

Rodriguez v 344 McGuinness Holdings LLC

2023 NY Slip Op 30801(U)

March 17, 2023

Supreme Court, Kings County

Docket Number: Index No. 504708/2018

Judge: Wayne P. Saitta

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 29 of the Supreme Court of the State of New York, held in and for the County of Kings, at 360 Adams Street, Brooklyn, New York, on the 17th day of March , 2023.

P R E S E N T:

Hon. Wayne P. Saitta, Justice.

-----X

WILLIAM BALDEMAR RODRIGUEZ,

Plaintiff,

Index No. 504708/2018

-against-

DECISION AND ORDER
MS #4, #5, and #6

344 MCGUINNESS HOLDINGS LLC and B.K.
CONSTRUCTION GROUP INC.,

Defendants,

-----X

344 MCGUINNESS HOLDINGS LLC

Third-Party Plaintiff,

-against-

L&J GENERAL CONSTRUCTION CORP.,

Third-Party Defendant

-----X

B.K. CONSTRUCTION GROUP INC.,

Second Third-Party Plaintiff,

-against-

L&J GENERAL CONSTRUCTION CORP.,

Second Third-Party Defendant

-----X

The following papers numbered on this motion:

NYSCEF Doc Numbers

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____	<u>58-59, 106-108, 120-122, 131-132, 140-141</u>
Answering Affidavit (Affirmation) _____	<u>74, 77, 119, 144, 145, 147-149</u>
Reply Affidavit (Affirmation) _____	<u>75, 85, 151, 150</u>
Supplemental Affidavit (Affirmation) _____	_____
Pleadings – Exhibits _____	<u>60-72, 78-84, 109-118, 133-139</u>
Stipulations – Minutes _____	_____
Filed Papers _____	_____

This action arises from a construction accident in which Plaintiff received an electrical shock when he touched a metal door while working as a painter at 344 McGuinness Boulevard, Brooklyn, NY (the Premises).

Defendant 344 MCGUINNESS HOLDINGS LLC (Defendant MCGUINNESS) owned the Premises.

Defendant MCGUINNESS hired Defendant/Second Third-Party Plaintiff B.K. CONSTRUCTION GROUP INC. (Defendant B.K.) as the general contractor for construction and renovation work at the Premises.

Defendant B.K. hired non-party Accurate Electrical (Accurate) to perform electrical work at the Premises.

Defendant B.K. also hired Third-Party Defendant/Second Third-Party Defendant L&J GENERAL CONSTRUCTION CORP. (Third-Party Defendant L&J) to perform work at the Premises.

Third-Party Defendant L&J was Plaintiff’s employer.

Plaintiff was a painter employed by Third-Party Defendant L&J. On January 4, 2018, Plaintiff was performing painting and plastering work at the Premises. Plaintiff was on stilts in the hallway directly outside one of the apartments on the first floor. Plaintiff was injured when, while holding a construction lamp in his left hand, he placed his right

hand on the metal door to the apartment and a received an electrical shock. The lamp Plaintiff was holding was plugged into an outlet, located inside the entry way of the apartment. At the time of Plaintiff's accident, there was also a portable heater by the door to the apartment that was plugged into an extension cord that was touching the metal frame of the doorway.

Plaintiff's complaint alleges two causes of action: Labor Law § 241(6) and Labor Law § 200.

Defendant MCGUINNESS moves for summary judgment dismissing Plaintiff's claims and all cross-claims as against it.

Defendant B.K. moves for summary judgment dismissing Plaintiff's claims and any cross-claims as against it.

Plaintiff cross-moves for summary judgment against Defendant MCGUINNESS and Defendant B.K. on his claim pursuant to Labor Law § 241(6).

Labor Law § 241(6)

Defendants MCGUINNESS and BK move to dismiss Plaintiff's claims pursuant to Labor Law § 241(6).

Plaintiff cross-moves against Defendant MCGUINNESS and Defendant B.K. on his claim pursuant to Labor Law § 241(6).

Plaintiff has plead a violation of Industrial Code § 23-1.13 (b) and (c).

Defendants raise two arguments as to why they are not liable under Labor Law § 241(6): first, that there is no evidence as to what caused the door to become electrified and second, that had either the electrical cord to the lamp or to the heater electrified the door that would not constitute a violation of Industrial Code Section 23-1.13.

Both Defendant MCGUINNESS and Defendant B.K. argue that Plaintiff failed to identify what caused the door to become electrified and that there is no evidence that any cord or wire or electrical circuit associated with either the lamp or the cord connecting the heater were in any way defective, frayed, or improperly insulated.

