

**Gray v Stahl**

2019 NY Slip Op 30001(U)

January 4, 2019

Supreme Court, New York County

Docket Number: 110738/2011

Judge: Anthony Cannataro

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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 IAS MOTION 41EFM

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BRIAN GRAY,

Plaintiff,

- v -

STANLEY STAHL, STAHL PARK AVENUE  
COMPANY, 277 PARK AVENUE LLC, 277  
PARK AVENUE CONDOMINIUM, CASSIDY  
TURLEY NEW YORK INC, STANLEY STAHL  
MANAGEMENT INC, JP MORGAN CHASE  
BANK NA S/H/A JP MORGAN CHASE & CO.,  
CALDWELL WINGATE CO,

Defendants.

-----X

JP MORGAN CHASE BANK, NA s/h/a JP  
MORGAN CHASE & CO.,

Third-Party-Plaintiff,

-against-

KNOLL, INC., and EVENSONBEST, LLC,

Third-Party Defendant.

**INDEX NO.**     110738/2011

**MOTION  
DATE**             10/31/2018

**MOTION  
SEQ. NO.**         007 008 009  
010 011 012  
013

**DECISION AND ORDER**

-----X

JP MORGAN CHASE BANK, NA s/h/a JP  
MORGAN CHASE & CO.,

Second-Party-Plaintiff,

-against-

CAULDWELL WINGATE, CO.,

Second/Third-Party Defendant.

-----X

EVENSONBEST, LLC,

Third/Third-Party-Plaintiff,

-against-

N. JERSEY INTERIORS, LLC.,

Third/Third-Party Defendant.

-----X

N. JERSEY INTERIORS, LLC,

Second Fourth/Third-Party-Plaintiff,

-against-

NJ INSTALLATIONS, LTD.,

Second Fourth/Third-Party Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 007)  
228- 244, 434, 450, 451

were read on this motion JUDGMENT - SUMMARY .

The following e-filed documents, listed by NYSCEF document number (Motion 008)  
245 - 301, 432, 437, 470, 471, 485- 488, 494- 499, 512- 516, 519, 520

were read on this motion JUDGMENT - SUMMARY .

The following e-filed documents, listed by NYSCEF document number (Motion 009)  
302 - 328, 433, 438, 449

were read on this motion SUMMARY JUDGMENT (AFTER JOINDER) .

The following e-filed documents, listed by NYSCEF document number (Motion 010)  
329-357, 435, 445, 452 - 460, 489 - 493, 500- 502, 510, 511

were read on this motion JUDGMENT - SUMMARY .

The following e-filed documents, listed by NYSCEF document number (Motion 011)  
359- 388, 443- 447, 461, 462, 475, 476, 517, 518

were read on this motion JUDGMENT - SUMMARY .

The following e-filed documents, listed by NYSCEF document number (Motion 012)  
389-425, 436, 442, 448, 463, 464- 467

were read on this motion DISMISS .

The following e-filed documents, listed by NYSCEF document number (Motion 013)  
426- 431, 439, 441, 468, 469, 472, 473, 474, 477- 484, 521- 524

were read on this motion JUDGMENT - SUMMARY .

HON. ANTHONY CANNATARO:

In this action, plaintiff seeks to recover damages for personal injuries allegedly sustained when he slipped and fell while walking across the loading dock in the building located at 277 Park Avenue in Manhattan. At the time of the accident, plaintiff Brian Gray was a carpenter employed by NJ Installations LTD, a company subcontracted to assemble and install office cubicle furniture in the offices of JP Morgan Chase Bank on the 13th

Floor of 277 Park Ave. On February 6, 2012, as he was exiting the building for a coffee break, plaintiff alleges that he tripped and fell in the loading dock located on the ground floor of the building, sustaining several serious injuries. Plaintiff alleges that he was caused to trip by a crevice on the surface of the loading dock.

