

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. JOSEPH A. DE MARO

Justice

----- TRIAL/IAS, PART 3
NASSAU COUNTY

MICHAEL O'HURLEY-PITTS,

Plaintiff,

MOTION DATE:
April 26, 2007
INDEX No. 17573/05

-against-

SEQUENCE No. 1

DIOCESE OF ROCKVILLE CENTRE and
THE CHURCH OF SAINT MARY,

Defendants.

The following papers read on this motion:

Notice of Motion and Supporting Papers
Affirmation in Opposition
Reply Affirmation

This is a motion by defendant to dismiss this cause on two grounds. The first ground is that the evidence from deposition demonstrates that defendant did not create any dangerous condition nor have actual or constructive notice of same. Indeed it could be argued on the date of the motion (February 13, 2007) that there was a paucity of evidence as to the existence of such a condition. However, at a deposition of a non-party, Nicole Rufrano, a former employee of defendant Church, Ms. Rufrano (p.11-12), there is

testimony of a puddle of water being present at the relevant location at a time when "maintenance" personnel of defendant were working on the air conditioning unit in that area.

Certainly there is sufficient evidence from this testimony to raise an issue of fact on liability grounds. That portion of the defendants motion is denied.

The second ground proffered is more of a problem.

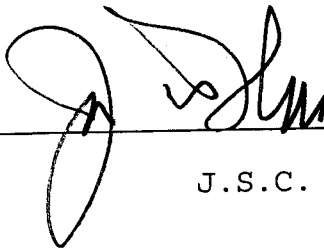
Plaintiff was, at the time of the event, an employee of a Canadian Corporation, Faith Matters, Inc. (Exhibit A, Affidavit in Opposition). This Corporation (plaintiff signed on behalf of Faith Matters, Inc.), signed a contract with defendant Church to provide plaintiff, as the Director of Development. The contract requires defendant Church to supply the place of employment and equipment.

It is clear that plaintiff was a principal of Faith Matters and averred that this Ontario Corporation provided Workers Compensation for him (p. 44-45); he reported to Monsignor John McCann (43). The testimony of Monsignor John McCann indicates that the contract involved required Faith Matters, Inc., to supply plaintiff, as Director of Development. According to Monsignor McCann, plaintiff took his orders from him and the parish finance committee.

Plaintiff had all the nuances of a special employee. He got paid by defendant Church; he was supervised by "Employees" of defendant Church; he sat at their desk; was assisted by their employees etc., etc., (see, Navarrete v. A & V Pasta Products, Inc., 32 AD3d 1003. The Church had Workers Compensation coverage

and a notification of plaintiff's alleged incident was apparently sent to the Workman Compensation Board (see plaintiff's Exhibit F).

The cause must be dismissed as plaintiff's sole remedy is Workers Compensation.



J.S.C.

ENTERED

MAY 08 2007

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**

Dated: April 27, 2007