

**Lata v Rector, Church Wardens and Vestrymen of
Grace Church in the City of N.Y.**

2019 NY Slip Op 31246(U)

May 2, 2019

Supreme Court, New York County

Docket Number: 153747/2014

Judge: Arthur F. Engoron

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ARTHUR F. ENGORON PART IAS MOTION 37EFM

Justice

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INDEX NO. 153747/2014

RYSZARD LATA,

Plaintiff,

**MOTION DATE 06/20/2018,
06/26/2018**

- v -

MOTION SEQ. NO. 003 and 004

THE RECTOR, CHURCH WARDENS AND VESTRYMEN OF
GRACE CHURCH IN THE CITY OF NEW YORK, GRACE
CHURCH SCHOOL, 80 FOURTH AVENUE LLC, TRI-STAR
EQUITIES, INC., NOVA RESTORATION OF NY INC., CS BRIDGE
CORP.,

DECISION AND ORDER

Defendants.

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THE RECTOR, CHURCH WARDENS AND VESTRYMEN
OF GRACE CHURCH IN THE CITY OF NEW YORK, 80 FOURTH
AVENUE LLC and TRI-STAR EQUITIES, INC.,

Third-Party Plaintiffs,

- v -

WEST NEW YORK RESTORATION OF CT., INC.,

Third-Party Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 144, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 158, 159

were read on this motion for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 145, 146, 157, 160

were read on this motion for SUMMARY JUDGMENT.

Upon the foregoing documents, it is hereby ordered that third-party defendant's motion for summary judgment against remaining third-party plaintiff is granted and plaintiff's motion for summary judgment against remaining defendant is granted.

Background

Plaintiff, Ryszard Lata, commenced this action against defendant, The Rector, Church Wardens and Vestrymen of Grace Church in the City of New York (hereinafter "Grace Church"), to recover for personal injuries allegedly sustained on April 19, 2011 while he was performing pointing work on the masonry walls of the chantry portion of Grace Church, located at 802

Broadway, New York, New York (the "Premises").¹ On or about May 5, 2009, Grace Church, which owned the Premises, contracted with third party-defendant, West New York Restoration of CT, Inc. (hereinafter, "West NY") for West NY to perform restoration work on the chantry roof in the south vestibule of the Premises.

The contract for the roof restoration work included the following provision:

§ 6.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement with Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement. A Modification is (1) a written agreement to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) **a written order for a minor change in the Work issued by the Architect**. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonable inferable from them as being necessary to produce the indicated results.

(NYSCEF Doc. No. 102, emphasis added.) On July 2, 2009, Grace Church's architect of longstanding, Walter B. Melvin Architects, LLC ("WBM"), signed a Certificate of Substantial Completion indicating that WBM had reviewed the roof restoration work and found it to be substantially completed. (NYSCEF Doc. No. 107.) The Certificate of Substantial Completion was also signed by representatives for Grace Church and West NY.

Subsequent to the execution of the May 5, 2009 contract, a water test was performed on the chantry, and WBM recommended that additional waterproofing work be done. On or about September of 2009, WBM prepared a 19-page Outline Specification for Chantry Repointing. (NYSCEF Doc. No. 151.)

On April 19, 2011, plaintiff, Ryszard Lata, sustained injuries while employed by West NY and performing pointing work at the Premises, when an OSHA-approved wooden plank he was standing on unexpectedly broke. Plaintiff asserts that although he was provided a harness, he was not provided with any place "to tie off" the harness, violating Labor Law § 240(1).

On or about April 17, 2014, plaintiff sued Grace Church to recover for his personal injuries. On or about December 4, 2014, Grace Church impleaded West NY as a third-party defendant, asserting that West NY is obligated to indemnify Grace Church.

¹ Plaintiff had commenced suit against other defendants (Grace Church School, 80 Fourth Avenue LLC, Tri-Star Equities, Inc., Nova Restoration of NY Inc., and CS Bridge Corp.) that were subsequently discontinued.

West NY now moves, pursuant to CPLR 3212, for summary judgment in its favor against Grace Church and dismissal of the third-party complaint. Plaintiff also moves pursuant to CPLR 3212 for summary judgment against Grace Church on the issue of liability under Labor Law § 240(1).

