

Valentini v Verizon

2013 NY Slip Op 32546(U)

October 17, 2013

Supr Ct, New York County

Docket Number: 115978/2008

Judge: Saliann Scarpulla

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

PRESENT: SALIANN SCARPULLA Justice

PART 19

VALENTINI, GEORGE

INDEX NO. 115978/2008

FILED OCT 21 2013 COUNTY CLERK'S OFFICE NEW YORK

MOTION DATE 5/29/2013

VERIZON, NEW YORK

MOTION SEQ. NO. 004

The following papers, numbered 1 to ... were read on this motion to/for summary judgment
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

ORDERED that defendant Corbel Communications, Inc.'s motion for summary judgment is decided per the memorandum decision dated 10/17/13

This constitutes the Decision and Order of the Court.

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DATED: 10/17/13

SALIANN SCARPULLA, J.S.C.

- 1. CHECK ONE : [] CASE DISPOSED [X] NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE : MOTION IS : [] GRANTED [] DENIED [X] 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: CIVIL TERM: PART 19

-----X
GEORGE VALENTINI and ANGELA VALENTINI,

Plaintiffs,
-against-

Index No.: 115978/2008
Submission Date: 5/29/13

VERIZON NEW YORK, INC., ST OWNER LP,
CUSTOM CABLE COMMUNICATIONS, INC.,
and CORBEL COMMUNICATIONS, INC.

DECISION AND ORDER

Defendants.

FILED

OCT 21 2013

COUNTY CLERK'S OFFICE
NEW YORK

For Plaintiffs:
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Papers considered in review of this motion for summary judgment (motion seq. no. 004):

Notice of Motion/Affirm. of Counsel in Supp.....	1
Affirm. of Counsel in Opp. to Motion.....	2
Reply Affirm. of Counsel in Supp.....	3

HON. SALIANN SCARPULLA, J.:

In this action to recover damages for personal injuries, defendant Corbel Communications, Inc. ("Corbel") moves for summary judgment dismissing plaintiffs George Valentini ("Valentini") and Angela Valentini's (collectively, "Plaintiffs") complaint pursuant to CPLR § 3212.

Valentini is a mechanic employed by Tishman Speyer at 280 First Avenue, New York, NY, an apartment building in Stuyvesant Town-Peter Cooper Village (“the premises”). In the complaint, Valentini alleges that he fell and suffered personal injuries while working at the premises on July 13, 2008. Valentini alleges that defendants negligently created or allowed a hazardous and unsafe condition to exist on the premises – unsecured conduit pipes – which caused his injuries.

Valentini asserts negligence and Labor Law §§200, 240(1) and 241(6) causes of action against the defendants. Valentini’s wife, Angela Valentini, asserts a separate cause of action on behalf of herself for loss of services and consortium. On March 27, 2013, I issued an order on the record dismissing Valentini’s Labor Law §§ 240 and 241(6) claims against Corbel.¹

At his deposition, Valentini testified that on the morning of his accident, he worked on installing heat traps at the premises. After Valentini installed about twelve or thirteen heat traps, he went to install heat traps in the “hub room” where computers and computer equipment was stored.

To install the heat traps in the hub room, Valentini first set up his wood A-frame ladder, and placed his wrench on top of the ladder. He then climbed up the ladder four or five steps, with the first heat trap in hand. Valentini testified that as he hooked up his

¹ I also issued an April 11, 2013 order granting defendants Verizon New York, Inc. and ST Owner LP’s motion for summary judgment dismissing the complaint.

wrench to one side of the trap, something then “hit it [the ladder] and then all of a sudden, I lost my equilibrium and I fell down” off the ladder.

When Valentini fell off the ladder, he testified that he fell onto pipes that were “all over the floor.” Valentini described the pipes as silver and varied in size – some were one-inch in diameter, and others were three-inch elbow pipes and coupling pipes. According to Valentini, prior to his accident, the pipes were laying on the floor and stacked two or three levels high.

Jose Caraballo, a supervisor for Tishman Speyer, testified that Valentini’s accident occurred in a storage room in the building. According to Caraballo, Verizon was performing work and installing FiOS service throughout Stuyvesant Town-Peter Cooper Village. Caraballo testified that “Verizon has pipes all over the buildings” and that workers often left pipes after completing their work because “the workers don’t care and they walk away and leave it there.” Caraballo also testified that “many different companies” and subcontractors worked at Stuyvesant Town-Peter Cooper Village.

Stephen Javakian (“Javakian”), president of Corbel, testified that Verizon hired Corbel as a subcontractor in April 2008 to install electric metal tubing, conduits, and plastic molding at the premises. Corbel then subcontracted out the installation work to T & T Cable (“T & T”), and Corbel maintained responsibility for managing the project.

Javakian explained that Corbel paid for the conduits and that they were delivered by truck to a warehouse area for the premises. The warehouse manager then issued the

conduits to the subcontractor T & T to deliver to the job site. The conduits installed by T & T were two or three inches in diameter and ten feet in length called "E.M.T" or electric metallic tubing.

Javakian testified that Corbel instructed T & T as to where it could store conduits if any excess materials were left at the end of the day. Corbel was given a master key that would open all of the rooms at the premises, and Corbel received instructions from Verizon about where materials could be stored.

