SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LOUIS L. NOCK** **PART** **38M**

Justice

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ROBERT V. VILLALTA,

Plaintiff,

- v -

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., VERIZON NEW YORK INC., VERIZON SOURCING LLC, and VERIZON COMMUNICATIONS INC.,

Defendants.

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INDEX NO. 150166/2018

MOTION DATE 04/29/2022

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document numbers (Motion 004) 116, 117, 118, 119, 120, 121, 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, and 162

were read on this motion for SUMMARY JUDGMENT.

Upon the foregoing documents, the motion is granted for the reasons set forth in the moving and reply papers (NYSCEF Doc. Nos. 117-118, 157) (and the exhibits attached thereto) in which the court concurs, as summarized herein.

In a decision dated September 30, 2021, the Appellate Division, First Department, affirmed this court's denial of plaintiff's motion for partial summary judgment on its claim pursuant to Labor Law § 240(1) (*Villalta v Consol. Edison Co. of New York, Inc.*, 197 AD3d 1078 [1st Dept 2021]). The Appellate Division then searched the record and modified this court's decision to grant summary judgment to defendants Verizon New York Inc., Verizon Sourcing LLC, and Verizon Communications Inc. (collectively, "Verizon"). The Appellate Division stated that "there is no evidence that [Verizon] contracted for, directed or controlled, or benefitted from the work plaintiff was performing for the cable company at the time he was injured or that it was acting in the capacity of an accountable "owner" within the meaning of the

statute" (*id.* at 1079). "Further, there is no evidence to support an inference that Verizon had a right to insist that plaintiff followed proper safety practices in the performance of his work" (*id.*). Verizon now moves for summary judgment dismissing plaintiff's remaining claims pursuant to Labor Law §§ 200 and 241(6) and for common-law negligence. At argument on the motion, plaintiff's counsel conceded that the Appellate Division's decision is dispositive of the claim under Labor Law § 241(6) (transcript of proceedings, NYSCEF Doc. No. 163 at 4).

Labor Law § 200 "is a codification of the common-law duty imposed upon an owner or general contractor to provide construction site workers with a safe place to work" (*Singh v Black Diamonds LLC*, 24 AD3d 138, 139 [1st Dept 2005], citing *Comes v New York State Elec. & Gas Corp.*, 82 NY2d 876, 877 [1993]). Labor Law § 200 (1) states, in pertinent part, as follows:

> All places to which this chapter applies shall be so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein or lawfully frequenting such places. All machinery, equipment, and devices in such places shall be so placed, operated, guarded, and lighted as to provide reasonable and adequate protection to all such persons.

There are two distinct standards applicable to section 200 cases, depending on the kind of situation involved: (1) when the accident is the result of the means and methods used by a contractor to do its work, and (2) when the accident is the result of a dangerous condition that is inherent in the premises (*see McLeod v Corporation of Presiding Bishop of Church of Jesus Christ of Latter Day Sts.*, 41 AD3d 796, 797-798 [2d Dept 2007]; *see also Griffin v New York City Tr. Auth.*, 16 AD3d 202, 202 [1st Dept 2005]).

"Where a plaintiff's claims implicate the means and methods of the work, an owner or a contractor will not be held liable under Labor Law § 200 unless it had the authority to supervise or control the performance of the work" (*LaRosa v Internap Network Servs. Corp.*, 83 AD3d

905, 909 [2d Dept 2011]). Specifically, "liability can only be imposed against a party who exercises *actual* supervision of the injury-producing work" (*Naughton v City of New York*, 94 AD3d 1, 11 [1st Dept 2012]). However, where an injury stems from a dangerous condition inherent in the premises, an owner or contractor may be liable in common-law negligence and under Labor Law § 200 when the owner or contractor "'created the dangerous condition causing an injury or when the owner failed to remedy a dangerous or defective condition of which he or she had actual or constructive notice'" (*Mendoza v Highpoint Assoc., IX, LLC*, 83 AD3d 1, 9 [1st Dept 2011], quoting *Chowdhury v Rodriguez*, 57 AD3d 121, 128 [2d Dept 2008]).

Here, neither theory of liability is available to plaintiff. As the Appellate Division, First Department, effectively held, and plaintiff does not attempt to dispute, Verizon had no control over the manner in which plaintiff was conducting his work (*Villalta*, 197 AD3d at 1079). Plaintiff argues two potential dangerous conditions: the iciness of the utility pole, and the lack of what plaintiff terms "attachment points" on the pole. Plaintiff provides no authority that ice on the pole constitutes a dangerous condition "inherent in the premises" (Labor Law § 200). As to the attachment points, the affidavit of Stanley Pein, plaintiff's expert and professional engineer (NYSCEF Doc. No. 156), does not establish that such points are a necessary feature of utility poles. At best, the affidavit provides that the use of such a device is permissible within the bounds of certain cited regulations of the Occupational Safety and Health Administration.

Accordingly, it is hereby

ORDERED that the motion is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of defendants Verizon New York Inc., Verizon Sourcing LLC, and Verizon Communications Inc. dismissing the case against them.[1]

This constitutes the decision and order of the court.

10/19/2023								
DATE					LOUIS L. NOCK, J.S.C.			
CHECK ONE:	X	CASE DISPOSED			☐	NON-FINAL DISPOSITION		
	X	GRANTED	☐	DENIED	☐	GRANTED IN PART	☐	OTHER
APPLICATION:	☐	SETTLE ORDER			☐	SUBMIT ORDER		
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN			☐	FIDUCIARY APPOINTMENT	☐	REFERENCE

[1] The case has been previously discontinued against defendant Consolidated Edison Co. of N.Y., Inc. (stipulation of discontinuance, NYSCEF Doc. No. 83).