SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

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RHONDA WILLIAMS,

Plaintiff,

-against-

COACH, INC., JRM CONSTRUCTION MANAGEMENT LLC., LEGACY YARDS TENANT, LLC and WING PARTNER, LLC,

Defendants.

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Index No. 158247/16
Motion Seq. No. 001

DECISION AND ORDER

Hon. Carol R. Edmead

In a Labor Law action, defendants Coach, Inc. (Coach), JRM Construction Management LLC (JRM), and Wing Partners, LLC (Wing Partners) (collectively, Moving Defendants) move, pursuant to CPLR 3212, for summary judgment. More specifically, Coach and JRM move for partial summary judgment dismissing Plaintiff's Labor Law § 241 (6) claim, as well as Plaintiff's Labor Law § 200 and common-law negligence claims, as against them. Wing Partners seeks dismissal of the complaint as against it. Plaintiff only partially opposes the motion by asking the Court to make the dismissal's without prejudice.

BACKGROUND

On March 10, 2016, plaintiff Rhonda Williams (Plaintiff or Williams) was working on a renovation project in a building owned by Coach. JRM was the construction manager on the project. Wing Partners distributed a glass office system that was installed by nonparty Al-Lee, Plaintiff's employer.

Plaintiff alleges that, at the time of her accident, she was standing on an A-frame ladder and removing temporary brackets at the top of a seven-to-eight-foot tall glass partition. Plaintiff further alleges that while this is a job that typically requires several workers, she performed it by

herself and neither the ladder nor the partition was secured. The glass fell when Plaintiff removed the brackets and toppled Plaintiff off the ladder. Plaintiff alleges that she was directed by Mike Kelty (Kelty), an Al-Lee foreman, to perform the work alone as Al-Lee was short-staffed and she had to prove herself as a woman. In an affidavit submitted in support of the present motion, Moving Defendants submit an affidavit from Kelty denying that he instructed Plaintiff to perform the subject work alone (NYSCEF doc No. 41).

Plaintiff filed her complaint on September 29, 2016. In it, she alleges that defendants are liable pursuant to Labor Law § 240 (1) and 241 (6), as well as under Labor Law § 200 and common-law negligence.

DISCUSSION

"Summary judgment must be granted if the proponent makes 'a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact,' and the opponent fails to rebut that showing" (*Brandy B. v Eden Cent. School Dist.*, 15 NY3d 297, 302 [2010], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). However, if the moving party fails to make a *prima facie* showing, the court must deny the motion, "'*regardless of the sufficiency of the opposing papers*'" (*Smalls v AJI Indus., Inc.*, 10 NY3d 733, 735 [2008], quoting *Alvarez*, 68 NY2d at 324).

I. Claims against Wing Partners

Moving Defendants make a *prima facie* showing, through the deposition transcript of Joseph Mascaro, Wing Partners' director of operations (NYSCEF doc No. 41), that Wing Partners are not a proper Labor Law defendant, as they are neither an owner, a general contractor or an agent of either. Moreover, there are no claims that Wing Partners performed its distribution

work negligently. Accordingly, the branch of Moving Defendants' motion that seeks dismissal of all claims as against Wing Partners must be granted.

II. Labor Law § 241 (6)

Labor Law § 241 (6) provides, in relevant part:

> "All areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, equipped, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places."

It is well settled that this statute requires owners and contractors and their agents "to 'provide reasonable and adequate protection and safety' for workers and to comply with the specific safety rules and regulations promulgated by the Commissioner of the Department of Labor" (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501-502 [1993], quoting Labor Law § 241 [6]). While this duty is nondelegable and exists "even in the absence of control or supervision of the worksite" (*Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 348-349 [1998]), "comparative negligence remains a cognizable affirmative defense to a section 241 (6) cause of action" (*St. Louis v Town of N. Elba*, 16 NY3d 411, 414 [2011]).