Discussion

Plaintiff's Motion for Summary Judgment against Grace Church

Labor Law § 240(1), states, in pertinent part:

All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, in the erection, demolition, repairing, altering, painting, cleaning, or **pointing** of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed.

(emphasis added.) Section 240 of the Labor Law creates a nondelegable duty on the part of owners and general contractors and their agents to provide scaffolding and other protective devices to provide a safe place for all workers on the job. Liability under the statute is strict, and where a plaintiff demonstrates “that a defendant’s failure to provide workers with adequate protection from reasonably preventable, gravity-related accidents [liability will result].” Wilinski v 334 E. 92nd Hous. Dev. Fund. Corp. 18 NY3d 1, 7 (2011).

Plaintiff has established his prima facie entitlement to summary judgment against Grace Church by demonstrating that he was injured while performing pointing work, that his injury was a gravity-related accident, and that he was not provided an adequate place to tie off his safety harness. Grace Church’s argument that it is not liable under Labor Law § 240(1) because plaintiff’s actions were the sole proximate cause of his injuries is unpersuasive. Under Labor Law § 240(1), “liability is imposed without regard to principles or concepts of negligence.” Crawford v Leimzider, 100 AD3d 568, 569 (2d Dep’t 1984); Garcia v 1122 E 180th St. Corp., 250 AD2d 550, 551 (1st Dep’t 1998) (holding that the provisions of § 240(1) apply regardless of plaintiff’s negligence). Further, and contrary to the arguments advanced by Grace Church, “[t]here is no burden placed upon the worker to guarantee his own safety by requiring that he construct, place or operate the equipment in a proper manner.” Berndt v Aquavello, 139 AD2d 920, 920 (4th Dep’t 1988).

Accordingly, plaintiff is entitled to summary judgment on liability against Grace Church.

West NY’s Motion for Summary Judgment on the Third-Party Complaint

West NY argues it is entitled to summary judgment against Grace Church and dismissal of the third-party complaint because there is no applicable contract in which it agreed to indemnify Grace Church for injuries arising out of the subject work. Grace Church argues that the indemnity clause of the May 5, 2009 contract is applicable. In support of this argument, Grace Church asserts that the September 2009 Outline Specification for Chantry Repointing, prepared by Grace Church’s architect WBM, relates back to the May 5, 2009 contract such that the

indemnity clause of the May 5, 2009 contract should govern. This Court disagrees. As identified herein, § 6.1 of the May 5, 2009 contract itemizes all of the applicable contract documents, and states that a modification to the contract documents may only occur by: (1) a written agreement to the Contract signed by both parties, (2) a change order, (3) a construction change directive, or (4) a written order for a minor change in the work issued by the architect. The first three mechanisms are inapplicable, leaving this Court to determine whether a 19-page Outline Specification for Chantry Repointing prepared by Grace Church’s architect that outlines a different scope of work to be performed on a different part of the church constitutes a “written order for a minor change.” This Court finds that September 2009 Outline for Chantry Repointing is a substantial change, rather than a “minor change.” Accordingly, the indemnity provision of the May 5, 2009 contract is inapplicable to the instant action.

Further, as plaintiff has not alleged a “grave injury” as Section 11 of the Workers Compensation Law defines that phrase, Grace Church’s third-party claims seeking common law indemnification and contribution from West NY are statutorily barred. Keita v City of New York, 129 AD3d 409, 410 (1st Dep’t 2015). Accordingly, West NY is entitled to summary judgment against Grace Church and dismissal of the third-party complaint.

As West NY has established its entitlement to summary judgment against Grace Church, the Court need not consider the other arguments.

Conclusion

For the reasons set forth herein, it is hereby ordered that summary judgment is granted in favor of third-party defendant West NY and against third-party plaintiff Grace Church, and summary judgment is granted in favor of plaintiff Ryszard Lata and against defendant Grace Church, and the Clerk is directed to enter judgment in favor of plaintiff against Grace Church, and dismissing the third-party complaint against West NY.

5/2/2019

DATE



ARTHUR F. ENGORON, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE