

Nazario v 222 Broadway, LLC
2014 NY Slip Op 30857(U)
April 1, 2014
Sup Ct, New York County
Docket Number: 105608/11
Judge: Geoffrey D. Wright
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: GEOFFREY D.S. WRIGHT

PART 47

Justic3

JUSTIN NAZARIO,

Plaintiff/Petitioner,

-v-

222 BROADWAY, LLC and JONES LAND LaSALLE AMERICAS, INC.,

Defendants

INDEX NO. 105608/11

MOTION DATE

MOTION SEQ. NO. 001

MOTION CAL. NO.

222 BROADWAY, LLC and JONES LaSALLE AMERICAS, INC.,

Third-Party Plaintiff,

-v-

KNIGHT ELECTRICAL SERVICES CORP.,

Third-Party Defendant.

TP Index #590740/11

JONES LAND LaSALLE AMERICAS, INC.,

Second-Third-Party Plaintiff,

-v-

KNIGHT ELECTRICAL SERVICES CORP.,

Second-Third-Party Defendant.

2d TP Index #590163/12

222 BROADWAY, LLC,

Third-Third Party Plaintiff,

-v-

KNIGHT ELECTRICAL SERVICES, CORP.,

-v-

KNIGHT ELECTRICAL SERVICES CORP.,

Third-Third Party Defendant.

3rd TP Index #590121/12

FILED

APR 07 2014

COUNTY CLERK'S OFFICE
NEW YORK

The following papers, numbered 1 to 11 were read on this motion to/for dismiss the complaint against 222 Broadway, LLC, Jones, Land LaSalle Americas, Inc. and Lime Energy Co., motion by the Plaintiff for summary judgment on the issue of liability

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

1,3

Answering Affidavits — Exhibits

3,4,5,6

2]
Replying Affidavits _____


7,8,9,10,11

Cross-Motion: X Yes No

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Upon the foregoing papers, it is ordered that this motion by Defendants 222 Broadway LLC, Jones Lang LaSalle Americas, Inc., and Lime Energy Co., to dismiss the complaint is granted. The motion by the Plaintiff for summary judgment in his favor on the issue of liability against the foregoing Defendants is denied, a/p/o.

Dated: April 1, 2014


GEOFFREY D. WRIGHT J.S.C.
A.J.C.

Check one: X FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

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APR 07 2014

COUNTY CLERK'S OFFICE
NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 47

-----X
JUSTIN NAZARIO,

Plaintiff-Petitioner(s),

-against-

222 BROADWAY, LLC and JONES LANG
LASALLE AMERICAS, INC. and LIME ENERGY
CO.,

Defendants.

-----X
222 BROADWAY, LLC and JONES LANG LASALLE
AMERICAS, INC.,

Third-Party Plaintiff,

-against-

KNIGHT ELECTRICAL SERVICES CORP.,
Third-Party Defendant.

-----X
JONES LANG LASALLE AMERICAS, INC.,
Second-Third-Party Plaintiff,

-against-

KNIGHT ELECTRICAL SERVICES CORP.,
Second-Third-Party Defendant.

-----X
222 BROADWAY, LLC,
Third-Third-Party Plaintiff,

-against-

KNIGHT ELECTRICAL SERVICES CORP.,

Third-Third-Party Defendant.

-----X

Index #105608/11
Motion Cal. #
Motion Seq. #
DECISION/ORDER
Pursuant To Present:
Hon. Geoffrey Wright
Judge, Supreme Court

FILED

APR 07 2014

COUNTY CLERK'S OFFICE
NEW YORK

Recitation, as required by CPLR 2219(a), of the papers considered in the review of

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this Motion to: dismiss the complaint against 222 Broadway LLC and Jones Lang LaSalle America, Inc.; cross-motion to dismiss all claims against Lime Electrical Services. The Plaintiff moves for summary judgment on liability on his claims under Labor Law Sections 240(1) and 241(6)

