

Camas v 63 W. 104th St. Owner LLC
2022 NY Slip Op 30142(U)
January 19, 2022
Supreme Court, New York County
Docket Number: Index No. 155666/2018
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE BLUTH PART 14

Justice

-----X

JUAN CAMAS, MARIA SAETEROS,
Plaintiffs,

- v -

63 WEST 104TH STREET OWNER LLC, 1 OAK
CONTRACTING LLC,

Defendants.

-----X

63 WEST 104TH STREET OWNER LLC, 1 OAK
CONTRACTING LLC

Plaintiffs,

-against-

BENCHMARK CONTRACTING, INC.

Defendant.

-----X

INDEX NO. 155666/2018
MOTION DATE 01/18/2022
MOTION SEQ. NO. 001 002

DECISION + ORDER ON
MOTION

Third-Party
Index No. 595741/2018

The following e-filed documents, listed by NYSCEF document number (Motion 001) 36, 37, 38, 39, 40,
41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 74, 76, 78, 80, 81, 82, 97, 98, 99, 100, 101, 102,
103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123,
124, 125, 127

were read on this motion to/for JUDGMENT - SUMMARY .

The following e-filed documents, listed by NYSCEF document number (Motion 002) 55, 56, 57, 58, 59,
60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 75, 77, 79, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93,
94, 95, 96, 126, 128

were read on this motion to/for JUDGMENT - SUMMARY .

Motion Sequence 001 and 002 are consolidated for disposition. The motion (MS001) by
defendants for summary judgment is granted in part and denied in part. The motion (MS002) by
plaintiff for partial summary judgment on his Labor Law § 240 claim is granted.

Background

This Labor Law case arises out of construction accident involving plaintiff Camas (hereinafter, “plaintiff”). He was working for Benchmark Contracting and carrying forms (metal pieces put in the wall before the concrete) when another worker dropped a form and hit plaintiff’s hand (NYSCEF Doc. No. 44 at 20-21 [plaintiff’s deposition testimony]). The other worker was on the second floor while plaintiff was on the first when the accident happened (*id.* at 21). The forms weighed about 150 pounds each (*id.* at 22). Plaintiff added that because there were no stairs on the premises, workers would drop them from one floor to another (*id.*).

Motion Sequence 001

Defendants move for summary judgment on their contractual indemnification claim against Benchmark, including legal fees. They claim that the provisions of the contract between defendants and Benchmark required Benchmark to indemnify defendants (the owner and the general contractor at the job site). Defendants also seek common law indemnification on the ground that Benchmark, as a subcontractor at the site, was in charge of the work when plaintiff was injured and that defendants had no role at the work site.

Defendants also seek legal fees against Benchmark pursuant to the contract and to dismiss plaintiff’s Labor Law § 200 claim on the ground that they were not negligent. They point out that plaintiff could not identify either defendant at his deposition.

Plaintiff offers opposition and points out that although defendants seek to dismiss all claims, they do not address any of plaintiff’s claims except for its Labor Law § 200 claim. Plaintiff claims there is an issue of fact with respect to the Labor Law § 200 claim because defendant 1 Oak (the general contractor) had three supervisors on site daily and should have observed that Benchmark employees were dropping heavy metal forms from floor to floor.

Third-party Benchmark also offers opposition (although the first paragraph says the affirmation is for defendant Five Sunset Park Holdings, LLC, which is not a party to this case). Benchmark claims that there are issues of fact with respect to whether 1 Oak supervised and controlled the work site and whether they had the authority to stop the work.

Defendants did not submit a reply.

“In contractual indemnification, the one seeking indemnity need only establish that it was free from negligence . . . Whether or not the proposed indemnitor was negligent is a non-issue and irrelevant” (*Correia v Professional Data Mgmt., Inc.*, 259 AD2d 60, 65, 693 NYS2d 596 [1st Dept 1999]).

“Common-law indemnification is predicated on vicarious liability, which necessitates that a party who has itself actually participated to some degree in the wrongdoing cannot receive the benefits of the doctrine” (*Edge Mgt. Consulting, Inc. v Blank*, 25 AD3d 364, 367 [1st Dept 2006] [internal quotations and citations omitted]). “[I]n the case of common-law indemnification, the one seeking indemnity must prove not only that it was not guilty of any negligence beyond the statutory liability but must also prove that the proposed indemnitor was guilty of some negligence that contributed to the causation of the accident” (*Correia*, 259 AD2d at 65).

The Court denies the branch of the motion that seeks both contractual and common law indemnification. As an initial matter, Benchmark raised an issue of fact as to whether 1 Oak might be negligent—it argued that 1 Oak was responsible for supervising the job site and that it should have stopped workers from dropping heavy metal forms in an unsafe manner. That clearly justifies denying the branch of the motion with respect to 1 Oak’s request for relief.

The Court also denies the demand for indemnification by the owner (63 West 104th Street Owner LLC). Clearly, the owner is not negligent; neither plaintiff nor Benchmark made any arguments about why the owner could be liable under a negligence theory. However, that does not mean the owner is necessarily entitled to indemnification from Benchmark (as the motion demands). There has been no finding of negligence as against any party and so it would be premature to reach such a conclusion about indemnity. It could be that a fact-finder absolves Benchmark of negligence and holds 1 Oak responsible instead.

Similarly, the Court denies the branch of the motion that sought summary judgment dismissing plaintiff's Labor Law § 200 claim (the codification of common law negligence) against 1 Oak. However, the Court dismisses this claim as against the owner as there is no basis to find that this entity was negligent.

Plaintiff's Motion

In this motion, plaintiff seeks partial summary judgment on its Labor Law § 240(1) claim. The only opposition offered is from Benchmark, who claims that there are issues of fact with respect to whether plaintiff was the sole proximate cause of his accident by leaving his hand on a container used to store the metal forms.

“Labor Law § 240(1), often called the ‘scaffold law,’ provides that all contractors and owners . . . shall furnish or erect, or cause to be furnished or erected . . . scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to construction workers employed on the premises” (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 499-500, 601 NYS2d 49 [1993] [internal citations omitted]). “Labor Law § 240(1) was designed to prevent those types of accidents in which the scaffold, hoist, stay, ladder or other protective device proved

inadequate to shield the injured worker from harm directly flowing from the application of the force of gravity to an object or person” (*id.* at 501).

“[L]iability [under Labor Law § 240(1)] is contingent on a statutory violation and proximate cause . . . violation of the statute alone is not enough” (*Blake v Neighborhood Hous. Servs. of NY City*, 1 NY3d 280, 287, 771 NYS2d 484 [2003]).

The Court grants this motion. The fact is that in this case it is undisputed that workers were directed to drop 150-pound metal forms down a floor. That plaintiff might share some responsibility by (according to Benchmark) not paying attention is not a basis to conclude that he was the sole proximate cause of his own accident. Benchmark failed to identify an adequate safety device—the containers used to “accept” materials would not have provided safety. There is no evidence that these containers were designed to protect a worker from being hit with a giant metal beam. Rather, it seems that these containers were simply used to cart the metal forms away (apparently, Benchmark was about to finish up its work and was removing these forms).


Moreover, the scenario described precludes the conclusion that plaintiff was the sole proximate cause of his accident. Because there was no staircase, Benchmark was literally throwing these metal forms down a floor. Although this Court does not purport to describe what safety protocols should have been in place to complete such work, blaming a worker for not looking up as metal forms are dropping from above is not a basis to deny liability under Labor Law § 240(1).

Accordingly, it is hereby

ORDERED that the motion (MS001) by defendants is denied in all respects except that the branch of the motion that the Labor Law § 200 claim is severed and dismissed as against defendant 63 West 104th Street Owner, LLC; and it is further

ORDERED that the motion (MS002) by plaintiff for summary judgment as to liability on its Labor Law § 240(1) claim is granted.

1/19/2022
DATE


ARLENE BLUTH, 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