

Begnoja v Hudson Riv. Park Trust

2024 NY Slip Op 31299(U)

April 12, 2024

Supreme Court, New York County

Docket Number: Index No. 152938/2020

Judge: David B. Cohen

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DAVID B. COHEN PART 58

Justice

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ALEN BEGNOJA,

Plaintiff,

- v -

HUDSON RIVER PARK TRUST, SUPER P57 LLC,RXR
PIER 57 MT LLC,RXR REALTY LLC,RXR CONSTRUCTION
SERVICES LLC,CITY WINERY, LLC,CITY WINERY NY-
PIER 57, LLC,FAHRENHEIT MECHANICAL LLC,HORIZON
CONTRACING, LLC,

Defendants.

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INDEX NO. 152938/2020

MOTION DATE 06/15/2023

MOTION SEQ. NO. 007

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 007) 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 200, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 215, 216, 217, 218, 219, 220, 221, 222

were read on this motion to/for JUDGMENT - SUMMARY.

In this Labor Law action, plaintiff moves, pursuant to CPLR 3212, for summary judgment against defendants Super P57 LLC, RXR Pier 57 MT LLC, RXR Realty LLC, RXR Construction Services LLC, City Winery, LLC, City Winery NY-Pier 57, LLC, and Fahrenheit Mechanical LLC (collectively, the subject defendants)¹ on the issue of liability under Labor Law § 240(1).

I. Factual and Procedural Background

This case arises from an incident on March 13, 2020, in which plaintiff was allegedly injured after he fell from a ladder while working in a building located at 25 11th Avenue in Manhattan (the premises) (NYSCEF Doc No. 1). Plaintiff commenced this action against defendants alleging violations of Labor Law §§ 200, 240(1), and 241(6) (Doc No. 171). The

¹ Although plaintiff initially sought partial summary judgment against Hudson River Park Trust, he withdrew that request in his reply papers (NYSCEF Doc No. 221 at 7). With respect to Horizon Contracting, LLC, he never sought summary judgment against it.

subject defendants joined issue, denying all substantive allegations of wrongdoing and asserting various affirmative defenses (Doc Nos. 173-175). Plaintiff now moves for partial summary judgment on his Labor Law § 240(1) claim (Doc No. 167), which defendants oppose (Doc No. 208).

A. Deposition Testimony of Plaintiff (Doc No. 180)

At his deposition, plaintiff testified that he was employed by third-party defendant John's Insulation Inc. and working on its behalf at the premises. John's Insulation had been hired by "RXR" which was the general contractor on the project. He and his coworkers were renovating the interior of a business at the premises, and he was responsible for insulating the ductwork and piping. He was given instructions by his foreman only, a John's insulation employee.

On the date of the incident, plaintiff was directed to insulate ductwork and piping on the ground floor level. He borrowed an A-frame ladder from Fahrenheit Mechanical and used it without issue for three to four hours prior to the accident. After working in a different area of the ground floor level, plaintiff moved the ladder into the kitchen area to begin insulating ductwork and piping in the ceiling. He inspected the ladder, opened it fully by placing all four rubber feet on the ground, locked it in place, and shook it to ensure it was stable. Plaintiff climbed up several steps and began wrapping a portion of ductwork above his head, using both hands while leaning slightly to the side. Suddenly, the ladder "kicked out from under [him]," causing plaintiff to fall several feet to the floor and lose consciousness. He was never given a lanyard by John's Insulation and there was no place in the kitchen area for him to tie off a safety harness.

B. Deposition Testimony of Plaintiff's Coworker (Doc No. 184)

Plaintiff's coworker testified that John's Insulation was hired by Fahrenheit Mechanical, and while he never received instructions from Fahrenheit Mechanical on how to perform his work, he sometimes received instructions from one of Fahrenheit Mechanical's "supervisor[s]."

He and plaintiff were never instructed to use harnesses, no harnesses were ever provided to them, and there were no tie-off points in the kitchen area where the accident occurred. Although manlifts were previously available on the premises, none were present on the date of plaintiff's accident, nor were any scaffolds available. In any event, using those devices in the kitchen area was not feasible due to size constraints, and a ladder was the only option.

He witnessed plaintiff's accident while standing on a nearby ladder facing plaintiff in the kitchen area. Plaintiff's ladder was fully open, with all four feet firmly on a level section of the floor. Plaintiff was standing on one of the ladder's higher rungs, but not the top one, with his hands above his head insulating piping. The ladder twisted suddenly, causing plaintiff to fall to the ground and lose consciousness.

C. Deposition Testimony of RXR Construction (Doc No. 181)

An employee of RXR Realty assigned to the instant construction project, and responsible for project management and site safety, explained that RXR Realty was a real estate holding company, and the parent company of RXR Construction Services. RXR Realty was the landlord for the premises, RXR Pier 57 MT was the "master tenant," and RXR Construction Services was the general contractor on the project. When asked about Super P57, he was unaware of its relationship to the project. RXR Construction Services was responsible for maintaining a site safety plan, and had the authority to stop unsafe work. Although he did not witness the accident,

when shown a copy of the incident report, he verified that he completed it that same day based on what was told to him by a coworker who witnessed the accident.

E. RXR Construction Services Incident Report (Doc No. 185)

The RXR Construction Services incident report provides that plaintiff fell from approximately eight feet off the ladder and was taken to a local hospital to treat his injuries.

F. Deposition Testimony of Fahrenheit Mechanical (Doc No. 182)

A former employee of Fahrenheit Mechanical testified on its behalf that it was hired as a subcontractor by RXR Construction Services. Fahrenheit Mechanical only had authority to stop unsafe work done by its employees, and did not have the authority to stop unsafe work performed by John's Insulation or any other subcontractors. It neither provided subcontractors with safety devices nor instructed them on how to perform their work.

He witnessed the accident from approximately 75 feet away while he was on the phone. He saw plaintiff with one foot off the ladder and one foot on it. Shortly thereafter, plaintiff fell off the ladder.

G. Deposition Testimony of John's Insulation (Doc No. 183)

A project manager with Horizon testified on behalf of John's Insulation that the two entities, plus a third entity named Shelter Rock, were owned by three brothers, with one brother owning each of the entities. Fahrenheit Mechanical hired Horizon as a subcontractor on the project to insulate Fahrenheit Mechanical's mechanical installations, ductwork, and piping, but he could not confirm whether Fahrenheit Mechanical also hired John's Insulation.

He was responsible for some site safety items and had authority to stop work that was unsafe, but he would sometimes inform the general contractor of the unsafe work to let it handle

the matter. He and Fahrenheit told the insulation subcontractors where to work, although it was unclear whether he and Fahrenheit directed those subcontractors on how to perform their work.

When the project manager first started on the project, the premises purportedly had tie offs for safety devices and manlifts provided by Fahrenheit Mechanical. However, he could not confirm whether there were tie offs in the area where plaintiff fell on the date of the accident, and there were no manlifts present at the premises that day either. In any event, it was not feasible to use a manlift, or an alternative like a scaffold, where plaintiff was working because of the low ceilings; plaintiff's work, therefore, required the use of a ladder. He was also unsure whether plaintiff was given any safety equipment on the date of his accident.

He did not witness plaintiff's accident, but he arrived at the premises shortly after plaintiff was taken to the hospital and viewed the area in which plaintiff fell. A coworker informed him that plaintiff fell after he made a misstep coming down a ladder - as plaintiff descended the ladder, his foot stepped onto a nearby countertop instead of the ladder rung.

H. Contract Between City Winery and RXR Construction Services (Doc No. 192)

Pursuant to the contract, City Winery New York LLC was the property owner and RXR Construction Services was the "construction manager" with RXR responsible for "furnish[ing] . . . an adequate supply of workers and materials" and for "performing the [w]ork" of the construction project, as well as being responsible for "the safe performance of the [w]ork."

I. Contract Between RXR Construction Services and Fahrenheit (Doc No. 193)

Pursuant to the contract, the scope of work to be performed by Fahrenheit included, among other things, duct work and insulation, with Fahrenheit responsible for "identify[ing] the best means, methods, techniques, sequences[,] and procedures." The contract also included a comprehensive set of site safety guidelines set forth by RXR Construction Services, which

specified that Fahrenheit was required to provide its own safety manager who had “full authority to stop work and remove any person employed by” Fahrenheit or any of its subcontractors.

J. Assignment and Assumption of Lease Agreement (Doc. No. 219)

On February 28, 2020, City Winery New York LLC assigned its interest in the premises to City Winery NY-Pier 57, LLC.

II. Legal Analysis and Conclusions

Plaintiff contends that he has made a prima facie showing that the subject defendants violated Labor Law § 240(1) and such violation caused his injuries because he was not given a safety harness and there were no places for him to tie off any potential harness. The subject defendants argue in opposition that plaintiff failed to make a prima facie showing that the ladder was defective or improperly secured. They also maintain that none of the subject defendants are proper defendants under Labor Law.

