SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 32

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RUSSELL J. LESTER,

Plaintiff,

-against-

JD CARLISLE DEVELOPMENT CORP., MD CARLISLE DEVELOPMENT CORP. AND 835 6th AVE. MASTER LP,

Defendants.

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JD CARLISLE DEVELOPMENT CORP., MD CARLISLE DEVELOPMENT CORP. AND 835 6th AVE. MASTER LP,

Third-Party Plaintiffs

-against-

FACADE TECHNOLOGY, LLC AND CENTURY-MAXIM CONSTRUCTION CORP.,

Third-Party Defendants.

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FACADE TECHNOLOGY, LLC,

Fourth-Party Plaintiff

-against-

EXTERIOR ERECTING SERVICES, INC.,

Fourth-Party Defendant.

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Index No. 152112/2012

Motion Sequence: 008

DECISION & ORDER
ARLENE P. BLUTH, JSC

The motion by plaintiff, brought pursuant to CPLR 603, for an order severing plaintiff's Labor Law § 241(6) cause of action and scheduling an immediate trial on only the issue of plaintiff's damages is denied.

Background

This action arises out of injuries suffered by plaintiff on July 23, 2010 at approximately 10:30 a.m. while he was working at a construction site. Plaintiff claims that he slipped and fell while working on the roof above the parking garage located at 839 6th Avenue, New York, NY. Plaintiff alleges that the roof was sloped and slippery. Plaintiff claims that he suffered a myriad of injuries including a severe laceration to his left arm suffered when he fell onto a sharp edge of exposed metal flashing. Plaintiff alleges that when he slipped, he fell to his knees and his left arm hit the sharp metal flashing.

Plaintiff claims that he fell on granulations (a substance similar to sand) located on a waterproof membrane that had become loose and slippery. At the time of the accident, plaintiff asserts that he was installing stainless steel panels to a steel structure that would support a movie screen.

Plaintiff was an employee of Exterior Erecting Services, Inc. ("Exterior"), who was hired by Facade Technology, LLC ("Facade") to perform work at 839 6th Avenue. MD Carlisle claims it served as a construction management corporation for this job site while JD Carlisle asserts it was merely the development corporation for this construction project. 839 6th Avenue Master LP was allegedly the original development owners before the site was sold to the current owners.

On August 8, 2016, this Court issued a decision and order on motion sequence numbers 003, 004 and 005. The Court dismissed plaintiff's Labor Law § 240(1) and § 241(6) claims except to the extent that the § 241(6) cause of action citing Industrial Code 21-1.7(d) remained. The Court also denied the motions to the extent that they sought to dismiss plaintiff's Labor Law § 200 claim.

Plaintiff appealed. On December 28, 2017, the First Department modified this Court's decision to the extent that plaintiff's § 241(6) claim based on Industrial Code 23-1.7(e)(2) was reinstated and, upon a search of the record, plaintiff was granted partial summary judgment on the § 241(6) claim.

Plaintiff now moves, pursuant to CPLR 603, to sever plaintiff's § 241(6) claim and order that a trial be held only on the issue of damages. In opposition, defendants/third-party plaintiffs JD Carlisle Development Corp., M.D. Carlisle Development Corp., and 835 6th Avenue Master LP (collectively, "Carlisle") stresses that plaintiff was not granted summary judgment on his Labor Law § 200 claim and that the indemnification claims among the various defendants also remain outstanding. Carlisle contends that plaintiff must still prove negligence and the issue of negligence is crucial for both the Labor Law § 200 claim and the indemnification issues. Carlisle maintains that there is no reason to require the parties to litigate the same issues twice.

Exterior also submits opposition and claims that a trial on liability must occur prior to one on damages. Exterior insists that even where a violation of Labor Law § 241(6) is found, comparative negligence is a defense and the First Department was silent as to plaintiff's comparative negligence. Exterior further argues that it would be prejudiced by expending a substantial amount of resources to do two trials.

Discussion

Plaintiff brings this motion pursuant to CPLR 603, which provides that "In furtherance of convenience or to avoid prejudice the court may order a severance of claims, or may order a

separate trial of any claims, or of any separate issue. The court may order the trial of any claim or issue prior to the trial of the others."

Here, the Court denies plaintiff's motion because plaintiff failed to show how severing this claim would further the convenience of the parties or would prevent prejudice. The Court observes that plaintiff has not withdrawn his Labor Law § 200 claim. Therefore, if this Court were to grant plaintiff's motion and sever the §241(6) claim, then the parties would have another trial on plaintiff's Labor Law § 200 claim and the indemnification issues.

That would be a waste of resources. The parties would be forced to hold two trials on the same facts. Because both the Labor Law §§ 241(6) and 200 claims arise out of the same event– plaintiff's accident on July 23, 2010– severance pursuant to CPLR 603 is not appropriate (*see Phelps v Boy Scouts of America*, 268 AD2d 210, 210, 700 NYS2d 461 [1st Dept 2000] [denying a motion to sever pursuant to CPLR 603 on the ground that plaintiff's various claims all arose out of the same event]).

The Court observes that the parties' disagreement over whether comparative negligence can be raised at trial is not a dispositive issue because the instant motion only seeks to sever a cause of action pursuant to CPLR 603. And any confusion regarding the fact that plaintiff has summary judgment on one of his claims can be resolved by the trial court through jury instructions (*see e.g., Cason v Deutsche Bank Group,* 106 AD3d 533, 965 NYS2d 110 [1st Dept 2013] [rejecting defendants' motion to sever pursuant to CPLR 603 and observing that the trial court could utilize curative jury instructions to assuage defendants' concerns about prejudice]).

Accordingly, it is hereby

ORDERED that plaintiff's motion for an order severing his Labor Law § 241(6) claim and directing that there be an immediate trial on only damages is denied.

This is the Decision and Order of the Court.

Dated: April 11, 2018
New York, New York

HON. ARLENE P. BLUTH, JSC

HON. ARLENE P. BLUTH