that it merely supplied the carpet that was being installed by co-defendant Grayrose Carpet Service, Inc. (“Grayrose”) in the office where plaintiff Mayra Ramos worked; and to dismiss plaintiff’s complaint together with all cross-claims asserted against S&G, and/or for indemnification pursuant to common law on its cross-claims against Grayrose. Plaintiff opposes the motion.

Plaintiff, employed as an administrative assistant by nonparty Imowitz, Koenig and Company (“Imowitz”), was allegedly injured on May 20, 2011, when she slipped and fell on adhesive glue that Grayrose’s employees had spread on the floor at plaintiff’s workplace.

Plaintiff commenced the instant personal injury action by filing a summons and verified complaint on August 10, 2011. The complaint alleges that defendant S&G was hired and retained by nonparty Imowitz to install new carpeting in their office space; that defendant S&G hired, retained and subcontracted with co-defendant Grayrose to perform the physical carpet installation; and that plaintiff's injury was caused by defendants' negligent conduct. In addition, plaintiff in her verified bill of particulars asserts that defendants are liable under the doctrine of *res ipsa loquitur*.

Defendant Grayrose filed a verified answer, asserting four affirmative defenses, a cross-claim for apportionment of liability, and a cross-claim for indemnification.

Defendant S&G filed an answer, asserting seven affirmative defenses, cross-claims for common law and contractual indemnification, a cross-claim for common law negligence, and a cross-claim for insurance coverage.

Defendant S&G exhibits EBT transcripts of four individuals – namely, plaintiff Mayra Ramos; Patricia Gail Wasserman Imowitz; Anthony Giannino; and Alan Ozur.

Plaintiff testified that she never had any contact with S&G and that she did not know what, if anything, that entity did with respect to the offices where she worked.

Patricia Gail Wasserman Imowitz testified that she is the owner of S&G, which is a flooring sales company. According to Ms. Imowitz, S&G contracted to supply

and install the carpeting. She testified further that S&G ordered the carpet from a carpet mill; that the installation was subcontracted out to defendant Grayrose; and that the mill delivered the carpet to the installer. Ms. Imowitz stated that S&G did not have anyone present on site when Grayrose was installing the carpet; that S&G did not supervise or control the work; and that she had gone to the site to look at the space prior to the commencement of the installation work. Finally, Ms. Imowitz testified that Grayrose had done work for S&G in the past, and S&G never received any complaint about the work.

Next, S&G exhibits the EBT transcript of Anthony Giannino, who testified that he is a foreman at Grayrose. Mr. Giannino stated that he was on site at the beginning of the project and that he visited the site from time to time to check on progress and to address any problems that had arisen. He described the work performed as removal of existing carpeting and the installation of new carpet. Further, Giannino stated that he was present when portions of the carpet were removed; that three Grayrose employees were involved in the work; that no one from S&G was at the site; and that he participated in the work on one occasion. He testified specifically as follows:

- Q. Were you present during any portion of the ripping off of the old carpeting?
- A. Yes.
- Q. How many people comprised the crew from S&G that ripped up the old carpeting?
- A. The people were from Grayrose.

Q. How many people from Grayrose were part of the crew that ripped up the carpeting?

A. Three.

(Affirmation in Support of Motion, exhibit H, p. 10, lines 14-23).

Finally, S&G exhibits the EBT transcript of Alan Ozur, a partner at the accounting firm where plaintiff worked. He testified that the firm retained defendant S&G to install the carpeting. Further, Mr. Ozur stated that he routinely dealt with the supervisor from Grayrose, who directed and controlled the work of carpet replacement.

S&G exhibits two more documents in support of its motion. The first document is the sworn affidavit of Patricia Gail Wasserman Imowitz, which is completely consistent with her EBT testimony.

The second document is an invoice dated May 25, 2011 (Affirmation in Support of Motion, exhibit K). The invoice reflects that Grayrose billed S&G \$17,194.00 for installing the carpet.

Discussion

“As a general rule, a principal is not liable for the acts of an independent contractor because, unlike the master-servant relationship, principals cannot control the manner in which independent contractors perform their work” (Saini v. Tonju Assoc., 299 A.D.2d 244, 245 [1st Dept., 2002]). Here, there is no evidence that S&G

exercised any supervision or control over Grayrose's work. Accordingly, S&G has made out a prima facie showing that it is entitled to summary judgment in its favor (See, for example, Duhe v. Midence, 48 A.D.3d 244 [1st Dept, 2008]; see also DiPietro v. Stark Carpet Corp., 34 Misc.3d 160(A) [App. Term, 1st Dept., 2012] (“No basis is shown on the post-discovery, summary judgment record before us to impose liability on defendant Stark Carpet Corp., a carpet wholesaler, for any negligent conduct attributable to defendant Extreme Carpet LLC, a carpet installation firm”)).

Plaintiff asserts that summary judgment should be denied for three reasons.

First, plaintiff points to “fine print” towards the bottom of the written work proposal stating that “[a]ll work is to be completed in a workmanlike manner...” (Opp., exhibit 1).

Second, plaintiff contends that S&G's principal and owner possessed first-hand knowledge of the job, had priced it, had inspected it, had insured it, and proposed the parameters of the work.

Third, plaintiff contends that under General Obligations Law section 5-322.1, S&G is prohibited from entering into an agreement which either exempted, or attempted to exempt, that company from liability in negligence as void and unenforceable.

These arguments fail to demonstrate the existence of any genuine issues of

material fact or otherwise rebut the motion. It is undisputed that Grayrose is the only party that spread the offending glue on the floor that allegedly caused plaintiff to slip. It is also undisputed that no one from S&G was ever present on site to supervise the work. Nor did S&G play any direct role whatsoever in the physical installation of the carpet. The record reflects that S&G's exclusive role was to order the carpet from the mill; contract with Grayrose for installation; and arrange for the mill to deliver the carpet to Grayrose.

Under the specific circumstances of this case, the Court finds that S&G cannot be liable as a matter of law. The connection between the two defendants is attenuated and insufficient to impose tort liability on the supplier.

Accordingly, it is

ORDERED that defendant S&G Commercial Finishes, LLC's motion for summary judgment is granted, and the complaint and all cross-claims asserted against it are dismissed with costs and disbursements to defendant as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

The foregoing constitutes the decision and order of the court.

Date:

01/23/13

New York, New York



Anil C. Singh
HON. ANIL C. SINGH
SUPREME COURT JUSTICE