PAPERS	NUMBERED
Notice of Petition/Motion, Affidavits & Exhibits Annexed	1,3
Order to Show Cause, Affidavits & Exhibits	
Answering Affidavits & Exhibits Annex	3,4,5,6
Replying Affidavits & Exhibits Annexed	7,8,9,10,11
Other (Cross-motion) & Exhibits Annexed	2
Supporting Affirmation	

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

Plaintiff Justin Nazario, on or about October 30, 2009, was an employee of Defendant Knight Electrical Services, was working at removing old light fixtures at 222 Broadway, in the course of a retrofitting of light fixtures. The Plaintiff had to climb an A frame ladder in order to remove the fixtures. Power to the lights was supposed to have been turned off. The Plaintiff was equipped with a device that was supposed to confirm that there was no electricity going to the fixture where he was working. The Plaintiff had tested two light fixtures with the device. When the device's signal was consistent with no power, he removed the components of the fixture. In attempting to do the same with the third, the Plaintiff again checked the tester, and upon receiving an all clear signal, began removing the light components. This time the current was live and the Plaintiff received a shock, knocking him from the ladder, and causing the ladder to tip over and fall on the Plaintiff.

The ownership and management of the building, 222 Broadway LLC and Jones LaSalle Americas, Inc., now move to dismiss the Labor Law 200 claim.

According the deposition testimony of Romula DeLeon, the service manager of Knight Electrical Services Corp. ("Knight"), it was his, DeLeon's job to shut off the electricity on the floor where the Plaintiff was assigned to work. It also appears, from the deposition of Mr. DeLeon, that the Plaintiff's accident occurred while Mr. DeLeon was in the act of shutting off electricity to the floor where the Plaintiff was assigned [see ex. W, to the motion by Lime Energy, p. 97, l. 15-24] (Mr. DeLeon did not return to the electrical closet to check that power was off after the Plaintiff's accident, and the person who completed the Plaintiff's job at the fixture did not receive a shock).

5] “Labor Law § 200 codifies the common-law duty of an owner or general contractor to provide employees with a safe place to work (see Comes v. New York State Elec. & Gas Corp., 82 N.Y.2d 876, 877, 609 N.Y.S.2d 168, 631 N.E.2d 110). Liability pursuant to Labor Law § 200 may fall into two broad categories: workers “injured as a result of dangerous or defective premises conditions at a work site, and those involving the manner in which the work is performed” (Ortega v. Puccia, 57 A.D.3d 54, 61, 866 N.Y.S.2d 323). [*MCLEAN v. 405 WEBSTER AVE. ASSOCIATES*, 98 A.D.3d 1090, 951 N.Y.S.2d 185, 2012 N.Y. Slip Op. 06286 2nd Dept. 2012]. In this case, the accident occurred due to the method used or ignored in doing the work. [see also *GUZMAN v. 170 WEST END AVE. ASSOCIATES*, --- N.Y.S.2d ----, 2014 WL 941974 (N.Y.A.D. 1 Dept.), 2014 N.Y. Slip Op. 01537]. Nothing in the depositions submitted with this motion raises any issue as to the worthiness of the ladder used by the Plaintiff (indeed the ladder was not the property of either of the movants here).

Since the movants [222 Broadway LLC and Jones Lang LaSalle America, Inc.] did not supervise the Plaintiff or otherwise exercise any control over the work area, the claims arising under Labor Law, which is a codification of common law negligence [*COMES v. NEW YORK STATE ELEC. & GAS CORP.*, 82 N.Y.2d 876, 877, 609 N.Y.S.2d 168, 631 N.E.2d 110. Indeed, the deposition testimony of Mr. DeLeon, raises questions as to whether the Plaintiff was working on an emergency fixture, that would be activated when the normal power source was turned off.

That part of the motion seeking indemnification from Knight Electrical Services Corp., is granted, as Knight was responsible for supervising the activities of the Plaintiff and the accident took place as the result of any event or occurrence which arises in connection with the Work.” [*GUZMAN v. 170 WEST END AVE. ASSOCIATES*, --- N.Y.S.2d ----, 2014 WL 941974 (N.Y.A.D. 1 Dept.), 2014 N.Y. Slip Op. 01537].

