Cordova v 27E79 Prop. LLC
2020 NY Slip Op 33136(U)
September 24, 2020
Supreme Court, New York County
Docket Number: 160748/2017
Judge: Frank P. Nervo

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, PART IV

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EFRAIN CORDOVA,

Plaintiff,

-against-

27E79 PROPERTY LLC and ALBA SERVICES INC.,

Defendants.

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27E79 PROPERTY LLC and ALBA SERVICES INC.,

Third-Party Plaintiffs

-against-

DN CALLAHAN, INC.

Third-Party Defendant

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DECISION AND ORDER

Index Number

160748/2017

FRANK P. NERVO, J.S.C.

Defendants 27E79 Property, LLC (hereinafter "27E79") and Alba Services, Inc. (hereinafter "Alba") move for summary judgment dismissing plaintiff's Labor Law § 200 claim. Plaintiff, in response, does not oppose dismissal of his Labor Law § 200 claim, but does oppose defendants' motion to the extent it seeks dismissal of his Labor Law §§ 240 and 241 related claims.

Background

Plaintiff was employed by defendant Alba, a construction company, to perform demolition work.[1] While performing his work on the fifth floor, plaintiff alleges he was

[1] Plaintiff contends his employer at the time of the alleged accident was a company called "Scala;" however, it later changed its name to "Alba Services" (Plaintiff's EBT at P. 20-21). For clarity, the Court will refer to plaintiff's employer at the time of accident as "Alba."

injured by falling plank of wood from the floor or roof above where additional construction work was being performed (Plaintiff's EBT – NYSCEF Doc. No. 55 at p. 28). Plaintiff suffered injuries to his foot, including fracture, and later brought this suit claiming, inter alia, violations of Labor Law §§ 200, 240, and 241 caused his injuries (*id.* at p. 38-53; Summons and Compliant – NSYCEF Doc. No. 1).

Summary Judgment

On a motion for summary judgment, the burden rests with the moving party to make a prima facie showing they are entitled to judgment as a matter of law and demonstrate the absence of any material issues of fact (*Friends of Thayer lake, LLC v. Brown*, 27 NY3d 1039 [2016]). Once met, the burden shifts to the opposing party to submit admissible evidence to create a question of fact requiring trial (*Kershaw v. Hospital for Special Surgery*, 114 AD3d 75 [1st Dept 2013]). "Where a defendant moves for summary judgment and establishes a prima facie entitlement to such relief as a matter of law, the burden shifts to the plaintiff to raise a triable issue of fact" (*Kesselman v. Lever House Rest.*, 29 AD3d 302 [1st Dept 2006]). However, a "feigned issue of fact" will not defeat summary judgment (*Red Zone LLC v. Cadwalader, Wickersham & Taft LLP*, 27 NY3d 1048 [2016]). A failure to make a prima facie showing requires the Court to deny the motion, regardless of the sufficiency of opposing papers (*Alverez v. Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *see also JMD Holding Corp. v. Congress Financial Corp.*, 4 NY3d 373 [2005]).

As relevant to this motion, plaintiff does not oppose the dismissal of his Labor Law § 200 claims, conceding the evidence supports summary judgment in movants'

favor on this cause of action. However, plaintiff opposes the motion solely to the extent of awarding summary judgment and dismissal of his Labor Law §§ 240 and 241 claims, as plaintiff contends movants have not sought such relief.

It is beyond cavil that where a moving party seeks partial summary judgment, it is proper to award summary judgment to a movant only on those claims addressed in the movant's papers (*Dunham v. Hilco Constr. Co.*, 89 NY2d 425 [1996]). As Alba and 27E79 have sought summary judgment only on the Labor Law § 200 claims, the Court will address only the Labor Law § 200 claim on this motion, leaving undisturbed plaintiff's remaining claims.

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 Electric and Gas Corp.*, 82 NY2d 876, 877 [1993]; *Allen v. Cloutier Constr. Corp.*, 44 NY2d 290 [1978]). It provides, in pertinent part:

> All places to which this chapter applies shall be so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein or lawfully frequenting such places. All machinery, equipment, and devices in such places shall be so placed, operated, guarded and lighted as to provide reasonable and adequate protection to all such persons.

The party responsible under Labor Law § 200 must, therefore, have control over the activity bringing about the injury (*Russin v. Picciano & Son*, 54 NY2d 311 [1981]). Accordingly, a breach of Labor Law § 200 is, effectively, a breach of the common law duty to maintain a safe work site (*Allen v. Cloutier Constr. Corp.*, 44 NY2d at 299). If

duty to maintain a safe work site (*Allen v. Cloutier Constr. Corp.*, 44 NY2d at 299). If the dangerous condition or defect arises from the contractor's methods, the owner will not be liable under § 200 or the common law, absent a showing the owner exercised some control or supervision over the operation (*Comes v. New York State Electric and Gas Corp.*, 82 NY2d at 877; *see also Lombardi v. Stout*, 80 NY2d 290, 295 [1992]). However, where the plaintiff's injuries arise from a dangerous condition on the premises not caused by the contractor's methods, liability will attach if the property owner had control over the work site and notice of the dangerous condition (*Bradley v. HWA 1290 III LLC*, 157 AD3d 627 [1st Dept 2018]; *Mendoza v. Highpoint Assoc., IX, LLC*, 83 AD3d 1, 9 [1st Dept 2011]).

Here, the admissible evidence supports judgment in favor of 27E79 and Alba on plaintiff's Labor Law § 200 claims, insomuch as movants did not have control over the means of the construction on the sixth floor or roof, from which the wooden plank fell, and did not otherwise have notice of the dangerous conditions leading to plaintiffs' injuries (*see generally* Acevedo EBT – NSYCEF Doc. No. 56). Defendant Alba has established that it lacked control over the methods used on the floors above plaintiff's worksite comprising the "controlled access zone," where third-party defendant DN Callahan was performing work, and was otherwise unaware of the dangerous condition leading to plaintiff's injury (*id.*; Plaintiff's EBT – NSYCEF Doc. No. 55). Likewise, no evidence has been submitted that the owner exercised the requisite control or supervision over the worksite to find the owner liable under Labor Law § 200. Therefore, movants have established their prima facie entitlement to judgment as a matter law.

As no party has raised a triable issue of fact to defeat partial summary judgment as to plaintiff's Labor Law § 200 claim, it is accordingly:

ORDERED that the motion is granted solely to the extent of granting defendants and third-party plaintiffs 27E79 Property LLC and Alba Services Inc. summary judgment in their favor on plaintiff's Labor Law § 200 claims and dismissing same as against them; and it is further

ORDERED that the remaining claims shall continue.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: September 24, 2020

Enter:

Hon. Frank P. Nervo, J.S.C.