

Hartigan v Gilbane Bldg. Co.

2023 NY Slip Op 33461(U)

October 6, 2023

Supreme Court, New York County

Docket Number: Index No. 152414/2018

Judge: James d'Auguste

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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. James d'Auguste

PART 55

Justice

-----X

TERENCE HARTIGAN,

Plaintiff,

- v -

GILBANE BUILDING COMPANY, SJC 33 OWNER 2015,
LLC, WESTBROOK PARTNERS, L.L.C., ATLAS CAPITAL
GROUP, LLC, HUDSON RIVER PARK TRUST, CITY OF
NEW YORK,

Defendants.

-----X

HUDSON RIVER PARK TRUST

Plaintiff,

-against-

THE PACE COMPANIES NEW YORK, INC., PACE
PLUMBING CORP.

Defendants.

-----X

INDEX NO. 152414/2018

MOTION DATE 06/21/2023

MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595507/2018

The following e-filed documents, listed by NYSCEF document number (Motion 004) 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 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, 193, 194, 195, 196, 197, 198, 199

were read on this motion to/for SUMMARY JUDGMENT.

In Motion Sequence 004, plaintiff Terence Hartigan (“plaintiff”) moves for summary judgment against defendants Hudson River Park Trust (“HRPT”) and Gilbane Building Company (“Gilbane”) for violations of Labor Law §§ 240(1) and 241(6). Plaintiff further moves for an order extending the time *nunc pro tunc* to file the Note of Issue. Defendants oppose the

branch of the motion seeking summary judgment.¹ For the foregoing reasons, the motion is granted to the extent of granting plaintiff partial summary judgment against HRPT and Gilbane as to liability under Labor Law § 240(1) and extending the deadline to file the Note of Issue.

On October 24, 2017, at approximately 8:15a.m., plaintiff was assembling a fire suppression system on the second floor of a parking garage located at 40 Pier Street (353 West Street) in New York. While climbing down from a metal lift, plaintiff slipped on a wet rung and fell approximately four to five feet, sustaining injuries. Plaintiff was not wearing a safety harness or foot protection to prevent this type of accident.

Defendants' arguments in opposition to the motion are insufficient to defeat summary judgment under Labor Law § 240(1). Defendants attempt to argue that plaintiff's fall of four to five feet is not high enough to implicate Labor Law § 240(1) protections, and plaintiff's fall qualifies as a routine and ordinary risk that should fall outside Labor Law § 240(1) protection. The Court disagrees. The First Department routinely upholds summary judgment motions under Labor Law 240(1) for construction accidents when a worker falls from a similar height from an unsafe ladder. *See eg. Golubowski v City of New York*, 131 AD3d 900 [1st Dept 2015] [upholding summary judgment under Labor Law § 240(1) for a worker falling from a six-foot ladder with wet rungs]; *see also Kuras v Cornell Univ.*, 118 AD3d 488 [1st Dept 2014] [reversing denial of summary judgment under Labor Law § 240(1) for a worker falling from an A-frame ladder that was improperly secured]. As the construction manager, Gilbane attempts to state that they are an improper party under the plain text of the Labor Law. Labor Law 240(1)

¹ HSBT takes no position regarding the branch of the motion seeking to extend the deadline to file the Note of Issue. Gilbane's memorandum of law in opposition seems to argue that this branch of the motion is for leave to file the Note of Issue, rather than seeking an extension of the deadline to file the Note of Issue. Gilbane states that "Gilbane respectfully submits that the Note of Issue should not be filed until discovery is completed" (NYSCEF Doc. No. 183, at p.8). Therefore, the Court considers arguments as presented in the motion papers.

provides that “contractors and owners and their agents” can be held liable under this statutory provision. Gilbane, as neither the general contractor nor the owner, argues that it did not have the authority to supervise and control the work that would confer it the status of “statutory agent” – and thus confer liability under the Labor Law. However, a construction manager can be considered a “statutory agent” when the construction manager is contractually responsible for overall site safety. *See Lind v Tishman Constr. Corp.*, 180 AD3d 505, 505 [1st Dept 2020]. The Court recognizes that Gilbane did have actual supervisory control over aspects of the construction, including safety matters. *See* “Article 12: Uncovering and Correcting Work” of Contract No. A4820 (between Parkwide Construction Management Services and Gilbane Building Company), NYSCEF Doc. No. 130; *see also* Deposition of Keith Neuscheler, NYSCEF Doc. No. 137, at pp. 80-90 [showing Gilbane was responsible for overseeing site safety]. Finally, defendants have not been able to establish that plaintiff was the sole proximate cause of his injuries.

As the plaintiff has established defendants’ liability under Labor Law §240(1), the branch of the motion seeking summary judgment under Labor Law § 241(6) is academic, and accordingly denied.

Accordingly, it is hereby,

ORDERED that plaintiff’s motion for partial summary judgment as to liability against Hudson River Park Trust and Gilbane Building Company is granted under Labor Law §240(1); and it is further,

ORDERED that plaintiff’s motion for partial summary judgment as to liability against

Hudson River Park Trust and Gilbane Building Company under Labor Law §241(6) is denied without prejudice as academic in light of the Court granting partial summary judgment under Labor Law § 240(1), and it is further,

ORDERED that the deadline to file the Note of Issue is extended to December 22, 2023.

This constitutes the decision and order of the Court.



10/6/2023
DATE

James d'Auguste, 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