Plaintiff commenced this action against several defendants including Stanley Stahl, Stahl Park Avenue Company, 277 Park Avenue LLC, 277 Park Avenue Condominium, Cassidy Turley New York Inc., Stanley Stahl, Management, Inc. (collectively "Stahl"), the owner and manager of the building, and JPMorgan Chase Bank, NA i/s/h/a/ J.P. Morgan Chase & Co. (Chase), the lease holder of several floors of the building, including the 13th Floor where plaintiff was working. Chase commenced third-party actions seeking indemnification from Caudwell Wingate Co. (Caudwell), the general contractor for the project, Knoll, Inc. (Knoll), the office furniture manufacturer for the project, and Evensonbest, LLC (Evensonbest), the furniture seller. Evensonbest commenced a third-party action for indemnification against N. Jersey Interiors, LLC (N. Jersey Interiors), the furniture installer. N. Jersey Interiors, in turn, commenced a fourth-party action against NJ Installations LTD. (NJ Installations), the company to which N. Jersey Interiors subcontracted the installation work. The various defendants now move pursuant to CPLR 3212 for summary judgment dismissing plaintiff's complaint in its entirety or, in the alternative, that portion of plaintiff's complaint which seeks to recover for injuries pursuant to Labor Law § 241 (6) or, in the alternative, that portion of the various claims as was asserted against them individually. Plaintiff cross-moves for partial summary judgment on the issue of liability. These motions, sequence numbers 007, 008, 009, 010, 011, 012, and 013 are consolidated for decision herein.

On a motion for summary judgment, the movant carries the initial burden of tendering sufficient admissible evidence to demonstrate the absence of a material issue of fact as a matter of law (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]). Once the

movant meets its initial burden, the burden shifts to the opposing party to “show facts sufficient to require a trial of any issue of fact” (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). The court must view the evidence in the light most favorable to the nonmoving party and give that party the benefit of all reasonable inferences that can be drawn (*Benjamin v City of New York*, 55 Misc3d 1217[A], 2017 NYSlipOp 50619[U] [Sup Ct, NY County 2017]). Summary judgment “is a drastic remedy which should only be employed when there is no doubt as to the absence of triable issues” (*Andre v Pomeroy*, 35 NY2d 361, 363 [1974]).

The motions by Knoll, Evensonbest, N. Jersey Interiors, and NJ Installations for summary judgment dismissing the third-party and fourth-party complaints against them are all unopposed. Moreover, there has been no evidence offered that would suggest that these companies breached a duty owed to plaintiff or were in any way negligent. As such, Knoll’s, Evensonbest’s, N. Jersey Interiors’, and NJ Installations’ motions for summary judgment dismissing the third-party and fourth-party complaints against them are granted.

The remaining defendants, Stahl, Chase, and Caudwell seek to have the complaint dismissed in its entirety, alleging that plaintiff is unable to identify what caused him to fall and is merely “speculating” as to the cause of the accident. The movants further assert that plaintiff’s claims of negligence against them are likewise speculative. These arguments are unpersuasive.

In his deposition, plaintiff testified that he felt his foot dip into something in the floor of the loading dock that caused him to fall. This testimony, taken together with other statements made by plaintiff during his deposition and the proof relied upon by plaintiff, if believed, would provide a sufficient nexus between the condition of the loading dock and plaintiff’s fall for the trier of fact to find both negligence and causation as to one or more of the remaining defendants (*see Cherry v Daytop Vil., Inc.*, 41

AD3d 130 [1st Dept 2007]; *see also Jackson v Fenton*, 38 AD3d 495 [2d Dept 2007]; *Cuevas v City of New York*, 32 AD3d 372 [1st Dept 2006]). As such, summary judgment dismissing the complaint in its entirety is unwarranted.

For the same reasons, plaintiff's cross motion for partial summary judgment on the issue of liability must be denied. Although plaintiff has set forth sufficient proof to survive defendants' motions, at this juncture it is impossible for the Court to determine the issue of liability as a matter of law. There remain unresolved issues of fact necessitating trial on the issue of the remaining defendants' negligence and whether that negligence proximately caused plaintiff to fall.

The Court next turns to the argument by the remaining defendants that they are entitled to summary judgment on the portion of plaintiff's complaint which seeks to recover for injuries pursuant to Labor Law § 241 (6). To recover under Labor Law § 241 (6), a plaintiff must plead and prove a violation of a concrete provision of the New York State Industrial Code containing "specific, positive commands," rather than a provision reiterating common-law safety standards (*Ross v Curtis-Palmer Hydro Elec. Co.*, 81 NY2d 494, 503 [1993]). In support of his Labor Law § 241 (6) claim, plaintiff's "further amended complaint" alleges that defendants violated Industrial Code § 23-1.7 (e). Industrial Code § 23-1.7 (e), titled "Tripping and other hazards," provides:

(1) Passageways. All passageways shall be kept free from accumulations of dirt and debris and from any other obstructions or conditions which could cause tripping. Sharp projections which could cut or puncture any person shall be removed or covered.

