

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FOURTH JUDICIAL DEPARTMENT

Barilla Am. NY, Inc. v. Boulter Indus. Contrs., Inc.

2021 NY Slip Op 03771 (App. Div. 2021) · No. 948 CA 19-02089 · Decided June 11, 2021

SUMMARY

The Appellate Division, Fourth Department, unanimously affirmed an order denying in part Boulter Industrial Contractors, Inc.'s motion for summary judgment in Barilla America NY, Inc.'s breach-of-contract action. The court held that Boulter's submissions raised triable issues concerning whether the millwrights were qualified, the scope of Boulter's contractual obligations, and whether the millwrights were Barilla's special employees. The action arose from metal contamination in pasta produced after maintenance work at Barilla's plant.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Whalen, P.J.; Centra, J.; Nemoyer, J.; Winslow, J.; Bannister, J.
JURISDICTION	New York
DECIDED	June 11, 2021
DOCKET	948 CA 19-02089
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from an order denying in part its motion for summary judgment dismissing the complaint, including the first cause of action for breach of contract.
STANDARD OF REVIEW	Summary judgment is appropriate only where the movant establishes entitlement to judgment as a matter of law; triable issues of fact require denial. Whether a worker is a special employee may be determined as a matter of law only where the undisputed facts establish surrender of complete control by the general employer and assumption of control by the special employer.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Boulter Industrial Contractors, Inc. v. Barilla America NY, Inc.

TOPICS

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QUESTIONS PRESENTED

1. Whether Boulter established as a matter of law that it satisfied its sole obligation under the oral agreement by supplying qualified millwright laborers.
2. Whether Boulter's submissions established as a matter of law that the millwrights were special employees of Barilla, making Barilla solely liable for negligence attributable to them.
3. Whether triable issues of fact precluded summary judgment dismissing Barilla's breach-of-contract claim.

HOLDINGS

1. Boulter was not entitled to summary judgment because its own submissions raised triable issues of fact concerning whether the millwrights were qualified and concerning the scope of Boulter's obligations under the oral agreement.
2. Boulter was not entitled to summary judgment on the special-employment theory because its submissions raised questions of fact concerning which party supervised and directed the millwrights' work.

KEY QUOTATIONS

*"A person's status as a special employee is generally a question of fact and may be determined as a matter of law "[o]nly where the undisputed facts establish surrender of complete control by the general employer and assumption of control by the special employer"" (*2)*

FACTUAL BACKGROUND

Barilla owned a pasta production plant in Avon, New York, and orally agreed with Boulter for Boulter to provide millwrights to perform preventive maintenance during the plant's annual shutdown. After maintenance was performed on two production lines, Barilla discovered metal particles in pasta produced on those lines, resulting in an FDA-directed recall. Barilla sued Boulter for breach of contract and damages, while Boulter argued that it had supplied qualified laborers and that the millwrights were Barilla's special employees.

PROCEDURAL HISTORY

Barilla sued Boulter for breach of contract and related damages after metal contamination was found in pasta produced following maintenance work at Barilla's plant. Boulter moved for summary judgment, asserting that it had fulfilled its contractual obligation by supplying qualified millwrights and that the millwrights were special employees of Barilla. The Supreme Court, Livingston County, denied the motion in part as to the breach-of-contract claim, and the Appellate Division unanimously affirmed.

DISPOSITION

affirmed

CASES CITED

- Zuckerman v. City of New York, 49 N.Y.2d 557, 562 (1980)
- Thompson v. Grumman Aerospace Corp., 78 N.Y.2d 553, 557-560 (1991)
- Moore v. Newport Quarries, Inc., 285 A.D. 640, 642 (4th Dep't 1955)
- Ozzimo v. H.E.S., Inc., 249 A.D.2d 912, 913 (4th Dep't 1998)

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