

Harsanyi v Extell 4110 LLC

2022 NY Slip Op 34392(U)

December 23, 2022

Supreme Court, New York County

Docket Number: Index No. 157170/2015

Judge: Lori S. Sattler

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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. LORI S. SATTLER PART 02TR

Justice

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BOAZ HARSANYI, MARY KATE HARSANYI

Plaintiff,

- v -

EXTELL 4110 LLC, GILBANE BUILDING COMPANY,

Defendant.

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INDEX NO. 157170/2015

MOTION DATE 02/18/2022,
02/18/2022

MOTION SEQ. NO. 006 007

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 006) 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 226, 228, 229, 230, 231, 232, 233, 234, 237

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

The following e-filed documents, listed by NYSCEF document number (Motion 007) 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 227, 235, 236, 238

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

In this action alleging violations of Labor Law §§ 240(1), 241(6), and 200, Defendants move for summary judgment in their favor in Motion Sequence #006 while Plaintiffs move for summary judgment in their favor in Motion Sequence #007. Each side opposes the others' motions, except that Plaintiffs voluntarily withdraw their § 200 claim against Extell 4110 LLC ("Extell"). The motions are consolidated for disposition.

The action stems from an incident that occurred on June 25, 2015 at a construction site at 555 Tenth Avenue in Manhattan. Defendant Extell is the owner of the property and Defendant Gilbane Building Company ("Gilbane") was contracted by Extell to be the construction manager for the construction of a 55-floor apartment building on the property. Plaintiff Boaz Harsanyi was an employee of non-party Pinnacle Industries ("Pinnacle"), a subcontractor hired by Gilbane to erect the building's concrete superstructure. It is undisputed that on the morning of the

incident, Mr. Harsanyi was instructed by his Pinnacle supervisor to clean the deck and column yard on the east side of the building on the 25th floor. This area included a temporary platform, referred to as an outrigger or diving board, which extended beyond the exterior wall of the building and was used to receive materials hoisted up by crane.

Mr. Harsanyi testified that he was on the outrigger about five feet beyond the building's exterior facing the building when the incident occurred (NYSCEF Doc. No. 205, Harsanyi EBT at 117-122). He was bending over to pick something up when he was struck by an object on the back of his neck and head (*id.*). Mr. Harsanyi did not see what hit him and was unaware of any witnesses (*id.* at 122-123). He did not see the object after it hit him or know where it landed, nor was he aware of anyone who did (*id.* at 127-128). He stated that he heard the sound of stripping wood above him that day (*id.* at 125). Mr. Harsanyi testified to having seen a safety net above the outrigger before the day of the accident and on the day of the accident after it occurred (*id.* at 100-101). He stated that it was "where it always was . . . hanging out over the edge of the building" (*id.*). After the incident, he saw a hole in the netting above where he had been standing (*id.* at 129), a photograph of which is annexed to Plaintiffs' papers (NYSCEF Doc. No. 218).

Gilbane's witness, Edward Bigley, was the lead superintendent at the construction site on the date of the incident. Mr. Bigley testified to the existence of safety measures on the job site, including a "cocoon system" and a two-part netting system (NYSCEF Doc. No. 209, Bigley EBT at 29-43). It is undisputed that black safety netting was erected by Pinnacle and extended beyond the building approximately 20 feet, approximately 10 floors above the outrigger, and underneath where the concrete superstructure was being built. Mr. Bigley testified that this netting was pulled back when loading materials onto outriggers (*id.* at 38). When shown the photograph of the netting and asked about the purported hole, Mr. Bigley stated, "I can't tell

what it is” (*id.* at 92). Mr. Bigley further testified that on the date of the accident there was stripping work done on the 41st floor and pouring work done on the 42nd floor (*id.* at 50-51).

On a motion for summary judgment, the movant “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issue of fact” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). In deciding a summary judgment motion, the court “should not pass on issues of credibility” (*Garcia v J.C. Duggan, Inc.*, 180 AD2d 579, 580 [1st Dept 1992]). A court’s function is issue finding rather than issue determination (*Kershaw v Hosp. for Special Surgery*, 114 AD3d 75, 82 [1st Dept 2013]).

Defendants contend they are entitled to summary judgment due to the lack of evidence to support any cause of action pled, namely, what the object was, where it came from, why it dropped or fell, or even that it fell as opposed to being thrown. On the other hand, Plaintiffs contend Mr. Harsanyi’s injury falls squarely within what is actionable under the Labor Law regardless of whether there was a witness to the accident. Labor Law § 240(1) requires owners and contractors engaged in the construction of a building to provide proper protection to workers against gravity-related hazards such as being struck by a falling object (*Runner v New York Stock Exch. Inc.*, 13 NY3d 599, 604 [2009]); § 241(6) imposes a non-delegable duty on owners and contractors to “provide reasonable and adequate protection and safety” for workers and to comply with Department of Labor safety regulations (*Toussaint v Port Auth. of N.Y.*, 38 NY3d 89 [2022]); and § 200 codifies an owner or 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 AD3d 139, 143-144 [1st Dept 2012]). A plaintiff may establish entitlement of summary judgment on the issue of liability in a § 240(1) action even where the injured party did not see

the falling object and was the sole witness to the accident (see *Humphrey v Park View Fifth Ave. Assoc. LLC*, 113 AD3d 558 [1st Dept 2014]).

In this matter, the object that hit Mr. Harsanyi was unknown at the time of the incident and was not identified at any point afterward. Additionally, although it is undisputed that safety netting was overhead, there is conflicting testimony as to whether the netting had a hole or was otherwise improperly situated. In the cases cited by Plaintiffs, the injured parties did not see what hit them as they were being hit, but the falling objects and other circumstances surrounding the accidents were not disputed (see *id.* [awarding summary judgment based on evidence that a falling aluminum beam was the proximate cause of the plaintiff’s injuries]; *Mercado v Caithness Long Is. LLC*, 104 AD3d 576 [1st Dept 2013] [summary judgment awarded to plaintiff where it was undisputed that he was struck by a falling pipe and there was no netting]). Here, material issues of fact as to the netting and falling object itself prevent granting of summary judgment to both Plaintiffs and Defendants.

For the reasons set forth herein it is hereby

ORDERED that Defendants’ motion for summary judgment is denied; and it is further

ORDERED that Plaintiffs’ motion for summary judgment is denied; and it is further

ORDERED that Plaintiffs’ Labor Law § 200 claim is voluntarily discontinued as to

Defendant Extell 4110 LLC.

This constitutes the Decision and Order of the Court.

12/23/2022 DATE  LORI S. SATTLER, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE