SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON.LYNN R. KOTLER, J.S.C. PART 8

CONRAD POWELL

INDEX NO. 159841-2018

MOT. DATE

- v -

MOT. SEQ. NO. 001

THE CITY OF NEW YORK,

The following papers were read on this motion to/for sj

Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits ECFS Doc. No(s)._____
Notice of Cross-Motion/Answering Affidavits — Exhibits ECFS Doc. No(s)._____
Replying Affidavits ECFS Doc. No(s)._____

This is a personal injury action arising from an accident which occurred on December 9, 2017, when the plaintiff was in the course of his employment with Verizon and allegedly struck by a "construction plate" while it was being moved at a Verizon project located in the roadway of 10th Avenue, between West 36th and West 37th Street, New York, New York. Plaintiff has asserted causes of action for violation of Labor Law §§ 240[1], 241[6] as well as Labor Law § 200 and common law negligence. Defendant The City of New York (the "City") now moves for summary judgment dismissing plaintiff's complaint. Plaintiff opposes the motion. Issue has been joined and the motion was timely brought after note of issue was filed. Therefore, summary judgment relief is available. The court's decision follows.

The City argues that plaintiff has not proven and cannot prove that it had notice of the subject trench work condition and thus cannot be held liable under Admin Code § 7-201(c)(2). Plaintiff argues the motion should be denied on procedural grounds because ~~plaintiff~~defendant did not provide a word count or a statement of material facts. The court will overlook these procedural defects and reach the merits of the motion. Substantively, plaintiff contends that Section 7-201 is inapplicable and argues the City is otherwise can be properly held liable under Labor Law §§ 200, 240[1] and 241[6] as owner of the public roadway. The City disputes plaintiff's arguments, and maintains it lacks the requisite nexus to Verizon's work and points to the fact that Verizon did not have a valid permit for the subject work.

On a motion for summary judgment, the proponent bears the initial burden of setting forth evidentiary facts to prove a prima facie case that would entitle it to judgment in its favor, without the need for a trial (CPLR 3212; *Winegrad v. NYU Medical Center*, 64 NY2d 851 [1985]; *Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]). If the proponent fails to make out its prima facie case for summary judgment, however, then its motion must be denied, regardless of the sufficiency of the opposing papers (*Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]; *Ayotte v. Gervasio*, 81 NY2d 1062 [1993]).

Dated: 7/26/22

HON. LYNN R. KOTLER, J.S.C.

1. Check one: ☑ **CASE DISPOSED** ☐ **NON-FINAL DISPOSITION**

2. Check as appropriate: Motion is ☑ **GRANTED** ☐ **DENIED** ☐ **GRANTED IN PART** ☐ **OTHER**

3. Check if appropriate: ☐ **SETTLE ORDER** ☐ **SUBMIT ORDER** ☐ **DO NOT POST**

☐ **FIDUCIARY APPOINTMENT** ☐ **REFERENCE**

Granting a motion for summary judgment is the functional equivalent of a trial, therefore it is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue (*Rotuba Extruders v. Ceppos*, 46 NY2d 223 [1977]). The court's function on these motions is limited to "issue finding," not "issue determination" (*Sillman v. Twentieth Century Fox Film*, 3 NY2d 395 [1957]).

The City's motion is granted for the reasons that follow. The court agrees with the City that it is not a proper labor law defendant. Ownership of the accident location, standing alone, is not enough to impose liability under the Labor Law (*Morton v. State of New York*, 15 NY3d 50 [2010]). Rather, a nexus between the owner and the worker, whether by a lease agreement or grant of an easement, or other property interest is required (*id.* quoting Scaparo v Village of Ilion, 13 NY3d 864, 866 [2009] [internal quotations omitted]). There is no dispute that the City did not contract with Verizon for the injury-producing work plaintiff was performing at the time of his accident. Further, there was no lease agreement or grant of an easement or other property interest creating a nexus between plaintiff and the City. At most, the City issued a permit for the work, which expired three days before plaintiff's accident and the City conducted an inspection before the permit expired and observed that no work was being performed.

While plaintiff's counsel points to a franchise agreement with Empie City Subway (ECS), a subsidiary of Verizon "to design, construct, and maintain subsurface electrical conduit and manhole infrastructure in Manhattan and the Bronx....", this agreement is insufficient to transform the City into a proper labor law defendant.

Otherwise, the City has demonstrated that it neither cause or created the condition which caused plaintiff's accident nor did it have prior written notice of same. Accordingly, the City's motion is granted in its entirety.

In accordance herewith, it is hereby:

ORDERED that the City's motion for summary judgment is granted in its entirety, plaintiff's complaint is dismissed and the Clerk is directed to enter judgment accordingly.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly rejected and this constitutes the decision and order of the court.

Dated: 7.26.22
New York, New York

So Ordered:

Hon. Lynn R. Kotler, J.S.C.