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Safety & Health

New York Court Dismisses Roofer's Claim That Union Improperly Induced Inspections

A state court in New York dismissed a roofing company's claim of malicious prosecution against a union Dec. 11 following what it said were the union's efforts to induce agents from the New York State Department of Labor and the Labor Department's Occupational Safety and Health Administration to inspect its projects (*Pyramid Roofing & Sheet Metal Co. v. Roofers*, N.Y. Sup. Ct., No. 2013-4416, 12/11/13).

Pyramid Roofing & Sheet Metal Co. didn't state claims for malicious prosecution, abuse of process or prima facie tort because it failed to show that Roofers, Waterproofers and Allied Workers Local 195 had "initiated a criminal or judicial proceeding, that any such proceeding was ever commenced or that any such proceeding terminated in its favor," the New York Supreme Court for Onondaga County ruled.

According to the roofing company's complaint, it was working on three projects around Syracuse, N.Y. The union, it said, induced both the state department of labor and federal OSHA to inspect the projects.

The court observed that to prove a case of malicious prosecution, a plaintiff must show that a defendant commenced or continued a criminal proceeding against the plaintiff, the proceeding concluded in favor of the defendant, there was an absence of probable cause and there was actual malice.

"The essence of this claim is the perversion of proper legal procedure; some sort of judicial proceeding is the *sine qua non* of a cause of action in malicious prosecution," the court said.

The company's complaint that the union induced authorities to inspect its projects had no facts to support it, the court found. Even if the union had requested that state and federal authorities inspect the sites, this activity was "mere reporting," which was insufficient to show that the union initiated a criminal proceeding, it said.

A similar rationale applied to the roofing company's claim of abuse of process, the court said. The union's mere reporting of its suspicions and giving testimony wasn't enough to launch a criminal process or lead to the use of such a process in an improper way, it held.

For the roofing company's claims of a prima facie tort, the court said it had to show that it had suffered a specific and measurable loss. Here, the company admitted that it couldn't calculate the damages the union had caused, because those damages were ongoing. Therefore, this claim lacked the necessary specificity, the court ruled.

The court granted the union's motion to dismiss.

Justice Donald A. Greenwood wrote the opinion.

Matthew E. Ward of the Ward Firm PLLC in Liverpool, N.Y., represented the plaintiff. Brian J. LaClair of Blitman & King LLP in Syracuse, N.Y., represented the defendants.

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Text of the opinion is available at <http://op.bna.com/env.nsf/r?Open=rdae-9evmw9>.