Javakian and his foreman Keith Gordon managed the conduit installation project on behalf of Corbel. Keith Gordon directed and controlled T & T's work, and Javakian was in charge of sending daily status reports to Verizon. According to Javakian, the project took approximately five days to complete and finished in June 2008.

Javakian further testified that Corbel was responsible for inspections and removing excess materials at the end of the project. Javakian did not recall whether he asked employees to remove any excess material from the project or whether Corbel completed a walkthrough at the end of the project.

In the current motion for summary judgment, Corbel argues that Valentini's Labor Law § 200 and negligence claims should be dismissed because: (1) Corbel is not an owner, employer, or general contractor; and (2) Corbel did not create a dangerous condition on the premises, nor did it have actual or constructive notice of any dangerous condition. Corbel further argues that it did not cause Valentini's accident because it

completed work prior to the accident and it did not transport or install the conduits at the premises.

In opposition, Valentini argues that Corbel's motion should be denied because issues of fact exist as to whether Corbel had direct responsibility for installing and removing conduits at the premises, and whether Corbel had actual or constructive notice that conduits were left unsecured.

Discussion

1. Labor Law § 200

Labor Law § 200 is a codification of the common-law duty imposed upon an owner or general contractor to provide construction workers with a safe place to work. *Comes v. New York State Elec. & Gas Corp.*, 82 N.Y.2d 876, 877 (1993).

I find here that Corbel is entitled to summary judgment dismissing Valentini's Labor Law § 200 claim. Corbel established that it is not an owner or a general contractor as a matter of law, and therefore it is not amenable to suit under Labor Law § 200.

Although Labor Law § 200 does not define the term, it is understood that a "general contractor" is "generally responsible for the coordination and execution of all the work at the worksite." *Feltt v. Owens*, 247 A.D.2d 689, 691 (3d Dep't 1998). Here, it is clear that Corbel was not responsible for all of the work at the premises, and Corbel did not have any responsibility for Valentini's work. Corbel's president Stephen Javakian testified that Corbel was hired by Verizon to install conduits and moldings at the

premises. Corbel's work was separate and independent from Valentini's work to install heating traps. Valentini was directed to install the traps by his employer – the managing agent of the building, Tishman Speyer.

Because I find that Corbel is not an owner or a general contractor under Labor Law § 200, I grant Corbel's motion for summary judgment dismissing Valentini's Labor Law § 200 claim.

2. Negligence

In a negligence action, the plaintiff must show that: (1) the defendant owed a duty of reasonable care to the plaintiff; (2) the defendant breached that duty; (3) which caused plaintiff's injury. *Akins v. Glens Falls City School Dist.*, 53 N.Y.2d 325, 333 (1981).

Under New York law, a “contractor does not owe a duty of care to a non-contracting third party.” *Timmins v. Tishman Constr. Corp.*, 9 A.D.3d 62, 66 (1st Dep't 2004); *Espinal v. Melville Snow Contrs., Inc.*, 98 N.Y.2d 136, 138 (2002).

However, a contractor's duty of care to a non-contracting third party may arise out of a contractual obligation when a contractor fails to exercise reasonable care in the performance of its duties and thereby “launches a force or instrument of harm.” *Espinal*, 98 N.Y.2d at 140; *Powell v. HIS Contractors, Inc.*, 75 A.D.3d 463, 464 (1st Dep't 2010).

Here, I find that Corbel made a *prima facie* showing of entitlement to judgment as a matter of law dismissing Valentini's negligence claim. Corbel demonstrates that

Valentini is not a party to any contract with Corbel, and therefore Corbel does not owe a duty of care to him.

The burden now shifts to Valentini to raise a triable issue of fact. I find that Valentini raises a triable issue of fact as to whether Corbel “launched an instrument of harm” by failing to exercise reasonable care in performing its duties. Although Corbel did not perform the physical installation of the conduits, Javakian testified that Corbel was responsible for removing excess materials at the end of the project and for performing a final walkthrough of the area where conduits were installed to locate any excess materials. At his deposition, Javakian could not recall whether he directed any of his employees to clean up conduits after the project was completed, or whether a final walkthrough was performed. He also testified that Corbel had a master key to any of the rooms in the building, which included the room where Valentini’s accident occurred.

Based on the deposition testimony, I find that issues of fact exist as to whether Corbel failed to perform its duties with reasonable care. If Corbel failed to exercise reasonable care in inspecting for and removing excess conduits, it may have launched an instrument of harm that caused Valentini’s accident. Therefore, I deny Corbel’s motion for summary judgment dismissing Valentini’s negligence claim.

In accordance with the foregoing, it is hereby

ORDERED that defendant Corbel Communications, Inc.'s motion for summary judgment dismissing the complaint pursuant to CPLR § 3212 is granted only to the extent that the Labor Law §200 claim is dismissed, and otherwise denied.

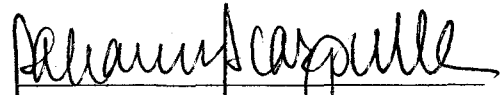
This constitutes the decision and order of the Court.

Dated: New York, NY
October 17, 2013

FILED

OCT 21 2013

ENTER: COUNTY CLERK'S OFFICE
NEW YORK


Saliann Scarpulla, J.S.C.