

**Raspaldo v Hudson 36 LLC**

2020 NY Slip Op 31712(U)

June 1, 2020

Supreme Court, New York County

Docket Number: 153014/2019

Judge: Margaret A. Chan

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARGARET A. CHAN PART IAS MOTION 33EFM

Justice

-----X

FERNANDO RASPALDO

Plaintiff,

- v -

HUDSON 36 LLC, GREG LOGISTICS, LLC, GREG BEECHE LOGISTICS, LLC, LALEZARIAN PROPERTIES LLC,

Defendants.

-----X

GREG LOGISTICS, LLC, GREG BEECHE LOGISTICS, LLC,

Third-Party Plaintiffs,

-against-

INTEGRATED FAÇADE SOLUTIONS, LLC

Third-Party Defendant.

-----X

INDEX NO. 153014/2019
MOTION DATE
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

Third-Party
Index No. 595638/2019

The following e-filed documents, listed by NYSCEF document number (Motion 005) 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59

were read on this motion to/for JUDGMENT - SUMMARY.

In this Labor Law matter, defendants/third-party plaintiffs Greg Logistics, LLC and Greg Beeche Logistics, LLC (individually referred to as "GL" or "GBL"; collectively as "Greg defendants") move for summary judgment to dismiss plaintiff Fernando Raspaldo's complaint and all cross-claims and counterclaims asserted against them pursuant to CPLR 3212. Plaintiff and co-defendants Hudson 36 LLC and Lalezarian Properties LLC (referred to as "co-defendants" throughout) oppose the motion. Third-party defendant Integrated Façade Solutions, LLC ("IFS") did not file opposition. The Decision and Order is as follows:

FACTS

Plaintiff alleges that on January 14, 2019, he tripped on debris while working at a job site located at 515 West 36th Street ("515 West") in the city, county, and state of New York. Plaintiff was employed as a roofer for non-party Unique Roofing

of NY, Inc., at the time of the accident. On March 21, 2019, plaintiff filed this lawsuit alleging claims under Labor Law §§ 200, 240, and 241(6).

For their part, the Greg defendants offer the affidavit of their Director Kirk P. Beeche, who avers that they were retained by third-party defendant IFS to design, manufacture, and deliver hoisting equipment and suspended work platforms for the project at 515 West (NYSCEF # 52, ¶ 1). GBL's contract with IFS dated August 21, 2017, confirms that this was the agreement (NYSCEF # 37). The contract also stated that IFS would erect, operate, and dismantle the hoisting system and GBL would pick up the equipment after dismantlement (*id.*).

Beeche avers that the hoisting equipment was delivered to the project on September 20, 2017 and removed from the site on April 27, 2018 (NYSCEF # 52, ¶¶ 8-9; NYSCEF ## 38-49 – Records of Delivery and Removal of Hoisting Equipment).

Additionally, on December 8, 2017, a change order was entered between GBL and IFS pursuant to which GBL provided four suspended access platforms to the 515 West job site (NYSCEF #40). Beeche attests, and the exhibits demonstrate, that the suspended access platforms were delivered to the site on February 21, 2018, and removed from the site on September 11, 2018, and October 17, 2018 (NYSCEF # 52, ¶¶ 11-12; NYSCEF ## 41-42).

Beeche avers, and the evidence shows, that the permit for the equipment provided to the project was issued by the Department of Buildings (“DOB”) to GL for the period January 16, 2018 through January 16, 2019, but the permit was closed on November 27, 2018 (NYSCEF # 52, ¶13; NYSCEF ## 43-44).

Additionally, Beeche avers that the Greg defendants did not enter into any agreements with plaintiff's employer or the co-defendants for work related to the 515 West project (NYSCEF # 52, ¶¶14-19). Beeche attests that the Greg defendants did not have any employees working at 515 West on the date of plaintiff's accident (*id.* at ¶¶ 20-21). Beeche further avers, and confirms via deed, that the Greg defendants did not own the 515 West building (*id.* at ¶ 22; NYSCEF # 36). Aside from the contract to provide the hoisting equipment and suspended platforms, Beeche states that the Greg defendants were not involved with the work at 515 West and had no connection to the project on the date of plaintiff's accident (NYSCEF #52, ¶¶ 21-24)

Plaintiff and co-defendants do not offer any evidence to refute the Greg defendants' evidence. Instead they argue that this summary judgment motion is premature as there has not been a preliminary conference in this matter and no depositions have occurred.

## DISCUSSION

A party moving for summary judgment must make a prima facie showing that it is entitled to judgment as a matter of law (*see Alvarez v Prospect Hosp*, 68 NY2d 320 [1986]). Once a showing has been made, the burden shifts to the parties opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial of the action (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]). On a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party (*see Vega v Restani Constr. Corp*, 18 NY3d 499 [2012]). In the presence of a genuine issue of material fact, a motion for summary judgment must be denied (*see Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]; *Grossman v Amalgamated Haus. Corp*, 298 AD2d 224, 226 [1st Dept 2002]).

The Greg defendants' motion for summary judgment is granted. The Greg defendants have met their burden by making a prima facie showing of entitlement to summary judgment to dismiss plaintiff's Labor Law §§ 200, 240, and 241(6) claims. All claims, crossclaims, and counter-claims asserted against the Greg defendants in this matter are dismissed.

