

Dziadaszek v Legacy Stratford, LLC,

2018 NY Slip Op 33641(U)

July 17, 2018

Supreme Court, Erie County

Docket Number: 2015-810794

Judge: Emilio Colaiacovo

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STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

MARK J. DZIADASZEK and
DEBRA J. DZIADASZEK
Individually and as Husband and Wife,

Plaintiffs,

Decision & Order

vs.

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LEGACY STRATFORD, LLC,
FAC DOWNTOWN, LLC,
KEITH E. CHONKA,
D/B/A ONSITE ENTERPRISES,
ALGRECO SCOTSMAN, LLC,
WILLIAMS SCOTSMAN, INC., and
LEGACY BUILDING CO., LLC.

Defendants.

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Plaintiffs Algeco Scotsman, LLC &
Williams Scotsman, LLC

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Attorney for Defendants Legacy
Stratford, LLC, Legacy Building Co.,
LLC and FAC Downtown, LLC

Colaiacono, J.

Before the Court are three motions. First, Legacy Stratford LLC & Legacy Building Co., LLC (hereinafter Legacy) have moved this Court to grant summary judgment or, in the alternative, dismiss the complaint against them on the grounds that Plaintiff was a special employee. Defendant Legacy also seek bifurcation should the Court not grant summary judgment or dismiss the complaint. Defendants/Third-Party Plaintiffs Alegresco Scottsman and Williams Scottsman (hereinafter Williams Scottsman) also seek summary judgment. Plaintiffs has cross-moved seeking summary judgment and to strike Defendant's Answer.

The underlying action arises from an incident that occurred on January 27, 2015. The Plaintiff reported for work at a construction site owned by Legacy and located on Chestnut Ridge Road in Amherst, New York. According to Defendants, Plaintiff had been summoned to the construction site trailer to discuss a physical altercation from the previous day that apparently involved the Plaintiff. While discussing the incident with the site manager, Plaintiff abruptly exited the trailer, according to Plaintiff, to speak with an employee who, according to him, was incorrectly performing his job duties. Instead of using the main door that was fitted with steps, Plaintiff unlocked a different door that was not equipped with steps and jumped out of the trailer. While Plaintiff did not request any medical assistance at the time, he later claimed he sustained injuries as a result of the fall.

The Court recognizes that summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue of fact. See

Kelsey v. Degan, 266 A.D.2d 843 (4th Dept. 1999); Moskowitz v. Garlock, 23 A.D.2d 943 (3d Dept. 1965). The party moving for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law by tendering sufficient evidence to demonstrate the absence of any material issues of fact. Alvarez v. Prospect Hospital, 68 N.Y.2d 320 (1986). On a motion for summary judgment, the court is not to determine credibility, but whether there exists a factual issue, or if arguably there is a genuine issue of fact. S.J. Capelin Assoc. v. Globe Manufacturing Corp., 34 N.Y.2d 338 (1974). To defeat a motion for summary judgment, the opponent must produce evidentiary proof in admissible form sufficient to require a trial of material issues of fact, and importantly mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient. Zuckerman v. City of New York, 49 N.Y.2d 557 (1980).

Before addressing the issues of summary judgment, the Court must first decide whether Plaintiff was a special employee of Legacy. Defendant Legacy maintains that Plaintiff was a special employee as defined by the Court of Appeals in Thompson v. Grumman Aerospace Corp. 78 N.Y.2d553 (1991). In Thompson, the Court held, a “special employment relationship is established where the facts show the ‘surrender of control by the general employer and assumption of control by the special employer.’” 78 N.Y.2d at 558. As the Court of Appeals also noted that, in determining whether a special employee relationship exists, the Court must determine “who controls and directs the manner, details and ultimate result of the employees’ work.” Id. Defendant insists that Plaintiff was a special employee and, as a result, the only recourse Plaintiff has is Workers Compensation.

Here, although Plaintiff received his payments from Brandon Management, he reported each day to Legacy, who was the general contractor. He took direction from Legacy and reported daily to the supervisor for instructions. He was supervised by Legacy and the work he did was done exclusively for this Defendant. However, the record is also clear that Legacy hired Brandon Management Group, Inc. employees to perform certain job duties, including providing instruction and direction to others. Of particular interest, Legacy itself had no employees. As such, there remain questions, indeed confusion, regarding who employed the Plaintiff.

Plaintiff relies on the Thompson holding in support of its argument. More specifically, the Court of Appeals held:

We recognize that a person's categorization as a special employee is usually a question of fact (Stone v Bigley Bros., supra; Irwin v Klein, supra, at 486-487; Wawrzonek v Central Hudson Gas & Elec. Corp., 276 NY 412, 419; Ramsey v New York Cent. R. R. Co., supra; Braxton v Mendelson, 233 NY 122). These cases usually involve arrangements under which a general employer performed work and provided services for another business and, in the course of doing so, an employee and equipment of the general employer were necessarily used and temporarily assigned to work for that business. These lent employee cases, not surprisingly, rest on their particular facts.

