

**Winkler v Halmar Intl., LLC**

2022 NY Slip Op 30506(U)

February 15, 2022

Supreme Court, New York County

Docket Number: Index No. 150694/2014

Judge: Frank P. Nervo

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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. FRANK NERVO PART 04

Justice

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DOREEN WINKLER,

Plaintiff,

- v -

HALMAR INTERNATIONAL, LLC, HALMAR CONSTRUCTION CORP., HALMAR INTERNATIONAL CONSTRUCTION, LLC, HAKS GROUP, INC., HAKS ENGINEERS, ARCHITECTS AND LAND SURVEYORS, P.C., THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Defendant.

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INDEX NO. 150694/2014
MOTION DATE 05/04/2020
MOTION SEQ. NO. 010

SUPPLEMENTAL AMENDED DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 010) 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 548, 549, 550, 551, 552, 553, 554, 555, 607, 611, 614, 615, 616, 629, 630, 631, 632, 633, 697, 698, 700, 703, 707, 732, 733, 734, 735, 736, 737, 738, 739

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER)

The Court amends its Decision and Order of June 23, 2021 (Motion Sequence 10) adding:

The plaintiff's cross-motion of February 24, 2021 seeking an order of Summary Judgment against JA Underground Professional Corporation (JA) pursuant to Labor Law §240(1), 241(b) and 200 is granted. The Court's observation in that earlier decision of June 23, 2021 that sufficient questions of

fact existed to deny the motion to dismiss does not preclude finding in favor of plaintiff on summary judgment.

Prior to the close of discovery, plaintiff initially moved for summary judgment against JA on September 21, 2018. That motion was denied by Justice Margaret A. Chan of this court. In view of further discovery and in the interest of justice this court grants plaintiff's motion with respect to JA. JA's Edward Sturm testified at deposition that "everyone" – a reference to all owners, contractors and subcontractors at the site – had the authority to stop work at any time, including stopping the concrete placement at the Maybrook site.

Further, the unambiguous language of JA's contract with HAKS provides for JA's obligation to "protect all persons . . . from damage, loss or injury resulting from the contractor's and/or its subcontractors' operations under this agreement."

JA's failure in these obligations by not inspecting the formwork utilizing its engineering expertise prior to the concrete placement of December 2, 2013, by issuing the Notice To Place required before the commencement of a concrete

placement in the absence of a confirmation of the stability and safety of the formwork (and notably in consideration of Sturm's own misgivings that the placement was scheduled for the morning after a long holiday weekend and upon his review of photographs of the formwork demonstrating the "formwork was not complete"), and by failing to order the concrete placement to cease upon notice given by HAKS' Morgans to JA's own on-site construction inspector Michael Hadley, of concern as to the stability of the formwork into which cement was being poured, are sufficient bases to hold JA accountable pursuant to Labor Law Sections 240(1) and 241(6), for this readily avoidable tragedy.

It is axiomatic:

- A) The duties of owners and contractors under Labor Law §§240(1) and 241(6) are non-delegable, however, those duties may be contracted to a third party (here JA) who then assumes those duties and becomes a statutory agent for the work so delegated; and
- B) JA's responsibility does not vitiate the statutory obligations imposed upon owners and contractors in the first instance, or the statutory

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obligations of any other parties determined to be statutory agents,  
pursuant to the Labor Law or otherwise.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT

2/15/2022

DATE

FRANK NERVO, 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