Co-Defendant Lime Energy Co., cross-moves to dismiss the claims against it, because it hired Knight as its subcontractor to perform all of the work involved in removing old fixtures and installing new ones. Lime did not do any of the work, supply any of the materials, or direct the manner in which work was done. By contract, Knight was obligated to indemnify Lime “against all claims, liability loss or expense caused or created by Subcontractor, its employees...whether or not through its or their negligence, arising from the Work performed hereunder.” The list of expenses covered by the agreement includes legal fees incurred by Lime.

In opposition to the above motions, the Plaintiff moves for summary judgment as to liability under Labor Law sections 240(1) and 241(6). Defendant Knight submits papers directly opposing the motions by 222 Broadway, Jones Land LaSalle and Lime.

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It does seem clear, however that the complaint alleges, and the facts developed through discovery do support a claim under Labor Law 200 and common law negligence [see *DELROSARIO v. UNITED NATIONS FEDERAL CREDIT UNION*, 104 A.D.3d 515, 961 N.Y.S.2d 389, 2013 N.Y. Slip Op. 01625, the Plaintiff in that case was also standing on a ladder, when he was hit by a live wire and knocked to the ground. “The record establishes that the ladder provided to plaintiff was inadequate to the task of preventing his fall when he came into contact with the exposed wire and was a proximate cause of his injury (see *Vukovich v. 1345 Fee, LLC*, 61 A.D.3d 533, 878 N.Y.S.2d 15 [1st Dept. 2009]; *Quackenbush v. Gar-Ben Assoc.*, 2 A.D.3d 824, 825, 769 N.Y.S.2d 387 [2d Dept. 2003]).”] The *DELROSARIO* case *ante*, does not discuss the clauses of the various contracts. However, the *DELROSARIO* does not give the full background of the happening of the accident. In this case, it is clear that the occurred due to the manner in which the work was being done, and that it happened without the participation of the moving Defendants. Therefore, the claims under Labor Law 200, and for common law negligence (the complaint does not cite specific Labor Law sections), are dismissed against 222 Broadway, LLC, Jones Lang LaSalle Americas, Inc. and Lime Energy Co. Even if the claims were not dismissed, the indemnification clauses in each of the contracts executed by Knight Electric Services Corp., are both broad enough and specific enough to extend to these moving Defendants. Therefore, these Defendants would be entitled to indemnification and the costs of defense from Knight.

Turning to the claims sounding in Labor Law 240(1) and 241(6), these legal obligations are capable of delegation [*BJELICIC v. LYNNED REALTY CORP.*, 152 A.D.2d 151, 546 N.Y.S.2d 1020, “It is the ability to control or supervise the work giving rise to the duties imposed under Labor Law § 240 which renders a third party, who is neither an owner nor a general contractor, liable as their statutory “agent” for any violation of § 240.] Once the ability to supervise or control passes to the contractor “the third party fall[s] within the class of those having nondelegable liability as an ‘agent’ under sections 240 and 241.” (See *WATERS v. PATENT SCAFFOLD Co.*, 75 A.D.2d 744, 745, 427 N.Y.S.2d 436 [1st Dept.1980], appeal dismissed, 53 N.Y.2d 704]. In this case, the contract between Lime and Knight provides, in the preamble to the agreement, as follows “The subcontractor shall provide and pay for all..labor...equipment...support services, safety and protection equipment...”

The language of the contract signed by Knight, together wither various depositions, makes it clear, that Knight was in full charge of its employee during the project, and thus, the baton imposed by the Labor Law section 200, 240(1) and 241(6), was successfully passed from the moving Defendants to Knight. Therefore, the motions by 222 Broadway, Jones, Lang LaSalle Americas, Inc., and Lime Energy Co., to dismiss the claims against them are granted, as are the requests for indemnification by Knight Electrical Services, Corp.

That being said, the motion by the Plaintiff for summary judgment on the issue of liability against the Defendants in the main claim is denied. This constitutes the decision and order of the court.


GEOFFREY D. WRIGHT
AJSC

Dated: April 1, 2014

FILED

APR 07 2014

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NEW YORK