Although not typically considered a passageway, where a loading dock is the sole means of access to and from a work area, that loading dock may be deemed a passageway which contractors and owners and their agents would be responsible to maintain in accordance with the provisions of the Labor Law (*see Hoyos v NY-1095 Ave.*

*of the Americas, LLC*, 156 AD3d 491, 496 [1st Dept 2017]; *see also Ramirez v Shoats*, 76 AD3d 851 [1st Dept 2010]; *McGarry v CVP 1 LLC*, 55 AD3d 441 [1st Dept 2008]; *Griffin v New York Tr. Auth.*, 16 AD3d 202 [1st Dept 2005]).

Here, deposition testimony suggests that the loading dock was the sole means of access to the work area whenever workers were carrying tools. As such, there is at least a question of fact as to whether the loading dock can be deemed the sole means of access to and from the work area such that it would be considered a passageway for purposes of the Labor Law. The fact that plaintiff was not engaged in construction, and that he was on his way to a coffee break at the time of the accident, does not change the analysis (*see Aguilar v Henry Marine Service, Inc.*, 12 AD3d 542 [2d Dept 2004]; *O'Connor v. Serge Elevator Co.*, 58 NY2d 655, 657 [1982]). Additionally, despite defendants' arguments to the contrary, as a carpenter involved in the assembly and installation of office furniture, plaintiff has at the very least raised a triable issue of fact as to whether he is protected under Labor Law § 241 (6), which is meant to ensure the safety of persons employed at or "lawfully frequenting" construction sites. Therefore, summary judgment dismissing the portion of plaintiff's complaint which seeks to recover for injuries pursuant to Labor Law § 241 (6) must be denied.

The branches of the motions by the remaining defendants for summary judgment dismissing so much of the complaints as was asserted against them individually must also be denied. Stahl, as the owner of the premises, had an obligation to properly maintain the loading dock on which plaintiff fell. Chase, who contracted for work to be performed for its own benefit, is deemed to be an owner for purposes of Labor Law §241(6) (*see Kane v Coundorous*, 293 AD2d 309 [2002]; *see also Glielmi v Toys R Us*, 62 NY2d 664 [1984]). Caudwell, as the general contractor for the project, had several labor law responsibilities as well. None of these defendants can rely on the indemnity provisions in their contracts to be absolved of liability because none of them can

establish that plaintiff's injuries resulted from actions for which they were to be indemnified, and not their own negligence.

Lastly, the Court addresses the remaining defendants' claims that they did not have notice of the alleged conditions. It remains a question of fact whether they had actual notice or in the alternative, constructive notice, in the event that the condition or defect was visible and apparent, and existed for a sufficient length of time before the accident that it could have been discovered and corrected (*see Gordon v American Museum of Natural History*, 67 NY2d 836 [1986]).

Accordingly, it is

**ORDERED** that the motions by defendants Knoll, Inc., Evensonbest, LLC, N. Jersey Interiors, LLC, and NJ Installations LTD. for summary judgment dismissing the third-party and fourth-party complaints against them is granted and the third-party and fourth-party complaints are dismissed in their entirety as against said defendants, with costs and disbursements to said defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants; and it is further

**ORDERED** that the action is severed and continued against the remaining defendants; and it is further

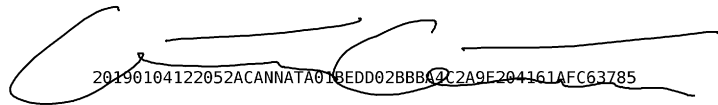
**ORDERED** that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

**ORDERED** that counsel for Knoll, Inc., Evensonbest, LLC, N. Jersey Interiors, LLC, and NJ Installations LTD. shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that the motions by Stanley Stahl d/b/a Stahl Park Avenue Company, 277 Park Avenue LLC, 277 Park Avenue Condominium, Cassidy Turley New York Inc., Stanley Stahl, Management, Inc., JPMorgan Chase Bank, NA i/s/h/a/ J.P. Morgan Chase & Co., and Caudwell Wingate Co. for summary judgment dismissing the complaint and plaintiff's motion for partial summary judgment are denied.

1/4/2019  
DATE



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ANTHONY CANNATARO, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: