

**Lesniak v 411 Wales Realty, LLC**

2021 NY Slip Op 34045(U)

August 4, 2021

Supreme Court, Bronx County

Docket Number: Index No. 23795/2019E

Judge: Lucindo Suarez

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: PART 19

Mtn. Seq. # 4

RADOSLAW LESNIAK,

Index No.: 23795/2019E

Plaintiff,

- against -

**DECISION and ORDER**

411 WALES REALTY, LLC, KEL-MAR INTERIORS,  
INC., CIVIC 411 WALES CORPORATION and  
NEIGHBORHOOD CHARTER SCHOOLS,

Defendants.

	PAPERS NUMBERED
Defendant Neighborhood Charter Schools' Notice of Motion, Affirmation in Support, Affidavit in Support, Exhibits	1, 2, 3, 4
Plaintiff's Affirmation in Opposition, Exhibits	5, 6
Defendant Neighborhood Charter Schools' Reply Affirmation, Exhibits	7, 8

Upon the enumerated papers; and due deliberation; this court finds:

Defendant Neighborhood Charter Schools ("Defendant") established its *prima facie* burden for a dismissal of Plaintiff's complaint.<sup>1</sup> However, Plaintiff's opposition raised triable issues of fact rendering the instant summary judgment motion premature with respect to his causes of actions under Labor Law §§240(1) and 241(6).

I. Liability Under Labor Law §§240(1) and 241(6)

Absolute liability under Labor Law §§240(1) and 241(6) may apply to a lessee, where the lessee had the right or authority to control the work. *See Bart v. Universal Pictures*, 277 A.D.2d 4, 715 N.Y.S.2d 240 (1st Dep't 2000); *see also Markey v. C.F.M.M. Owners Corp.*, 51 A.D.3d 734, 858 N.Y.S.2d 293 (2d Dep't 2008). While one way to prove such control of the worksite is

<sup>1</sup> Defendant's application to dismiss all cross-claims asserted against it went unopposed, therefore, same is granted and will not be addressed herein.

through evidence that the lessee actually hired the general contractor the right to control the work site may be proved by other means, such as contractual or statutory provisions granting such right. *Id.* The key factor 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 non-exercise of control.” *Id.*

Defendant argues that it could not be subject to liability under Plaintiff’s Labor Law §§240(1) and 241(6) causes of action since it alleges that it was not in possession of the subject worksite until after Plaintiff’s accident occurred. Defendant annexed the affidavit of its Director of Operations, Victor Rios, and the sublease it entered into on March 2, 2018, to establish that they did not have the requisite right or authority to control the work occurring at the worksite at the time Plaintiff sustained his injuries to subject it to liability under Labor Law §§240(1) and 241(6).

In opposition, Plaintiff argues that the instant motion should be denied as premature. He contends that discovery is still in its preliminary stages as no depositions have been held and a significant amount of paper discovery remains outstanding. In addition, Plaintiff points to the terms of Defendant’s sublease to buttress his argument that Defendant was conferred the requisite authority and right to control the work being completed at the worksite through the provisions of its sublease.

Plaintiff first argues that the subject sublease dated March 2, 2018, was in effect at the time of Plaintiff’s accident in December 2018. Furthermore, he cites to section 2 of the sublease, which provides that “during any time period that the subtenant [Defendant] is not in occupancy of the entire Prime Lease Premises, subtenant shall manage the operations, repairs and maintenance of the entire Prime Lease Premises...” Moreover, he cites to section 3 of the

sublease, which provides that “the improvements shall be coordinated and designed with subtenant’s design team and constructed by sublandlord’s contractors and agents good and workmanlike manner and substantially in accordance with the scope of work...”

This court finds that Plaintiff provided an evidentiary basis to suggest that further discovery may lead to relevant evidence as Defendant may be subject to liability as a lessee of the subject worksite under Labor Law §§240(1) and 241(6) irrespective if it actually exercised control over the work being completed at the worksite during the time period of Plaintiff’s accident. Therefore, at this juncture Defendant’s summary judgment is premature with respect to Plaintiff’s causes of action under Labor Law §§240(1) and 241(6).

II. Labor Law §200

Labor Law §200 codifies an owner’s or general contractor’s common-law duty of care to provide construction site workers with a safe place to work. *Cappabianca v. Skanska USA Bldg. Inc.*, 99 A.D.3d 139, 950 N.Y.S.2d 35 (1st Dep’t 2012). Claims for personal injury under the statute and the common law fall into two broad categories: (1) those arising from an alleged defect or dangerous condition existing on the premises; and those arising from the manner in which the work was performed. *Id.*

Where an existing defect or dangerous condition caused the injury, liability attaches if the owner or general contractor created the condition or had actual or constructive notice of it. *Id.* Where the injury was caused by the manner and means of the work, including the equipment used, the owner or general contractor is liable if it actually exercised supervisory control over the injury-producing work. *Id.*

Defendant via the affidavit of its Director of Operations, Victor Rios, made a *prima facie* showing that it did not have actual or constructive notice of the dangerous conditions that led to

Plaintiff's injuries nor did they control or supervise his injury-producing work in order to subject it to liability under Labor Law §200. Plaintiff's opposition failed to raise any triable issues of fact regarding same. Therefore, this court finds that Defendant established its entitlement to a dismissal of Plaintiff's Labor Law §200 claim.

Accordingly, it is

ORDERED, that Defendant's summary judgment motion is granted in part; and it is further

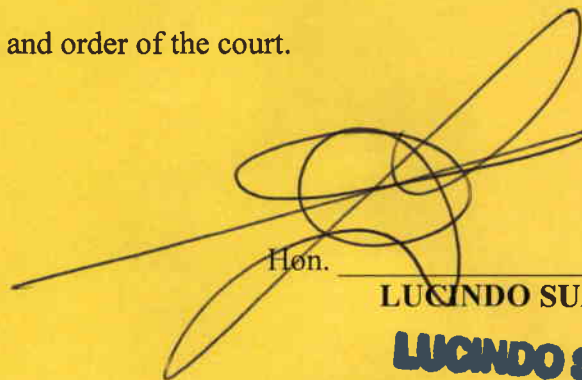
ORDERED, that Defendant's application to dismiss Plaintiff's Labor Law §§240(1) and 241(6) claims is denied; and it is further

ORDERED, that Defendant's application to dismiss Plaintiff's Labor Law §200 claim is granted; and it is further

ORDERED, that Defendant's application to dismiss all cross-claims asserted against is granted, without opposition.

This constitutes the decision and order of the court.

Dated: 8/4/2021



Hon.

LUCINDO SUAREZ, J.S.C.

**LUCINDO SUAREZ, J.S.C.**