The record before this Court is unclear. Did Brandon Management or Legacy Development exercise control over this specific employee? It would have been difficult for Legacy to do so, as it remains unclear whether they had any employees at the job site. Although the Defendant contends that the Plaintiff attended to certain needs at the direction of other individuals at the job site, it is well understood that "being told what job to do does not suffice to demonstrate the existence of a special employment relation." Bellamy v. Columbia Univ., 50 AD3d 160 (2nd Dept. 2012). The documents submitted by

the Defendants in support of their motion do not establish that their respective clients controlled and directed the manner and details of the Plaintiff's work. Bostick v. Penske Truck Leasing Co., L.P., 140 A.D.3d 999 (2nd Dept. 2016). As such, Defendant's have failed to satisfy their burden and their motion to establish a "special employee" designation is hereby DENIED.

Regarding Legacy's motion for summary judgment, it is generally understood that where a "Plaintiff's actions [are] the sole proximate cause of his injuries, . . . liability under Labor Law § 240(1) [does] not attach." Robinson v. East Med. Ctr., LP, 6 N.Y.3d 550 (2006). This Court agrees with the Defendant that Plaintiff was the sole cause for his injuries. He failed to use the door equipped with the stairs. This was a trailer the Plaintiff acknowledged he used daily. Plaintiff admitted that he knew that the main entrance was the only door he used, and that it was the only door equipped with stairs. Plaintiff's decision to unlock a locked door for the purposes of egress and then jump was his decision alone and any injuries resulting were his fault. As such, the Court GRANTS Legacy's motion for summary judgment. Plaintiff's motion for summary judgment is hereby DENIED. The Court need not address Legacy's motion for bifurcation as same is moot.

Turning next to the motion filed by Defendants/Third-Party Plaintiffs Williams Scottsman, they also seek summary judgment. Williams Scottsman were originally sued as they were the owner and lessor of the construction trailer that Plaintiff fell from. It is alleged that the trailer was dangerous as it did not have a staircase outside the door from which the Plaintiff fell. Williams Scottsman subsequently filed a third-party action

against Legacy for indemnification and contribution. Legacy had signed a lease with Williams Scottsman. Page 2 of the Lease provided that Legacy was to obtain general liability insurance covering any liability arising out of the use of the trailer. Among other provisions, Legacy agreed to indemnify and hold Williams Scottsman harmless against any losses or claims arising out of any injury related to the delivery, use, installation, or possession of the trailer.

Under the terms of the lease, Williams Scottsman was to provide the trailer and one set of stairs, which they did. The Court agrees with this Defendant that it cannot be held liable for Plaintiff's injuries and are thus entitled to summary judgment. For many of the same reasons Legacy prevailed on its motion for summary judgment, Williams Scottsman cannot be held liable for the injuries Plaintiff sustained as a result of his own conduct. Defendants have demonstrated a prima facie showing of entitlement to judgment as a matter of law. No evidentiary proof in admissible form sufficient to establish the existence of material issues of fact has been offered that would otherwise defeat the motion made by Williams Scottsman. Alvarez v. Prospect Hospital, 68 N.Y.2d 320 (1986); Zuckerman v. City of New York, 49 N.Y.2d 557 (1980). Accordingly, Defendant's motion is also GRANTED.

While academic at this point, the contract here clearly requires Legacy to indemnify William Scottsman for any injury that occurs regarding the trailer. A party is entitled to full contractual indemnification provided that the intention to indemnify can be clearly implied from the language and purposes of the entire agreement and the surrounding facts and circumstances. Cuellar v. City of New York, 139 A.D.3d 996 (2nd

Dept. 2016). Here, the contract is unambiguous. The lease clearly states that the use of the trailer in a safe and reasonable manner was Legacy's responsibility. Its responsibility ends with the execution of the Lease and a failure to request any modifications or corrections. As such, this motion must also be GRANTED.

With respect to Plaintiff's cross - motion seeking spoliation sanctions, Plaintiff seeks to strike Legacy's answer for allegedly destroying and failing to preserve video and surveillance tapes. In an affidavit from Frank Chinnici, the President of Legacy, Defendant denies destroying video and surveillance recordings. Mr. Chinnici maintains that the system employed overrides footage on a revolving basis. Further, he states that no video surveillance was maintained in the area where the alleged accident occurred. A motion to strike an answer is a rather drastic remedy. The Fourth Department has held that the striking of a pleading is appropriate only where there is a clear showing that the failure to comply with discovery demands is willful, contumacious, or in bad faith." WILJEFF, LLC v. United Realty Mgt. Corp., 82 A.D.3d 1616 (4th Dept. 2011); Hann v. Black, 96 A.D.3d 1503 (4th Dept. 2012). Plaintiff has not demonstrated such contumacious conduct and, as such, their motion to strike the Defendant's Answer is hereby DENIED.

This shall constitute the Decision and Order of this Court.

Dated: July 17, 2018


Hon. Emilio Colaiacovo, J.S.C.