

Mollema v Citigroup Inc.

2024 NY Slip Op 32048(U)

June 17, 2024

Supreme Court, New York County

Docket Number: Index No. 157126/2015

Judge: Leslie A. Stroth

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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. LESLIE A. STROTH PART 12M

Justice

-----X

WILLIAM MOLLEMA,

Plaintiff,

- v -

CITIGROUP INC., CITIGROUP FINANCIAL PRODUCTS
INC., SL GREEN REALTY CORP., TISHMAN
CONSTRUCTION CORPORATION,

Defendant.

-----X

CITIGROUP INC., CITIGROUP FINANCIAL PRODUCTS INC.,
SL GREEN REALTY CORP., TISHMAN CONSTRUCTION
CORPORATION

Plaintiff,

-against-

HALLEN WELDING SERVICES INC.

Defendant.

-----X

INDEX NO. 157126/2015

MOTION DATE N/A, N/A, N/A

MOTION SEQ. NO. 011 012 013

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595112/2016

The following e-filed documents, listed by NYSCEF document number (Motion 011) 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 238, 241, 242, 249, 252, 255, 256, 271 were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 012) 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 236, 239, 247, 248, 250, 253, 257, 258, 259, 260, 262, 263, 272 were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 013) 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 237, 240, 243, 244, 245, 246, 251, 254, 261, 264, 265, 273 were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

Background

Plaintiff commenced this labor law action for injuries sustained on June 1, 2015 after being struck by a steel beam that was lifted by a Roustabout, a mechanical hoist, while he was employed as a foreman ironworker for third-party defendant Hallen at 388 Greenwich Street on the 38th floor, New York, New York.¹

The parties move for the following relief: (i) plaintiff seeks summary judgment against defendants under Labor Law §240(1) (Motion #011); (ii) defendants/third-party plaintiffs Citigroup Technology, Inc, SL Green Realty Corp, and Tishman Construction Corporation of New York seek summary judgment, dismissing plaintiffs' complaint and all cross-claims asserted against them, and seek summary judgment on their third-party claims against the third-party defendant Hallen Welding Service Inc. (Motion #012); and (iii) third-party defendant Hallen Welding Service Inc. seeks dismissal of plaintiff's claim under Labor Law §241(6) and moves for summary judgment and dismissal of the third-party claims for common law indemnification, contribution and breach of contract (Motion #013).

Plaintiff's and Defendants' Motions for Summary Judgment Pursuant to Labor Law §240(1)

It is well-established that the "function of summary judgment is issue finding, not issue determination" (*Assaf v Ropog Cab Corp.*, 153 AD2d 520 (1st Dept 1989) (quoting *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957])). As such, the proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (*Alvarez v Prospect Hospital*, 68 NY2d 320 (1986); *Winegrad v New York University Medical Center*, 64 NY2d 851 (1985)).

¹ Defendants Citigroup Inc., Citigroup Financial Products Inc., and SL Green Realty Corp. owned the subject premises and contracted with defendant Tishman as the general contractor.

Once a party has submitted competent proof demonstrating that there is no substance to its opponent's claims and no disputed issues of fact, the opponent, in turn, is required to "lay bare [its] proof and come forward with some admissible proof that would require a trial of the material questions of fact on which [its] claims rest" (*Ferber v Sterndent Corp.*, 51 NY2d 782, 783 (1980)). The party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted (*See Dauman Displays, Inc. v Masturzo*, 168 AD2d 204 (1st Dept 1990)).

The Court shall first address plaintiff's motion for summary judgment against defendants under Labor Law §240(1). It is well-established that Section 240(1) "imposes absolute liability on owners, contractors and their agents for any breach of the statutory duty which has proximately caused injury. The duty imposed is nondelegable and ... an owner is liable for a violation of the section even though the job was performed by an independent contractor over which it exercised no supervision or control" (*Gordon v. E. Ry. Supply, Inc.*, 82 N.Y.2d 555 (1993)). Further, as the Court of Appeals held in *Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 N.Y.2d 494 (1993), the very purpose of Section 240(1) is "to prevent those types of accidents in which the scaffold, hoist, stay, ladder or other protective device proved inadequate to shield the injured worker from harm directly flowing from the application of the force of gravity to an object or person". In *Narducci v. Manhasset Bay Associates*, 96 N.Y.2d 259 (2001), the Court emphasizes that "for section 240(1) to apply, a plaintiff must show more than simply that an object fell causing injury to a worker. A plaintiff must show that the object fell, while being hoisted or secured, because of the absence or inadequacy of a safety device of the kind enumerated in the statute".

In support of their argument that the incident was gravity-related, petitioner points to the deposition of William Sandie, principal and Vice President of Hallen, who testified that "the

Roustabout had failed... there's a locking mechanism on the winch that let loose... I believe we saw that the stock on the winch had broken apart... My understanding was that the men were using the Roustabout and they were hoisting a lightweight beam. And that beam, as it was going up, the stop broke on the winch and the beam then essentially free-[fell]. And as it came down, it hit Mr. Mollema" (Exh 9, p 42-48). In further support is plaintiff's testimony, which shows that the steel beam was raised about twelve feet (Exh 2, p 50-51). In addition, the "Accident Report" provides, "Men were lifting a beam into position when [the] winch on the roustabout failed, causing [the] beam to fall to [the] floor grazing employees' neck and back" (Exh 11).

