

Reese v James N. Foss, Inc.
2017 NY Slip Op 33502(U)
March 31, 2017
Supreme Court, Erie County
Docket Number: Index No. 2014-812401
Judge: Donna M. Siwek
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**SUPREME COURT CHAMBERS
STATE OF NEW YORK**

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Re: Ernest Reese v. James N. Foss, Inc.
Index No. 2014-812401

Memorandum Decision

Dear Counselors:

The following shall constitute the Court's Decision on the defendant's motion for summary judgment. Plaintiff's complaint dated October 17, 2014, alleges that he sustained personal injuries resulting from an accident that occurred at 13806 Broadway Street in Alden, New York on June 15, 2012, while he was working as a laborer at those premises. We find that the defendant has met its initial burden of establishing that it is not the owner of the premises at 13806 Broadway Street in Alden, nor was the defendant a general contractor for any labor performed at the premises by the plaintiff's employer, R&R Precision Construction. The defendant has established that it had no involvement with construction at the premises as an owner, general contractor or their agent and that, therefore, the plaintiff has no basis for a claim against it.

We find that the plaintiff has failed to raise a triable issue of fact in opposition to the motion and note that the only opposition submitted by the plaintiff was an attorney's affirmation which suggests that there are issues of fact as to "the extent to which defendant exercised control over the situs of the accident" and argues that the plaintiff has not had the opportunity to conduct discovery or a deposition of an agent of the defendant. The attorney's affirmation is unsupported by any evidentiary material or exhibits and fails to raise a triable issue of fact to withstand the defendant's motion for summary judgment. Moreover, to the extent that the plaintiff argues that the motion is premature and that depositions and discovery should be completed, we note that this action was commenced in October, 2014 and despite ample time and opportunity, plaintiff has not conducted any discovery to support the allegations in his complaint or refute defendant's motion with proof in admissible form. Accordingly, the defendant's motion is granted, without costs.


DONNA M. SIWEK
New York State Supreme Court Justice