

Juan Chun v 18th Highline Assoc., L.L.C.

2023 NY Slip Op 31277(U)

April 20, 2023

Supreme Court, New York County

Docket Number: Index No. 151342/2020

Judge: David B. Cohen

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DAVID B. COHEN

PART 58

Justice

-----X

INDEX NO. 151342/2020

JUAN CHUN,

MOTION SEQ. NO. 001

Plaintiff,

- v -

18TH HIGHLINE ASSOCIATES, L.L.C., RELATED
CONSTRUCTION LLC**DECISION + ORDER ON
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37

were read on this motion to/for

JUDGMENT - SUMMARY

In this Labor Law action, plaintiff moves, pursuant to CPLR 3212, for partial summary judgment against defendants on the issue of liability under Labor Law § 240(1).

Factual and Procedural Background

This case arises from an incident on February 14, 2019, in which plaintiff was allegedly injured while working at a construction site located at 501 West 18th Street in Manhattan (the premises) (NYSCEF Doc No. 1). Plaintiff commenced this action against defendants alleging violations of various Labor Law provisions (Doc No. 1).

Deposition Testimony of Plaintiff

At his deposition, plaintiff testified that, on the day of the incident, he was employed by nonparty Highbury Concrete (Highbury) and working on the premises as a carpenter (Doc No. 25). He was given instructions by one of his supervisors, another Highbury employee, to move wooden boards from the first and second floor up to a higher floor (Doc No. 25).

He and a coworker were positioned on the fourth floor of the building, while additional sets of coworkers were stationed on the floors above and below them (Doc No. 25). He and his coworker began jointly handing boards to the set of coworkers on the fifth floor above by passing the boards up through an opening in the floor (Doc No. 25). After bending over to look down at the third floor below, as plaintiff turned to stand up, a board fell and struck him on his head (Doc No. 25). He believed that the board fell from the seventh floor but was unsure whether the board was dropped by a coworker or fell for some other reason (Doc No. 25).

Plaintiff stated that, most of the time, the boards were lifted to other floors by a crane, and he had never been asked previously to pass boards to upper floors by hand (Doc Nos. 25-26). On the day of the incident, a crane was present on the premises, but he was unsure of why it was not being used and never asked about it (Doc Nos. 25-26).

Deposition Testimony of Defendants

Michael Alacha, a safety director for a parent company of defendant Related Construction LLC (Related), testifying on behalf of defendants, stated that he was responsible for coordinating safety activities at multiple construction sites (Doc No. 27). He was unaware of plaintiff's accident but was familiar with Related's operations (Doc No. 27). Although he denied that Related served as the general contractor on the project, he conceded that it was the permit holder and construction manager with project management staff working on the premises (Doc No. 27). It also hired subcontractors, including plaintiff's employer, and had the ability to stop work that was being performed in an unsafe manner (Doc No. 27).

Contract Between Defendants

The contract between defendant 18th Highline Associates, L.L.C. (18th Highline) and Related identified 18th Highline as the owner of the premises and Related as the construction

manager (Doc No. 28). Related was responsible for hiring any necessary subcontractors and would “[s]upervise, manage[,] and monitor” their performance (Doc No. 28). Although Related did not assume any subcontractor’s responsibility “for determining and properly executing the appropriate construction means, methods, techniques[,] and procedures,” it was still required to “[m]onitor, coordinate[,] and make recommendations to [18th Highline]” regarding the “construction means, methods, techniques, sequences[,] and procedures employed by” any subcontractors (Doc No. 28). Related was also responsible for implementing, maintaining, and enforcing a safety program on the premises (Doc No. 28).

It is undisputed that there was no named general contractor on the project and that Related retained the highest level of supervisory control of the project.

Legal Analysis and Conclusions

Whether Related is a Statutory Agent Liable Under Labor Law § 240(1)

It is undisputed that 18th Highline, as the property owner of the premises, is subject to Labor Law § 240(1). However, plaintiff contends that Related is also subject to the statute, despite its role as construction manager, as it had the requisite control over plaintiff’s work, making it a “statutory agent” of 18th Highline subject to liability under the statute.

“Although a construction manager of a work site is generally not responsible for injuries under Labor Law § 240(1), one may be vicariously liable as an agent of the property owner for injuries sustained under the statute in an instance where the manager had the ability to control the activity which brought about the injury” (*Walls v Turner Constr. Co.*, 4 NY3d 861, 863-864 [2005] [citations omitted]). “To hold a defendant liable under the Labor Law as a statutory agent of either the owner or the general contractor, it must be shown that the defendant had the authority to supervise and control the injury-producing work. The determinative factor is whether the

defendant had the right to exercise control over the work, not whether it actually exercised that right. Where the owner or general contractor delegates to a third party the duty to conform to the requirements of the Labor Law, that third party becomes the statutory agent” (*Santos v Condo 124 LLC*, 161 AD3d 650, 653 [1st Dept 2018] [internal quotation marks and citations omitted]).