Plaintiff submits an expert affidavit from James Orosz, a Professional Engineer. Orosz cites to Industrial Code § 23-1.13 and opines that “the metal door could only have become energized and electrified so as to deliver an electrical shock by virtue of an improperly insulated energized conductor in the construction lamp being held by the Plaintiff, or an improperly insulated energized conductor in the cord connecting the heater to the power source”. Orosz further opines that “these are the only explanations possible as to how the Plaintiff could have experienced an electrical shock in the manner described”.

Defendants do not put in any evidence to contest Plaintiff’s expert opinion that the only possible way the door could have become electrified was that the cord of either the heater or lamp was not properly insulated and the current passing through the cord came in contact with the door.

It is also irrelevant in terms of liability pursuant to § 241(6) whether it was the lamp or heater that had the defective cord.

Defendants second argument that Industrial Code Section 23-1.13 is only applicable to “dedicated power circuits” is incorrect (see *Navedo v. VNO 225 West 58th Street LLC*, 203 AD3d 406 [1st Dept 2022]).

Industrial Code § 23-1.13 "Electrical Hazards" states, in pertinent parts:

(b) General.

(4) Protection of employees. No employer shall suffer or permit an employee to work in such proximity to any part of an electric power circuit that he may contact such circuit in the course of his work unless the employee is protected against electric shock by de-energizing the circuit and grounding it or by guarding such circuit by effective insulation or other means.

(c) Temporary electric power circuits at construction, demolition or excavation job sites.

(1) Temporary electric wiring.

(ii) Electrical systems and current-carrying equipment shall be properly grounded except as provided for blasting circuits in this part (rule). Where it is necessary to lay electrical wiring on the ground, such wiring shall be of the weatherproof type and heavy enough to withstand the wear and abuse to which it may be subjected. NO conductor shall be used to carry a higher voltage that the manufacturer's rating.

As Plaintiff's expert said improper insulation was the cause of Plaintiff's accident, not improper grounding, § 23-1.13(c) is inapplicable here.

The purpose of § 23-1.13(b)(4) is to protect workers from coming into contact with live electrical current. The fact that the path that the electric current traveled to come into contact with the Plaintiff included powers cords and items not intended to be electrified does not take the matter outside of the protections of § 23-1.13(b)(4).

In *Navedo v. VNO 225 West 58th Street LLC*, 203 AD3d 406 [1st Dept 2022]), the Court upheld a decision granting summary judgment based on a claim of violation of § 23-1.13(b)(4) where a worker was injured when he grabbed a safety cable that had become electrified, even though the cable was not designed or intended to carry electric current.

In *Snowden v. New York City Transit Authority*, 248 AD2d 235 (1st Dept 1998), the Court held that § 23-1.13(b)(4) was applicable even though Plaintiff suffered an electrical injury when his tool touched a live rail, even though he did not come into *direct* contact with the rail.

Here, while Plaintiff did not come into direct contact with a live electrical wire, he came in contact with the electric current that passed through the metal door from one of the cords which were carrying the current to power the lamp and the space heater.

Further, it is irrelevant whether or not Defendant L&J or Defendant B.K. provided the electric heater that caused Plaintiff's accident or whether it was the lamp that caused Plaintiff's accident because Defendant B.K. as the general contractor and Defendant MCGUINESS as owner are vicariously liable.

Based on the foregoing, Plaintiffs' motion as to Labor Law § 241(6) to the extent it is based on a violation of Industrial Code § 23-1.13(b)(4) should be granted and Defendant MCGUINESS and Defendant B.K.'s motions to dismiss the § 241(6) claim should be granted as to the other sections of the Industrial Code cited by Plaintiffs.

Labor Law § 200 and Common Law Negligence

Defendants B.K. and MCGUINESS move to dismiss Plaintiff's claims pursuant to Labor Law § 200.

Plaintiff takes no position with respect to the portions of Defendant MCGUINESS and Defendant B.K.'s motions seeking to dismiss Plaintiff's Labor Law § 200 claim.

Therefore, those portions of Defendant MCGUINESS and Defendant B.K.'s motions must be granted.

WHEREFORE, it is ORDERED that Plaintiff's motion for summary judgement as to Labor Law § 241(6) is GRANTED as to Industrial Code § 23-1.13(b)(4); and it is further

ORDERED, that Defendant MCGUINESS's motion for summary judgment as to Labor Law § 241(6) is GRANTED as to all other Industrial Code sections cited by Plaintiff; and it is further

ORDERED, that Defendant B.K.'s motion for summary judgment as to Labor Law § 241(6) is GRANTED as to all other Industrial Code sections cited by Plaintiff; and it is further

ORDERED, that Defendant MCGUINESS's motion for summary judgment dismissing Plaintiff's claims pursuant to Labor Law § 200 and common law negligence is GRANTED; and it is further

ORDERED, that Defendant B.K.'s motion for summary judgment dismissing Plaintiff's claims pursuant to Labor Law § 200 and common law negligence is GRANTED.

This constitutes the decision and order of the Court.

ENTER,



J.S.C.