The Court finds that the subject incident herein is gravity-related and appears to have been caused by a locking mechanism on the winch that became loose of the Roustabout device that had failed. Labor Law §240(1), subjects owners, contractors, and their agents to absolute liability, as a matter of law, because workers "are scarcely in a position to protect themselves from [an] accident" (*Zimmer v. Chemung County Performing Arts*, 65 N.Y.2d 513 (1985)). Here, as defendants are the owner and general contractor, plaintiff's motion for summary judgment on Labor Law §240(1) is granted, and that part of motion #012 by defendants seeking summary judgment on Labor Law §240(1) is denied. Defendants have not submitted sufficient evidence in admissible form to refute plaintiff's prima facie showing of defendants' liability.

Defendants' and Third-Party Defendant's Motions for Summary Judgment and Dismissal

Regarding Labor Law §200 and §241(6)

The Court shall next address defendants and third-party defendants' motions for summary judgment on Labor Law §200 and §241(6). First, plaintiff failed to provide any opposition to defendants' motion for summary judgment with respect to Labor Law §200. Thus, the portion of defendants' motion seeking summary judgment as to Labor Law §200 is granted, and that cause of action is dismissed.

As to Labor Law §241(6), the Court notes that plaintiff only addresses Industrial Code §23-1.5(c)(3) in its opposition to defendants' motions #012 and #013. Thus, the remaining industrial codes are dismissed² from the action. For plaintiff to establish liability pursuant to Labor Law §241(6), a violation of the Industrial Code must be shown (*See e.g. Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494 (1993) (holding that Labor Law §241(6) imposes a non-delegable duty upon owners and general contractors and their agents for violation of the statute). Here, plaintiff's claim under Labor Law §241(6) is based on the alleged violation of 22 NYCRR §23-1.5(c)(3): "Condition of equipment and safeguards. All safety devices, safeguards and equipment in use shall be kept sound and operable and shall be immediately repaired or restored or immediately removed from the job site if damaged." The Court denies the motions of defendants and third-party defendant seeking summary judgment and dismissal regarding Labor Law §241(6) and 22 NYCRR §23-1.5(c)(3), based on the same evidence referenced herein relating to the failure of the Roustabout causing the beam to fall, and defendants' failure to produce sufficient proof in opposition, such as an expert affidavit or contradictory testimony to show that there are unresolved issues of fact.

Defendants and Third-Party Defendant's Motions for Summary Judgment and Dismissal of Claims for Contractual and Common-Law Indemnification, Contribution, and Breach of Contract

Finally, as to defendants contractual indemnification, contribution, and breach of contract claims against Hallen, it is well-established that a party cannot be indemnified for their own negligence, and contractual indemnification clauses are to be enforced only when the "intention to indemnify can be clearly implied from the language and purpose of the entire agreement, and

² Industrial Code Sections 23-1.5, 23-1.7, 23-2.1, 23-2.3(a)(1), (c), 23-5, 23-6.1(d), (e)(1)(2)(3), (h), (j)(1)(2), (k), 23-6.2(a)(1), (a)(2)(i)(ii), (a)(3)(i)(ii)(iii), (a)(4)(i)(ii)(iii), (b), (c), (d)(1)(2)(3), (e), 23-7, 23-8 and 23-9.

the surrounding facts and circumstances” (*See Masciotta v Morse Diesel Int’l, Inc.*, 303 A.D.2d 309 (1st Dept 2003). “In contractual indemnification, the one seeking indemnity need only establish that it was free from any negligence and was held liable solely by virtue of the statutory liability” (*Correia v. Pro. Data Mgmt., Inc.*, 259 A.D.2d 60 (1st Dept 1999)). As to common-law indemnification, the one seeking indemnity must prove “...not only that the proposed indemnitor’s negligence contributed to the causation of the accident, but also that the party seeking indemnity was free from negligence” (*See Martins v Little 40 Worth Assoc., Inc.*, 72 AD3d 483, 484 (1st Dept 2010). Similarly, contribution is only available where tortfeasors combine to cause an injury (*Godoy v Alabaster of Miami*, 302 AD2d 57 (2d Dept 2003).

The Court notes that plaintiff testified that a safety orientation was given by Tishman and that Tishman and “safety guys” would walk around together (Exh F, p 31, 77, and 89). It is unclear from the record whether defendants or third-party defendant contributed to plaintiff’s accident. For the reasons stated herein, and based upon the papers submitted, the Court is denying defendants’ and third-party defendant’ motion for summary judgment on contractual and common-law indemnification and contribution. The Court similarly is not inclined to grant the motions for summary judgment on breach of contract for failure to procure the required insurance as there is an issue as to whether Hallen obtained the appropriate insurance coverage and received an application from Tishman for enrollment in an “owner-controlled insurance program” (Exh I, p 26 &30).

* * *

Accordingly, it is hereby

ORDERED, that plaintiff’s motion for summary judgment on Labor Law §240(1) is granted (Motion #011); and it is further

ORDERED, that defendants' motion for summary judgment on Labor Law §200 is granted and that the remaining relief sought is denied (Motion #012); and it is further

ORDERED, that third-party defendants' motion for dismissal and summary judgment is denied in its entirety (Motion #013).

The foregoing constitutes the Decision and Order of the Court

DATE: 6/17/2024


HON. LESLIE A. STROTH
J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE