SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

PAWAL PADIASEK,

Plaintiff,

-against-

PRD REALTY MANAGEMENT, INC., LEVITTOWN CENTER ASSOCIATES, LP, and MYSTIQUE BOUTIQUE OF LEVITTOWN, INC.,

Defendants.

PRD REALTY MANAGEMENT, INC. and LEVITTOWN CENTER ASSOCIATES, LP,

Third-Party Plaintiffs,

-against-

MYSTIQUE BOUTIQUE OF LEVITTOWN, INC.,

Third-Party Defendant.

PRD REALTY MANAGEMENT, INC., LEVITTOWN CENTER ASSOCIATES, LP, and MYSTIQUE BOUTIQUE OF LEVITTOWN, INC.,

Second Third-Party Plaintiffs,

-against-

REDWOOD CONSTRUCTION, LLC,

Second Third-Party Defendant.

MYSTIQUE BOUTIQUE OF LEVITTOWN, INC.,

Third Third-Party Plaintiff,

-against-

PRIDE EQUIPMENT CORPORATION,

Third Third-Party Defendant.

Index No. 504999/2015

DECISION & ORDER

Plaintiff Pawal Padiasek allegedly sustained injuries after falling from an "electric scissor lift" while painting the ceiling of premises located at 2977 Hempstead Turnpike in Levittown, NY (the "Premises"). Under the employ of Redwood Construction, LLC (Redwood), plaintiff was tasked with construction at the Premises. Mr. Padiasek alleges that the Premises' owner, Levittown Center Associates, LP's (Levittown), violated Labor Law § 241(6), and that the commercial tenant, Mystique Boutique of Levittown, Inc. (Mystique), violated Labor Laws §§ 200 and 241(6).[1]

Mr. Padiasek now moves for summary judgment as to his Labor Law § 241(6) claim (Mot Seq 9) and for leave to amend his complaint to add Hempstead Levittown Associates, LLC (Hempstead) as a defendant (Mot Seq 13). Levittown moves for summary judgment as to Mr. Padiasek's claims, and as to Mystique and Redwood's counter claims against it in the first and second third-party actions (Mot Seq 10). Third-party defendant Pride Equipment Corp. (Pride) similarly moves for summary judgement as to Mystique's claims against it in the third third-party action or, alternatively, indemnification from Mystique (Mot Seq 11) and Mystique broadly moves for summary judgment as to all claims against it (Mot Seq 12).

DISCUSSION

The parties dispute whether or not "painting" is an "enumerated activity" under Labor Law § 241(6) and argue that the evidence is controverted.

I. Standard of Review

"A party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, producing sufficient evidence to demonstrate the absence of any material issue of fact. Once this showing has been made, the burden shifts to the nonmoving party

1 After PRD Realty Management Inc. (PRD Realty) cross-moved for summary judgment as to all against it (Mot Seq 14), Mr. Padiaesek withdrew his Labor Law § 240(1) claim against all parties, his Labor Law § 200 claim against Levittown only, and the parties agreed to dismiss PRD Realty from the case (*see* Consent Order).

to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution" (*Giuffrida v. Citibank Corp.*, 100 NY2d 72, 81 [2003]). "Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers" (*Alvarez v. Prospect Hosp.*, 68 NY2d 320, 324 [1986]). A plaintiff moving for summary judgment as to liability must establish, *prima facie*, that defendant breached a duty owed to plaintiff and that such breach proximately caused plaintiff's alleged injury (*Tsyganash v. Auto Mall Fleet Mgmt., Inc.*, 163 AD3d 1033, 1034 [2d Dept 2018]). To succeed, a plaintiff need not establish freedom from comparative fault (*Rodriguez v. City of New York*, 31 NY3d 312, 318 [2018]).

II. Labor Law § 200

Labor Law § 200 codifies the common-law duty of property owners and general contractors to provide workers with a safe place to work (*Torres v. City of New York*, 127 AD3d 1163, 1165 [2d Dept 2015]). This protection, however, is not confined to construction work (*Rocha v. GRT Const. of New York*, 145 AD3d 926, 927 [2d Dept 2016]); *see, e.g.*, *Foots v. Consolidated Bldg. Contrs., Inc.*, 119 AD3d 1324, 1325 [2014]; *Beadleston v. American Tissue Corp.*, 41 AD3d 1074, 1076-1077 [2007]; *Mejia v. Levenbaum*, 30 AD3d 262 [2006]; *Yong Ju Kim v. Herbert Constr. Co.*, 275 AD2d 709, 712 [2000]). Under the statute, to be liable for injury arising from the manner in which work is performed, a defendant must have had authority to exercise supervision and control over the work done where the plaintiff was injured (*Rojas v. Schwartz*, 74 AD3d 1046, 1046 [2d Dept 2010]). However, even where such supervision and control existed, defendant is not liable injuries arising from a defect in plaintiff's methods or negligence occurring as a detail of plaintiff's work (*Schwind v. Mel Lany Const. Mgt. Corp.*, 95 AD3d 1196, 1197 [2d Dept 2012]).

Thus, the question here becomes which parties had authority to exercise supervision and control over Mr. Padiasek's work and whether Padiasek's injuries arouse from a defect in his

methods or other negligence on his part. Here, there are questions of fact, many of which are controverted. Summary judgment is usually inappropriate in negligence cases since whether a party acted reasonably under the circumstances can "rarely be resolved as a matter of law" (*Charles v. Garber*, 195 AD2d 585, 600 NYS2d 739 [2d Dept 1993]). In the same vain, since there "can be more than one proximate cause of an accident," the "issue of comparative fault is generally a question for the jury to decide" (*Vuksanaj v. Abbott*, 159 AD3d 1031, 1032 [2018]). Accordingly, Mr. Padiasek's Labor Law

III. Labor Law 240(6)

As to Labor Law § 240(6), the statute "requires owners and contractors to provide 'reasonable and adequate protection and safety' for workers and to comply with the specific safety rules and regulations promulgated by the Commissioner of the Department of Labor" (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501–502 [1993]). The duties therein articulated are nondelegable and claims invoking the statute must be based upon violations of specific codes, rules, or regulations applicable to the circumstances of the accident (*Ortega v. Puccia*, 57 AD3d 54, 60 [2d Dept 2008]; *Ross*, 81 NY2d at 502). In other words, to establish a defendant's liability, the plaintiff must "demonstrate that the defendant's violation of a specific rule or regulation was a proximate cause of the accident" (*Seaman v. Bellmore Fire Dist.*, 59 AD3d 515, 516 [2d Dept 2009]). However, even "where such a violation is established, it does not conclusively establish a defendant's liability as a matter of law" (*id.* at 516). Instead, it is "some evidence" of negligence, but it remains for the jury to decide whether the worksite equipment, operation, or conduct was "reasonable and adequate under the particular circumstances" (*ibid.*).

Contrary to inapposite contentions, Mr. Padiasek is within the class of persons that Labor Law § 241(6) protects since the Industrial Code expressly includes "painting" in the definition of "construction work" (*Pittman v. S.P. Lenox Realty, LLC*, 91 AD3d 738, 739 [2d Dept 2012]; *see*

12 NYCRR 23–1.4[b][13]). Moreover, as with Labor Law § 200, to invoke Labor Law § 241(6), the particular task performed by a plaintiff need not constitute 'construction, excavation, or demolition' so long as it is sufficiently connected to a larger project that qualifies as such (*accord McNeill v. LaSalle Partners*, 52 AD3d 407, 409 [1st Dept 2008]). Indeed, precisely the "intent of the statute was to protect workers employed in the enumerated acts, even while performing duties ancillary to those acts" (*Prats v. Port Auth. of New York & New Jersey*, 100 NY2d 878, 882 [2003]).

Even so, there are several material, factual issues in this case. For example, at his first deposition, plaintiff averred that he was operating the lift with the guardrail in its lowered position and the lift was lowered all the way down. At his second, plaintiff claimed the accident occurred because there was something wrong with the scissor lift. At his third, plaintiff recounted that the guardrail was in the up position, and that he had to bring the lift through the door slowly because of the lack of clearance between the top of the door frame and the top of the safety rails. Summary judgment motions "do not allow for credibility assessments on the part of the courts deciding them" (CPLR § 3212 ed. note). Such fact-finding is the jury's province. The parties' respective motions for summary judgment therefore cannot stand.

IV. Leave to Amend Complaint

Levittown contends that it is not a proper party to this action since Hempstead owned the building at the time of plaintiff's fall. Plaintiff argues that Levittown admitted its ownership of the Premises by failing to deny the same.[2] Plaintiff also requests leave to amend his complaint to add Hempstead as a defendant (Mot Seq 13). There, the gravamen of Mr. Padiasek's argument is that he is so entitled under the Relation Back Doctrine's since his amended complaint would arise

2 "[A]t the time of the plaintiff's accident defendant LEVITTOWN CENTER, was the owner of the premises" (Amend Compl ¶17, NYSCEF Doc 21). After Mr. Padiasek amended his complaint, Levittown never moved to amend its answer to deny the same, and the time to amend, as of right, has since passed.

out of the same nexus of fact as the original (*see* CPLR 203[c]).[3]

But such a proposed amendment need not invoke CPLR 203(c). Under 3025(b), applications for leave to amend pleadings should be "freely granted except when the delay in seeking leave to amend would directly cause undue prejudice or surprise to the opposing party, or when the proposed amendment is palpably insufficient or patently devoid of merit (*Ramos v. Baker*, 91 AD3d 930, 932 [2d Dept 2012]).

Here, Levittown was a partial owner of Hempstead, which owned the Premises, and both Levittown and Hempstead are owned by one family, which share an address for service of process and officers and directors. By reason of this relationship, Hempstead is charged with notice of the action such that it will not be prejudiced or surprised. Moreover, such an amendment would not be palpably insufficient or patently devoid of merit. Mr. Padiasek's application for leave to amend his complaint to add Hempstead as a defendant should therefore be granted.

CONCLUSION

Accordingly, it is hereby

ORDERED, motions sequenced as **9**, **10**, **11**, and **12** are **denied**. The motion sequenced as **13** is **granted** to the extent that plaintiff is hereby granted leave to amend his complaint to add Hempstead.

Additionally, since the parties stipulated to dismiss PRD Realty with prejudice (*see* Consent Order), the Clerk of the Part is directed to remove PRD Realty Management Inc. from the case and caption.

---

3 Under CPLR 203(c), for a claim against a new defendant to relate back to a previous claim against a defendant, the plaintiff must establish that (1) both claims arose out of the same conduct, transaction, or occurrence; (2) the new defendant is united in interest with the original defendant and, by reason of that relationship, can be charged with notice of the action such that she will not be prejudiced; and (3) the new defendant knew or should have known that, but for the plaintiff's mistake as to the identity of the proper parties, the action would have been brought against her as well (*Mensch v Planning Bd. of Vil. of Warwick*, 189 AD3d 1245, 1248–49 [2d Dept 2020]).

Dated: ~~April~~ May 03, 2022
Brooklyn, New York

Hon. Larry D. Martin
Supreme Court of the State of New York

HON. LARRY MARTIN
JUSTICE OF THE SUPREME COURT