

<b>Guarnizo v 485 Seventh Ave. Assoc., LLC</b>
2022 NY Slip Op 35053(U)
December 2, 2022
Supreme Court, Bronx County
Docket Number: Index No. 20162/2018E
Judge: Lucindo Suarez
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: PART 19

Mtn. Seq. # 3

SEGUNDO GUARNIZO,

Index No.: 20162/2018E

Plaintiff,

- against -

**DECISION and ORDER**

485 SEVENTH AVENUE ASSOCIATES, LLC,  
485 SEVENTH AVENUE CONDOMINIUM BOARD OF  
485 SEVENTH AVENUE CONDOMINIUM, MAGNETIC  
BUILDERS GROUP LLC, PARAGON RESTORATION  
CORP and MAJESTIC CONSTRUCTION CORP.,

Defendants.

and Third-Party action.

	PAPERS NUMBERED
Plaintiff's Notice of Motion, Affirmation in Support, Statement of Material Facts, Memorandum of Law in Support, Exhibits	NYSCEF Doc. No. 103-124
Defendants 485 Seventh Avenue Associates, LLC's, Magnetic Builders Group LLC's, and Paragon Restoration Corp's Affirmation in Opposition, Memorandum of Law in Opposition, Response to Statement of Material Facts	NYSCEF Doc. No. 126-128
Plaintiff's Reply Affirmation	NYSCEF Doc. 129

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

The threshold legal issue that must be determined is whether Magnetic Builders Group LLC ("Magnetic") and Paragon Restoration Corp ("Paragon") are proper Defendants within the meaning of the Labor Law. If it is determined that Magnetic and Paragon are proper Labor Law Defendants, then the legal issue becomes whether Plaintiff demonstrated his entitlement to judgment as to liability against Defendants 485 Seventh Avenue Associates, LLC. ("485 Seventh")<sup>1</sup>, Magnetic, and Paragon under the Labor Law §240(1) claim.

<sup>1</sup> It was uncontested that 485 Seventh as the owner of the subject jobsite may be exposed to strict liability under Labor Law §240(1).

This court holds Magnetic, and Paragon are proper Defendants within the meaning of the Labor Law. Plaintiff also established his *prima facie* burden of a Labor Law §240(1) violation against 485 Seventh, Magnetic, and Paragon and they failed to raise triable issues of fact to preclude summary judgment in Plaintiff's favor.

According to Plaintiff, on the day of the accident, he was employed by Third-Party Defendant Build Logistics Inc. ("Build Logistics") as a helper while working at a hotel renovation project. He testified that Build Logistics employed "Mario" who instructed Plaintiff on what to do in Spanish. Plaintiff testified that he worked at the jobsite for about four months before the accident occurred. On previous days worked at the jobsite, "Mario" provided a safety harness to Plaintiff in the morning and Plaintiff would return it to him at the end of the day. Plaintiff testified that on the date of the accident, "Mario" did not provide Plaintiff with a safety harness and when he asked "Mario" for one, "Mario" told Plaintiff that he forgot to bring them.

On the morning of the accident, Plaintiff was instructed to "take some stones up," that were already placed on a sidewalk bridge. He testified that there was a scaffold on top of a sidewalk bridge that went up to the fourth floor of the building. "Mario" instructed Plaintiff to hand stones, that measured four feet long, one foot high and weighed about 80-90 pounds, to a coworker who was situated on the scaffold four to six feet above him. To pass the stones up, Plaintiff testified that he was required to proceed to the edge of the sidewalk bridge to hand stones up to his coworker. He did not observe any railing or toe boards along the edge of the scaffold. At the time of the accident, Plaintiff was attempting to hand a stone up to his coworker, and when his coworker did not reach far enough to receive it, he lost his balance due to the momentum and weight of the stone causing him to fall through an opening between the sidewalk bridge and the scaffold to the ground below resulting in injuries.

This court finds Magnetic is a proper Defendant under the Labor Law. Magnetic's contentions that strict liability cannot be imposed upon it under Labor Law §240(1) because it was a Construction Manager that did not exercise actual control or supervision over the injury-producing work is without merit. The label of Construction Manager does not necessarily bar the imposition of strict liability under Labor Law §240(1). *See Walls v. Turner Constr. Co.*, 4 N.Y.3d 861, 831 N.E.2d 408, 798 N.Y.S.2d 351 (2005). Moreover, Magnetic had the authority to supervise and control the injury-producing work pursuant to the terms of its contract with the owner, 485 Seventh. Therefore, whether Magnetic actually exercised supervision and control over the injury-producing work is irrelevant. *See Tuccillo v. Bovis Lend Lease, Inc.*, 101 A.D.3d 625, 958 N.Y.S.2d 86 (1st Dep't 2012).

Likewise, this court finds Paragon is a proper Defendant under the Labor Law. Paragon entered into a subcontract agreement with Magnetic wherein it was given the authority to supervise and control the injury-producing work. Furthermore, Paragon subcontracted with Plaintiff's employer, Build Logistics, to actually perform the work and the subcontract also required Build Logistics to procure insurance naming 485 Seventh and Magnetic as additional insured. Thus, whether Paragon actually exercised supervision and control over the injury-producing work is irrelevant. Similarly, whether Paragon delegated their contractual responsibility to supervise and control the injury-producing work to Build Logistics is irrelevant, as it does not absolve Paragon from the imposition of strict liability under Labor Law §240(1). *See Badzio v. E. 68th St. Tenants Corp.*, 200 A.D.3d 591, 161 N.Y.S.3d 32 (1st Dep't 2021).

This court further finds Plaintiff established his *prima facie* burden of a Labor Law §240(1) violation as it was uncontroverted that his injuries resulted from the failure to provide safety devices to shield Plaintiff from a gravity-related fall. *See Gomez v Trinity Ctr. LLC*, 195

A.D.3d 502, 145 N.Y.S.3d 352 (1st Dep't 2021). In opposition, 485 Seventh's, Magnetic's, and Paragon's sole proximate cause argument fail as their statutory violation served as a proximate cause for the accident, thus, Plaintiff cannot be solely to blame for it. *See Blake v. Neighborhood Hous. Servs. of NY City, Inc.*, 1 N.Y.3d 280, 803 N.E.2d 757, 771 N.Y.S.2d 484 (2003).

Accordingly, it is

ORDERED, that Plaintiff's summary judgment motion (Mtn. Seq. # 3) seeking judgment against 485 Seventh, Magnetic, and Paragon as to liability on the Labor Law §240(1) claim is granted.

This constitutes the decision and order of the court.

**Dated: December 2, 2022**



Hon.

LUCINDO SUAREZ, J.S.C.

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