

Dematos v GDC LIC Owner LLC

2023 NY Slip Op 31546(U)

May 5, 2023

Supreme Court, New York County

Docket Number: Index No. 156870/2017

Judge: Richard Latin

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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. RICHARD LATIN PART 46V

Justice

-----X

WELLINGTON DEMATOS,

Plaintiff,

- v -

GDC LIC OWNER LLC, RINALDI BUILDERS, INC., 94TH
CONSTRUCTION LLC, ALABAMA IRON WORKS CORP.,
BMNY CONTRACTING CORP., BAYPORT
CONSTRUCTION CORP., SCHEAR CONSTRUCTION,
LLC,

Defendant.

-----X

GDC LIC OWNER LLC, RINALDI BUILDERS, INC.

Plaintiff,

-against-

THAG CONSTRUCTION LLC

Defendant.

-----X

GDC LIC OWNER LLC, RINALDI BUILDERS, INC.

Plaintiff,

-against-

ALABAMA IRON WORKS CORP., BMNY CONTRACTING
CORP., BAYPORT CONSTRUCTION CORP., SCHEAR
CONSTRUCTION, LLC

Defendant.

-----X

INDEX NO. 156870/2017

MOTION DATE 04/28/2023,
05/01/2023,
05/01/2023

MOTION SEQ. NO. 004 005 006

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595888/2017

Second Third-Party
Index No. 595118/2019

The following e-filed documents, listed by NYSCEF document number (Motion 004) 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 222, 223, 224, 225, 226, 227

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

The following e-filed documents, listed by NYSCEF document number (Motion 005) 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 228, 238, 239, 241, 242, 244, 251, 252, 253, 255, 258, 260

were read on this motion to/for

JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 006) 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 229, 230, 231, 232, 233, 234, 235, 236, 237, 240, 243, 245, 246, 247, 248, 249, 250, 254, 256, 257, 259

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents and for the reasons spread across the record during oral argument, it is ordered that plaintiff's motion for partial summary judgment against the owner and general contractor, defendants GDC LIC Owner LLC ("GDC") and Rinaldi Builders, Inc. ("Rinaldi"), on his Labor Law §240(1) claim, defendants GDC and Rinaldi's cross motion to dismiss, defendant Alabama Iron Works motion for summary judgment dismissing all claims against it, and defendant Bayport Construction Corp.'s summary judgment motion dismissing all claims against it, are determined as follows:

Plaintiff commenced this action alleging he was injured while working at a construction site in Queens when he fell through an opening in a makeshift elevated platform and landed on the concrete floor one story below. With his motion, he seeks summary judgment solely against defendants GDC and Rinaldi Builders, Inc, the owner and general contractor, respectively.

Plaintiff's Labor Law § 240 (1) and Defendants Cross Motion

Labor Law § 240 (1), also known as the Scaffold Law (*See Ryan v. Morse Diesel, Inc.*, 98 AD2d 615 [1st Dept 1983]) reads as follows:

"Scaffolding and other devices for use of employees

"1. All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so

constructed, placed and operated as to give proper protection to a person so employed.”

To prevail on a Labor Law § 240 (1) claim, the plaintiff must show that the statute was violated, and that this violation was a proximate cause of the plaintiff’s injuries (*see Blake v Neighborhood Hous. Servs. of N.Y. City, Inc.*, 1 NY3d 280, 287 [2003]). In support of his motion, plaintiff submits, inter alia, his deposition testimony. In opposition, defense counsel merely point to holes or possible inconsistencies in the plaintiff’s case but fail to raise a triable issue of fact with any admissible evidence. Moreover, regardless of how the accident took place, it is uncontroverted through admissible evidence whether plaintiff actually fell from an elevated platform. Inasmuch as a prima facie case is made that there is not proper protection as a matter of law whenever a worker falls from an elevation, plaintiff’s motion must be granted and defendants’ cross motion is denied (*see Bislam v Long Island Jewish Hospital*, 116 AD3d 475 [1st Dept 2014]).

Alabama Iron Works’ Motion for Summary Judgment

As a preliminary matter, plaintiff has not opposed those aspects of the motion seeking to dismiss plaintiff’s common law negligence claim or the claims under Labor Law §§ 200, 240, and 241(6) claims as to Alabama Iron Works. Accordingly, and inasmuch as movant is not a proper Labor Law defendant who did not supervise or control plaintiff, those causes of action are dismissed as to the movant.

In support of the portions of the motion seeking to dismiss all second third-party claims and cross claims for indemnification, movant submits all deposition testimony, including that of plaintiff and Oscar Pascualini. In opposition, the defendant owner and defendant general contractor submit the contract and rider between GDC and Rinaldi and Alabama Iron Works wherein the movant was required to indemnify the owner and general contractor and procure insurance on their behalf as additional insureds. Nevertheless, no indemnity is owed as regardless of what, if

anything, was wrong with the sub-flooring, it is demonstrated that the movant had nothing to do with the work that caused the injury such that the indemnity provision is not triggered. Likewise, there cannot be common law indemnification without creating at question of fact as to movant's negligence.

Bayport's Motion for Summary Judgment

Inasmuch as Bayport is not a proper Labor Law defendant those causes of action pursuant to Labor Law §200 and §241(6) must be dismissed. Nevertheless, it is conceded that triable issues of fact exist as to all other claims against them.


Accordingly, it is ordered that seq. #4 for summary judgment against defendants GDC and Rinaldi on the Labor Law §240(1) claim is granted; and it is further

ORDERED that seq. #5 dismissing the complaint, second third-party complaint, and all cross claims against Alabama Iron Works is granted; and it is further

ORDERED that seq. #6 is granted solely to the extent that that plaintiff's Labor Law §§200 and 241(6) claims are dismissed; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constituted the decision and order of the Court.

5/5/2023					
DATE			RICHARD LATIN, J.S.C.		
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					REFERENCE