

Peranzo v WFP Tower D Co. L.P.

2018 NY Slip Op 32767(U)

October 19, 2018

Supreme Court, New York County

Docket Number: 154704/2016

Judge: Lucy Billings

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46
-----X

AMEDEO PERANZO,

Plaintiff

- against -

Index No. 154704/2016

WFP TOWER D CO. L.P., BROOKFIELD
FINANCIAL PROPERTIES L.P., STRUCTURE
TONE, INC., and TITANIUM SCAFFOLD
SERVICES, LLC,

Defendants

-----X
-----X

TITANIUM SCAFFOLD SERVICES, LLC,

Third Party Plaintiff

- against -

Index No. 595094/2017

PIER HEAD ASSOCIATES, LTD., and
COMMODORE CONSTRUCTION CORP.,

Third Party Defendants

-----X
-----X

STRUCTURE TONE, INC.,

Second Third Party Plaintiff

- against -

Index No. 595128/2017

COMMODORE CONSTRUCTION CORP.,

Second Third Party Defendant

-----X

DECISION AND ORDER

LUCY BILLINGS, J.S.C.:

Plaintiff sues to recover damages for injuries sustained September 1, 2015, when he fell at a construction worksite. The scaffolding contractor, defendant-third party plaintiff Titanium Scaffold Services, Inc., subcontracted the scaffold erection to third party defendant Pier Head Associates, Ltd. Plaintiff moves to join Pier Head Associates Ltd. as a defendant and to amend his complaint by alleging his original claims against the new defendant. C.P.L.R. §§ 1002(b), 3025(b).

The proposed second amended complaint offered to support the joinder and amendment alleges that Pier Head Associates and the other defendants were negligent in breaching a duty to provide a safe place to work, which caused plaintiff's injury when he tripped and fell "due to a bracing pipe which was part of a large pipe scaffold at the . . . premises by reason of the negligence of the Defendants." Aff. of Scott Occhiogrosso Ex. 7 ¶ 91. Plaintiff also claims that defendants, including Pier Head Associates, violated New York Labor Law §§ 200 and 241(6). To support the violation of Labor Law § 241(6), plaintiff specifies that defendants violated 12 N.Y.C.R.R. §§ 23-1.5, 23-1.7, 23-1.16, 23-1.21, none of which applies to the scaffold here. The second amended complaint does not specifically allege that defendants created a dangerous condition.

As a subcontractor providing services to Titanium Scaffold Services, Pier Head Associates is liable to plaintiff for its negligence or other culpable conduct in performing the subcontract, when its breach of a contractual duty caused

plaintiff's injury, only under one of the following sets of circumstances. (1) Pier Head Associates displaced Titanium Scaffold Services' duty to maintain its work area, equipment, and materials in a safe condition. (2) Plaintiff detrimentally relied on Pier Head Associates' performance of the subcontract. (3) Pier Head Associates launched the "instrument of harm" that caused plaintiff's injuries. Stiver v. Good & Fair Carting & Moving, Inc., 9 N.Y.3d 253, 257 (2007); Church v. Callanan Indus., 99 N.Y.2d 104, 111 (2002); Espinal v. Melville Snow Contrs., 98 N.Y.2d 136, 140 (2002); Stimmel v. Osherow, 133 A.D.3d 483, 485 (1st Dep't 2015).

Pier Head Associates' liability to plaintiff lacks support from the start, as its subcontract with Titanium Scaffold Services did not obligate Pier Head Associates to maintain site safety or even to provide a safe scaffold, and plaintiff's allegations do not show that Pier Head Associates breached the subcontract in any way. Dinkins v. Kansas Fried Chicken, Inc., 158 A.D.3d 420, 421 (1st Dep't 2018); Rosenbaum, Rosenfeld & Sonnenblick, LLP v. Excalibur Group NA, LLC, 146 A.D.3d 489, 490 (1st Dep't 2017); Davies v. Ferentini, 79 A.D.3d 528, 530 (1st Dep't 2010). See Wade v. Bovis Lend Lease LMB, Inc., 102 A.D.3d 476, 477 (1st Dep't 2013). Plaintiff concedes the authenticity of the subcontract, which requires only that:

As provided by Pier Head, all materials meet and exceed code specifications, and all equipment assembly is to be completed in a workmanlike manner according to standard practices.