“Labor Law § 240(1) imposes a nondelegable duty and absolute liability upon owners and contractors for failing to provide safety devices necessary for workers subjected to elevation-related risks in circumstances specified by the statute” (*Soto v J. Crew Inc.*, 21 NY3d 562, 566 [2013] [citations omitted]; see *Healy v EST Downtown, LLC*, 38 NY3d 998, 999 [2022]). A plaintiff seeking summary judgment on the issue of liability “must establish that the statute was violated and that such violation was a proximate cause of his injury” (*Barreto v Metropolitan Transp. Auth.*, 25 NY3d 426, 433 [2015]; see *Villanueva v 114 Fifth Ave. Assoc. LLC*, 162 AD3d 404, 405 [1st Dept 2018]).

The evidence presented established that plaintiff was not provided with any adequate safety devices and fell after the ladder either kicked out from under him or he mis-stepped while descending. It is well-established that a fall from a ladder where no adequate safety devices were

provided is a violation of Labor Law § 240(1) (*see Nunez v SY Prospect LLC*, __ AD3d __, 2024 NY Slip Op 01782, *1 [1st Dept 2024] [prima facie showing made based on evidence that defendant “failed to provide any safety devices or assistance to ensure the stability of the ladder” and plaintiff’s fall occurred “when the ladder abruptly shook”]; *Rodas-Garcia v NYU United LLC*, __ AD3d __, 2024 NY Slip Op 01687, *1 [1st Dept 2024] [similar]).

Nevertheless, not all of the subject defendants are proper Labor Law defendants. Owners and general contractors are explicitly held liable under the statute (Labor Law 240[1] [absolutely liability for all contractors and owners and their agents]). Here, plaintiff establishes that City Winery NY -Pier 57, LLC was the premises owner on the accident date, and that RXR Construction Services acted as the general contractor on the project, and they therefore may be held liable for a violation of Labor Law § 240(1).

Besides property owners and general contractors, a defendant may also be liable if it is a statutory agent of either the property owner or general contractor, so long as it had “supervisory control and authority over the work being done when the plaintiff [wa]s injured” (*Walls v Turner Constr. Co.*, 4 NY3d 861, 864 [2005]; *accord Garcia v 13 W. 38 LLC*, 214 AD3d 408, 409 [1st Dept 2023]).

Thus, as to Fahrenheit, a triable issue remains as to whether it can be held liable as a “statutory agent” under the statute. There is evidence that Fahrenheit instructed employees from other subcontractors where to do their work and the ladder from which plaintiff fell was owned by Fahrenheit, but there is also testimony that Fahrenheit neither had the authority to stop other employees’ unsafe work practices, nor exercised such authority. Moreover, the scope of its work, pursuant to its contract with RXR, is broad, as is the provision which required Fahrenheit to hire

its own safety manager with “full authority to stop work and remove any person employed by” Fahrenheit or any of its subcontractors.

However, plaintiff fails to establish that the “middle tier lessees” – Super P57 LLC, RXR Pier 57 MT LC, RXR Realty LLC, and City Winery, LLC - are proper Labor Law defendants. The Court of Appeals has opined, without specifically determining, that a lessee can be held liable if it hired the contractor, and therefore had the right to control the work being done (*Ferluckaj v Goldman Sachs & Co.*, 12 NY3d 316 [2009]; *see also Bart v Universal Pictures*, 277 AD2d 4, 5 [1st Dept 2000] [control can be shown through “evidence that the lessee actually hired the general contractor”). Another way to prove a lessee controlled the work site is through “contractual or statutory provisions granting such right,” and the “key criterion is the right to insist that proper safety practices were followed and it is the right to control the work that is significant, not the actual exercise or nonexercised of control” (*id.* [internal quotation marks, brackets, and citations omitted]). Here, plaintiff submits no evidence that these lessees had any role in the construction project, that they hired any contractors, or that they had the right to control the worksite.

Accordingly, it is hereby:

ORDERED, that plaintiff’s motion for partial summary judgment on liability on his Labor Law 240(1) claim is granted to the extent of finding defendants RXR Construction Services LLC, and City Winery NY-Pier 57, LLC liable for the alleged violation, and is denied as to the other defendants at issue.



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DAVID B. COHEN, J.S.C.

4/12/2024
DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
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