Smith v Girls Club of N.Y.
2015 NY Slip Op 04775
Decided on June 9, 2015
Appellate Division, First Department
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A non-WCB workers comp related issue

Decided on June 9, 2015

Friedman, J.P., Acosta, Moskowitz, Richter, Feinman, JJ.

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Mark A. Smith, Plaintiff-Appellant,
v
The Girls Club of New York, Defendant-Respondent.

Mark A. Smith, appellant pro se.
McGaw, Alventosa & Zajac, Jericho (James K. O'Sullivan of counsel), for respondent.

Order of the Appellate Term of the Supreme Court, First Department, entered December 13, 2012, which affirmed two orders, Civil Court, Bronx County (Irving Rosen, J.H.O.), entered June 16, 2009 and May 19, 2010, respectively, denying plaintiff's motion for partial summary judgment on his Labor Law § 240(1) claim and, upon renewal, adhering to that determination, unanimously affirmed, without costs.

The record shows that plaintiff was injured while voluntarily participating in a community service program in lieu of incarceration. Accordingly, the court correctly denied plaintiff's motion for partial summary judgment, since he failed to establish that he was an "employee" entitled to the protections of Labor Law § 240(1) (*see Stringer v Musacchia*, 11 NY3d 212 [2008]; *Whelen v Warwick Val. Civil & Social Club*, 47 NY2d 970, 971 [1979]; *Pigott v State of New York*, 199 AD2d 734 [3d Dept 1993]). The evidence does not support plaintiff's assertion that he was employed by an agent of defendant, and his reliance on the Workers' Compensation Law is unavailing. Nor does the alleged new evidence submitted by plaintiff in support of his motion to renew warrant a different result (*see Gal-Ed v 153rd St. Assoc., LLC*, 73 AD3d 438 , 439 [1st Dept 2010]).

This constitutes the decision and order of the Supreme Court, Appellate Division, First Department.

Entered: June 9, 2015, Clerk