To maintain a viable claim under Labor Law § 241 (6), plaintiffs must allege a violation of a provision of the Industrial Code that requires compliance with concrete specifications (*Misicki v Caradonna*, 12 NY3d 511, 515 [2009]). The Court of Appeals has noted that "[t]he Industrial Code should be sensibly interpreted and applied to effectuate its purpose of protecting construction laborers against hazards in the workplace" (*St. Louis,* 16 NY3d at 416). Here, Plaintiff alleges that Defendants violated 12 NYCRR 23-1.7 (d), 12 NYCRR 23-1.7 (e) (1) and 12 NYCRR 23-1.7 (e) (2).

Here, Moving Defendants argue that JRM and Coach did not violate any Industrial Code violations. Plaintiff abandons her Labor Law § 241 (6) claims against JRM and Coach by failing

to contend that they violated a specific Industrial Code regulation (*Kempisty v 246 Spring St., LLC*, 92 AD3d 474, 475 [1st Dept 2012]). Accordingly, the branch of Moving Defendants' motion seeking dismissal of Plaintiff's Labor Law § 241 (6) claims as against JRM and Coach is granted.

III. Labor Law § 200

Labor Law § 200 "is a codification of the common-law duty imposed upon an owner or general contractor to provide construction site workers with a safe place to work" (*Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 877 [1993]). Cases under Labor Law § 200 fall into two broad categories: those involving injury caused by a dangerous or defective condition at the worksite, and those caused by the manner or method by which the work is performed (*Urban v No. 5 Times Sq. Dev., LLC*, 62 AD3d 553, 556 [1st Dept 2009]).

Where the alleged failure to provide a safe workplace arises from the methods or materials used by the injured worker, "liability cannot be imposed on [a defendant] unless it is shown that it exercised some supervisory control over the work" (*Hughes v Tishman Constr. Corp.*, 40 AD3d 305, 306 [1st Dept 2007]). "General supervisory authority is insufficient to constitute supervisory control; it must be demonstrated that the [owner or] contractor controlled *the manner in which the plaintiff performed his or her work*, i.e., how the injury-producing work was performed" (*id.*).

Here, Plaintiff's accident was caused by the manner of her work. Thus, Moving Defendants make a *prima facie* showing of entitlement to judgment by submitting Plaintiff's own deposition testimony that she only received instruction from other Al-Lee employees (NYSCEF doc No. 38 at 33). Thus, the branch of Moving Defendants' motion that seeks

dismissal of Plaintiff's Labor Law §200 and common-law negligence claims as against JRM and Coach must be granted.

IV. Plaintiff's Partial Opposition

Plaintiff argues that the Court should grant the Moving Defendants application without prejudice, as Plaintiff has not had an opportunity to cross-examine Kelty regarding the contents of his affidavit. Plaintiff's application is denied. The Court has not relied on Kelty's affidavit for the disposition of this motion, so Plaintiff's argument is moot.

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CONCLUSION

Accordingly, it is

ORDERED that the branch of Moving Defendants' motion seeking summary judgment dismissing Plaintiff's claims under Labor Law § 200 and common-law negligence as against defendants Coach, Inc. and JRM Construction Management LLC is granted; and it is further

ORDERED that the branch of Moving Defendants' motion seeking summary judgment dismissing Plaintiff's claims under Labor Law § 241 (6) as against defendants Coach, Inc. and JRM Construction Management LLC is granted; and it is further

ORDERED that the branch of Moving Defendants' motion seeking summary judgment dismissing all claims against defendant Wing Partners, LLC is granted

ORDERED that the Clerk of the Court is respectfully requested to enter judgment accordingly, and the remaining claims are severed and continue; and it is further

ORDERED that the counsel for Moving Defendants is to serve a copy of this decision, along with Notice of Entry, on all parties within 10 days of entry.

Dated: October 9, 2019

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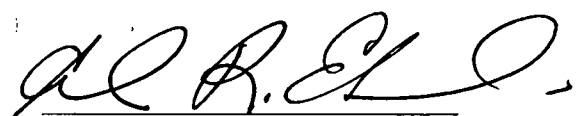

Hon. CAROL R. EDMEAD, JSC

HON. CAROL R. EDMEAD
J.S.C.