The evidence demonstrates that the Greg defendants were not involved in any way with the construction project at 515 West on the date of plaintiff's accident. Their equipment had been removed, DOB permits closed, and contractual obligations fulfilled months prior to plaintiff's accident. The Greg defendants have demonstrated that they are not the owners of the project or the general contractor. There is no evidence that the alleged debris could be related to the Greg defendants' equipment or conduct. As such, the Greg defendants have demonstrated a prima facie entitlement to summary judgment.

Plaintiff and co-defendants' only counterargument to the Greg defendants' motion for summary judgment is that it is premature as discovery is incomplete. The parties have exchanged some paper discovery, but a preliminary conference has not been held and depositions have yet to occur. Thus, the non-movants base their opposition to the motion on CPLR 3212(f).

CPLR 3212(f) states that “[s]hould it appear from affidavits submitted in opposition to the motion that facts essential to justify opposition may exist but cannot then be stated, the court may deny the motion”. The First Department in *Voluto Ventures, LLC v Jenkins & Gilchrist Parker Chpain LLP* (44 AD3d 557 [1st Dept 2007]) held that

“[t]o avail oneself of CPLR 3212(f) to defeat or delay summary judgment, a party must demonstrate that the needed proof is within the exclusive knowledge of the moving party (*Berkeley Fed. Bank &*

*Trust v. 229 E. 53rd St. Assoc.*, 242 AD2d 489 [1st Dept 1997]), that the claims in opposition are supported by something other than mere hope or conjecture (*Neryaev v. Solon*, 6 AD3d 510 [2d Dept 2004]), and that the party has at least made some attempt to discover facts at variance with the moving party's proof (*see Cruz v. Otis El. Co.*, 238 AD2d 540 [2d Dept 1997]).”

Both plaintiff and co-defendants offer only the affirmation of their respective attorneys in opposition to the motion and do not fully address the *Voluto* factors.

Plaintiff argues that the affidavit of Kirk Beeche is self-serving. Plaintiff further claims that the affidavit fails to address whether the Greg defendants

“had any responsibility over any conditions of the job site and in particular, any responsibility for removal of debris which was involved in plaintiff’s accident, whether their involvement with the job site may have created debris which was involved in plaintiff’s accident; whether they served as construction manager or any other managerial or supervisory role at the job site on or prior to the date of the accident; or in any other way were involved with the incident.”

(NYSCEF # 55, ¶ 10).

Co-defendants argue that depositions of the Greg defendants are necessary to determine if there is any relationship between them and the alleged accident (*id.*, ¶ 9). Co-defendants also argue that the “parties should be permitted to conduct the deposition of the plaintiff to determine his testimony concerning the work he performed at the jobsite, the method and manner of how the alleged accident occurred and the nature of the debris which plaintiff claims caused him to trip and fall” (NYSCEF # 56, ¶ 8).

These prematurity arguments are insufficient to defeat the Greg defendants’ prima facie showing. Plaintiff and co-defendants do not show how any of the information they seek is within the exclusive control of the Greg defendants. They offer nothing more than “mere hope or speculation” that evidence sufficient to defeat the motion for summary judgment may be uncovered during the discovery process (*see Voluto Ventures, LLC*, 44 AD3d at 557 citing *Neryaev*, 6 AD3d at 510; *see also Lopez v WS Distrib., Inc.*, 34 AD3d 759, 760 [2d Dept 2006]). There is no evidentiary basis for the speculation that further discovery will contradict the evidence submitted in support of the Greg defendants’ motion. Indeed, the non-movants do not even offer an affidavit from a person with knowledge to contradict or question the Greg defendants’ evidentiary showing or provide an evidentiary basis for further discovery, nor have they demonstrated that any attempts to find facts at variance with the movants’ proof, other than saying discovery is incomplete. This is insufficient to defeat the Greg defendants’ motion for summary judgment.

In any event, the Beeche affidavit and submitted evidence already address the information sought by plaintiff and co-defendants. Beeche averred that the Greg defendants were not involved with the project in any way on the date of the accident and that their contract with IFS was their only contractual relationship with the project. There are no questions of fact regarding whether the Greg defendants were general contractors on the project, had responsibility for debris removal, or whether they created the debris. The Greg defendants did not have responsibility for plaintiff's accident and the non-movants do not show how further discovery would reveal facts at variance with this conclusion. As there are no questions of fact here, summary judgment is appropriate at this time.


The Greg defendants have remaining third-party claims against IFS that are unaddressed in this motion. As such, the Greg defendants remain in this lawsuit at this time and must continue to participate in the upcoming discovery conference.

Accordingly, it is ORDERED that the Greg defendants' motion for summary judgment is granted and all claims, crossclaims, and counterclaims asserted against them dismissed; it is further

ORDERED that the remaining parties attend a telephonic preliminary conference in Part 33 on June 16, 2020 at 11:00 AM. The parties are directed to organize a conference call and then call into the court at (646) 386-5695; it is further

ORDERED that the Clerk of the Court enter judgment as written.

This constitutes the Decision and Order of the court.

<u>6/1/2020</u>			
DATE			MARGARET A. CHAN, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE