

Buezo v Pratt Inst.

2021 NY Slip Op 30971(U)

March 26, 2021

Supreme Court, New York County

Docket Number: 162512/2019

Judge: Erika M. Edwards

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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. ERIKA M. EDWARDS

PART 11

Justice

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INDEX NO. 162512/2019

SINDY BUEZO,

MOTION DATE 04/04/2021

Plaintiff,

MOTION SEQ. NO. 002

- v -

PRATT INSTITUTE, TISHMAN CONSTRUCTION CORP.
and LPCIMINELLI,

DECISION + ORDER ON MOTION

Defendants.

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PRATT INSTITUTE and TISHMAN CONSTRUCTION CORP.,

Third-Party
Index No. 596018/2020

Third-Party Plaintiffs,

-against-

RV DRYWALL CORP. and CONSTRUCTION REALTY
SAFETY GROUP, INC.,

Third-Party Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 23, 24, 25, 26, 27, 28, 29, 30, 41, 42

were read on this motion to/for SUMMARY JUDGMENT.

Upon the foregoing documents, the court grants Defendant LPCiminelli's ("LPC") motion for summary judgment dismissal of Plaintiff Sindy Buezo's ("Plaintiff") Verified Complaint and all cross-claims.

Plaintiff brought this action against LPC and Defendants/Third-Party Plaintiffs Pratt Institute ("Pratt") and Tishman Construction Corp. ("Tishman") for personal injuries she allegedly sustained on July 22, 2019, when she fell down a staircase while working as a plasterer at a construction site. Defendants Pratt and Tishman brought a Third-Party action against Third-Party Defendants RV Drywall Corp. and Construction Realty Safety Group, Inc.

LPC now moves for summary judgment in its favor and for an order dismissing Plaintiff's Verified Complaint, all cross-claims asserted by Defendants/Third-Party Plaintiffs, and denying Plaintiff's motion to compel, which was really a motion to strike Defendants' Answers for failure to comply with discovery demands that was subsequently withdrawn. To date, none of the other parties have opposed this motion.

LPC argues in substance that dismissal is warranted because Pratt terminated its construction manager services of the site with a written Termination Notice, dated March 22, 2018, as of April 22, 2018, which was more than one year prior to Plaintiff's alleged accident. LPC further argues that Pratt took over the site and LPC was not present and had no responsibility or involvement with the site on the date of Plaintiff's alleged accident.

To prevail on a motion for summary judgment, the movant must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient admissible evidence to demonstrate the absence of any material issues of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Jacobsen v New York City Health and Hospitals Corp.*, 22 NY3d 824, 833 [2014]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The submission of evidentiary proof must be in admissible form (*Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065, 1067-68 [1979]). The movant's initial burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party (*Jacobsen*, 22 NY3d at 833; *William J. Jenack Estate Appraisers and Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 [2013]).

If the moving party fails to make such prima facie showing, then the court is required to deny the motion, regardless of the sufficiency of the non-movant's papers (*Winegrad v New York Univ. Med. Center*, 4 NY2d 851, 853 [1985]). However, if the moving party meets its burden,

then the burden shifts to the party opposing the motion to establish by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure to do so (*Zuckerman*, 49 NY2d at 560; *Jacobsen*, 22 NY3d at 833; *Vega v Restani Construction Corp.*, 18 NY3d 499, 503 [2012]).

Upon review of the admissible evidence and without opposition, the court finds that LPC has met its burden of establishing that it is entitled to summary judgment in its favor as a matter of law as its services were terminated and it had no connection to the construction site for approximately fifteen (15) months prior to Plaintiff's alleged accident.

Therefore, the court grants LPC's motion for summary judgment in its favor and dismisses Plaintiff's Verified Complaint and all cross-claims against LPC.

As such, it is hereby

ORDERED that Defendant LPCiminelli's motion for summary judgment dismissal of Plaintiff Sindy Buezo's Verified Complaint and all cross-claims asserted against it is granted and the Verified Complaint is dismissed as against Defendant LPCiminelli only; and it is further


ORDERED that all cross-claims against Defendant LPCiminelli asserted by Defendants/Third-Party Plaintiffs Pratt Institute and Tishman Construction Corp. are dismissed as against Defendant LPCiminelli only; and it is further

ORDERED that said claims and cross-claims against Defendant LPCiminelli are severed and the balance of the action shall continue; and it is

ORDERED that the Clerk of the Court shall enter judgment in favor of Defendant LPCiminelli dismissing the claims and cross-claims made against it with prejudice and without costs to any party; and it is further

ORDERED that this is the Decision and Order of the court.

3/26/2021
DATE


ERIKA M. EDWARDS, J.S.C.

HON. ERIKA M. EDWARDS
J.S.C.

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| CHECK ONE: | <input type="checkbox"/> | CASE DISPOSED | <input checked="" type="checkbox"/> | NON-FINAL DISPOSITION | |
| APPLICATION: | <input checked="" type="checkbox"/> | GRANTED | <input type="checkbox"/> | GRANTED IN PART | <input type="checkbox"/> |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | SETTLE ORDER | | SUBMIT ORDER | <input type="checkbox"/> |
| | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | | FIDUCIARY APPOINTMENT | <input type="checkbox"/> |
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