Aff. of Peter Lucas Ex. I, at 6. The subcontract does not define

workmanlike, which is not necessarily construed as related to safety. See Miller v. City of New York, 100 A.D.3d 561, 562 (1st Dep't 2012). Instead, the subcontract imposes on Titanium Scaffold Services the responsibility for maintaining the safety of the scaffold for persons using it or passing nearby. Pier Head Associates' only responsibility after Titanium Scaffold Services accepted the scaffold was to perform repairs upon Titanium Scaffold Services' written request. Plaintiff does not claim that a repair by Pier Head Associates caused the unsafe condition.

Even assuming that Pier Head Associates breached its subcontract with Titanium Scaffold Services, Pier Head Associates did not displace Titanium Scaffold Services' duty regarding safety, Casiano v. Start El., 138 A.D.3d 582, 582 (1st Dep't 2016); Anchumida v. Tahl Propp Equities, LLC, 123 A.D.3d 505, 505-506 (1st Dep't 2014); Aiello v. Burns Intl. Sec. Servs. Corp., 110 A.D.3d 234, 246 (1st Dep't 2013); Jackson v. Board of Educ. of City of N.Y., 30 A.D.3d 57, 65-66 (1st Dep't 2006), because the subcontract itself specifically obligates Titanium Scaffold Services to maintain the safety of the scaffold. For the same reason, Pier Head Associates' performance of the subcontract did not launch a force of harm: once Titanium Scaffold Services accepted the scaffold as constructed by Pier Head Associates, Titanium Scaffold Services was expressly responsible for the scaffold and any unsafe conditions the scaffold created. Rosenbaum, Rosenfeld & Sonnenblick, LLP v.

Excalibur Group NA, LLC, 146 A.D.3d at 490; Davies v. Ferentini, 79 A.D.3d at 530. See Landon v. Kroll Lab. Specialists, Inc., 22 N.Y.3d 1, 6-7 (2013). Finally, plaintiff does not show his knowledge of the subcontract between Pier Head Associates and Titanium Scaffold Services, let alone his reliance on Pier Head Associates' performance of the subcontract. Santiago v. KMart Corp., 158 A.D.3d 596, 596 (1st Dep't 2018); Aiello v. Burns Intl. Sec. Servs. Corp., 110 A.D.3d at 246. See American Cas. Co. of Reading, Pennsylvania v. Motivated Sec. Servs., Inc., 148 A.D.3d 521, 521 (1st Dep't 2017).

Because plaintiff fails to demonstrate any merit to joinder of Pier Head Associates as a direct defendant, C.P.L.R. § 1002(b); see Kellogg v. All Sts. Hous. Dev. Fund Co., Inc., 146 A.D.3d 615, 617 (1st Dep't 2017); Stewart Tenants Corp. v. Square Indus., 269 A.D.2d 246, 248 (1st Dep't 2000), or to his proposed claims against it, C.P.L.R. § 3025(b); Davis v. South Nassau Communities Hosp., 26 N.Y.3d 563, 581 (2015); Koch v. Sheresky, Aronson & Mayefsky LLP, 161 A.D.3d 647, 648 (1st Dep't 2018); Farpoint Cos., LLC v. Vella, 134 A.D.3d 645, 645 (1st Dep't 2015); Oleh v. Anlovi Corp., 106 A.D.3d 445, 445 (1st Dep't 2013), the court denies his motion for that relief. This decision constitutes the court's order.

DATED: October 19, 2018



LUCY BILLINGS, J.S.C.