Plaintiff has established that Related was a statutory agent of 18th Highline. Defendants’ testimony that Related hired plaintiff’s employer as a subcontractor, and the contract provisions detailing Related’s responsibility to implement a safety program, hire subcontractors, supervise their work, and monitor the “construction means, methods, techniques, sequences[,] and procedures” they used demonstrates that Related “had authority to exercise control over the work that brought about plaintiff’s injury” (*Badzio v East 68th St. Tenants Corp.*, 200 AD3d 591, 592 [1st Dept 2021] [concluding defendant was statutory agent because contract gave it control over renovation project, including “means, methods, techniques, sequences[,] and procedures, and for coordinating all portions of” construction work performed (internal quotation marks omitted)]; *see Lind v Tishman Constr. Corp. of N.Y.*, 180 AD3d 505, 505 [1st Dept 2020] [finding contract documents demonstrated defendants were statutory agents because they “impose(d) not only the responsibility to coordinate the work but also the broad responsibility for overall job site safety” (internal quotation marks omitted)]).

In opposition, defendants failed to raise a triable question of fact regarding Related’s status as a statutory agent, as they did not address this issue in their opposition papers. Therefore, Related may be held liable under Labor Law § 240(1) (*see Douglas v Tishman Constr. Corp.*, 205 AD3d 570, 571 [1st Dept 2022]).

Plaintiff's Request for Summary Judgment on Issue of Liability

“Labor Law § 240(1) imposes a nondelegable duty and absolute liability upon owners and contractors for failing to provide safety devices necessary for workers subjected to elevation-related risks in circumstances specified by the statute” (*Soto v J. Crew Inc.*, 21 NY3d 562, 566 [2013] [citations omitted]; see *Healy v EST Downtown, LLC*, 38 NY3d 998, 999 [2022]). A plaintiff seeking summary judgment on the issue of liability “must establish that the statute was violated and that such violation was a proximate cause of his injury” (*Barreto v Metropolitan Transp. Auth.*, 25 NY3d 426, 433 [2015]; see *Villanueva v 114 Fifth Ave. Assoc. LLC*, 162 AD3d 404, 405 [1st Dept 2018]).

Here, plaintiff has made a prima facie showing that he is entitled to judgment as a matter of law. It is well established that Labor Law § 240(1) applies to instances of falling boards striking and injuring a plaintiff (see *Passos v Noble Constr. Group, LLC*, 169 AD3d 706, 707 [2d Dept 2019]; *Escobar v Safi*, 150 AD3d 1081, 1083 [2d Dept 2017]; *Cammon v City of New York*, 21 AD3d 196, 200 [1st Dept 2005] [finding statute applicable to falling piece of timber because it was “a load that required securing for the purposes of the undertaking at the time it fell” (internal quotation marks and citations omitted)]). By submitting uncontroverted testimony that he was struck by a falling board after being ordered to pass the boards by hand up through the floor, he has “submitted evidence showing that he was engaged in an activity covered by the statute, that defendants failed to provide an adequate safety device to protect him, and that such violation was a proximate cause of the accident” (*Villanueva*, 162 AD3d at 405; see *Escobar*, 150 AD3d at 1083; *Hill v Acies Group, LLC*, 122 AD3d 428, 429 [1st Dept 2014] [finding plaintiff made requisite prima facie showing after submitting testimony describing being “suddenly struck by a falling brick, in the absence of any overhead netting or other such protective devices”]).

In opposition, defendants fail to raise a triable issue of fact as to whether the statute was violated or whether plaintiff was the sole proximate cause of the accident; therefore, plaintiff is entitled to partial summary judgment on the issue of liability on his Labor Law § 240(1) claim against 18th Highline and Related (*see Tinti v Alpha Omega Bldg. & Consulting Corp.*, 208 AD3d 1120, 1121 [1st Dept 2022] [granting plaintiff summary judgment on issue of liability on Labor Law § 240(1) claim involving falling hose]; *Douglas*, 205 AD3d at 571 [affirming grant of summary judgment on issue of liability on Labor Law § 240(1) claim involving falling wooden door]).

Accordingly, it is hereby:

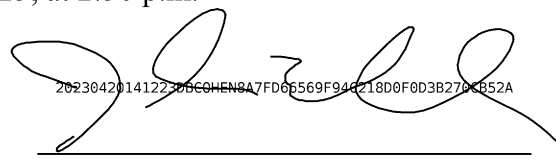
ORDERED that plaintiff's motion seeking partial summary judgment on the issue of liability under Labor Law § 240(1) as against defendants 18th Highline Associates, L.L.C. and Related Construction LLC is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly; and it is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B), and the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Case* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that the parties shall appear for a settlement/trial scheduling conference in person at 71 Thomas Street, Room 305, on June 20, 2023, at 2:30 p.m.



2023042014122300COHEN8A7FD665569F944218D0F0D3B270CB52A

4/20/2023
DATE

DAVID B. COHEN, 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