

Campoverde v 353-357 Broadway LLC

2024 NY Slip Op 32791(U)

August 6, 2024

Supreme Court, New York County

Docket Number: Index No. 159066/2018

Judge: Suzanne Adams

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

PRESENT: HON. SUZANNE ADAMS PART **39M**

Justice

-----X

RENE CAMPOVERDE,

Plaintiff,

- v -

353-357 BROADWAY LLC, TOLL GC LLC, TOP SHELF
ELECTRIC CORP.,

Defendants.

-----X

353-357 BROADWAY LLC, TOLL GC LLC

Plaintiff,

-against-

TOP SHELF ELECTRIC CORP.

Defendant.

-----X

353-357 BROADWAY LLC, TOLL GC LLC

Plaintiff,

-against-

ADVANCED CONTRACTING SOLUTIONS, LLC A/K/A ACS
NY LLC

Defendant.

-----X

INDEX NO. 159066/2018
MOTION DATE N/A
MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595369/2019

Second Third-Party
Index No. 596000/2020

The following e-filed documents, listed by NYSCEF document number (Motion 002) 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, 223, 228, 232, 236, 240, 244, 248, 252, 260, 261, 266, 267, 268, 286, 287

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, it is ordered that plaintiff's motion is granted. This action arises out of a workplace injury plaintiff sustained on July 13, 2017, at a construction site at the property located at 91 Leonard Street in Manhattan. Defendant/third-party plaintiff/second third-

party plaintiff 353-357 Broadway LLC (“Owner”) owned the property; defendant/third-party plaintiff/second third-party plaintiff Toll GC LLC (“Toll”) was the general contractor; and defendant/third-party defendant Top Shelf Electric Corp. (“Top Shelf”) was an electrical subcontractor. Plaintiff was employed by second third-party defendant Advanced Contracting Solutions, LLC (“Advanced”) as a helper. On the date in question, plaintiff alleges that two rolls of electrical wire fell through an opening one floor above him and struck him, causing injury, and that the rolls were dropped by an employee of Top Shelf. Plaintiff now moves pursuant to CPLR 3212 for partial summary judgment against the Owner and Toll on the issues of liability under Labor Law §§ 240(1) and 241(6). Owner, Toll, Advanced, and second third-party defendant Trident Contracting LLC (“Trident”) oppose the motion.

“The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact.” *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 324 (1986) (citing *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 (1985)); *see also Winegrad*, 64 N.Y.2d at 853. The party opposing a motion for summary judgment is entitled to all reasonable inferences most favorable to it, and summary judgment will only be granted if there are no genuine, triable issues of fact. *Assaf v. Ropog Cab Corp.*, 153 A.D.2d 520, 521-22 (1st Dep’t 1989).

Here, plaintiff has established entitlement to partial summary judgment on the issue of liability under both Labor Law sections, and the parties opposing the motion have not raised any triable issues of fact. Section 240(1) protects “workers in construction projects against injury from the expected risks of inherently hazardous work posed by elevation differentials at the work site.” *Buckley v. Columbia Grammar & Preparatory*, 44 A.D.3d 263, 267 (1st Dep’t 2007). It

“imposes [absolute] liability upon an owner or contractor who has failed to provide any safety devices for workers at a building worksite [where] the absence of such devices is the proximate cause of injury to a worker.” *Zimmer v. Chemung County Performing Arts, Inc.*, 65 N.Y.2d 513, 518-19 (1985). The owner’s agent may be held vicariously liable under the statute where it had the ability to control the activity which caused the injury. *Walls v. Turner Constr. Co.*, 4 N.Y.3d 861, 863-64 (2004). In this matter, it is undisputed that Owner was the owner of the subject property on the date of the incident. Plaintiff establishes *prima facie* that Toll had the ability to control the injury-producing work and Toll did not raise a triable issue of fact in opposition. Even discounting the documentary evidence, testimony shows that Toll employees were regularly onsite coordinating the trades. As such, both Owner and Toll are subject to § 240(1), which in turn applies to the facts herein. *See, e.g., Guzman v. 170 W. End Ave. Assoc.*, 115 A.D.3d 462, 463 (1st Dep’t 2014) (plaintiff entitled to summary judgment where “evidence demonstrates that he was struck by . . . electrical cable that fell . . . because it was improperly secured . . . [and is] not required to show that the cable was being hoisted or secured when it fell . . .”). *See also Rincon v. New York City Hous. Auth.*, 202 A.D.3d 421, 422 (1st Dep’t 2022) (plaintiff granted summary judgment on Labor Law § 240(1) claim where he was injured by falling wrench which “could have been tethered” and use of tethering devices while working from heights was recommended by the project manager to prevent such an accident).

Labor Law § 241(6) provides, in pertinent part, that all contractors and owners and their agents shall provide “reasonable and adequate protection and safety” to persons employed in “all areas in which construction, excavation or demolition work is being performed.” The statute imposes a nondelegable duty of reasonable care upon owners and contractors with respect to construction site safety, and has been held to also impose liability upon a general contractor for a

subcontractor’s negligence, even in the absence of control or supervision. *Rizzuto v L.A. Wenger Contr. Co.*, 91 N.Y.2d 343, 348-49 (1998). “To establish liability under the statute, a plaintiff must specifically plead and prove the violation of an applicable Industrial Code regulation” which “constitutes a specific, positive command, not one that merely reiterates the common-law standard of negligence . . . [and is] applicable to the facts and be the proximate cause of the plaintiff’s injury. *Buckley v. Columbia Grammar and Preparatory*, 44 A.D.3d 263, 271 (1st Dep’t 2007) (citations omitted). Plaintiff alleges violation of Industrial Code §§ 23-1.7(a)(1), 23-2.1(a)(1), and 23-2.1(a)(2), all of which pertain to safety and storage precautions to be undertaken where the risk of falling construction materials is present. These codes are applicable to the instant facts, where rolls of electrical wire were dropped on the floor, rolled a few feet, and fell into an opening in the floor, causing injury to plaintiff who stood beneath the opening on the floor below.

Accordingly, it is hereby

ORDERED that plaintiff’s motion for partial summary judgment on the issue of liability as against Owner and Toll is granted.

This constitutes the decision and order of the court.

<u>08/06/2024</u>					<u>SUZANNE ADAMS, J.S.C.</u>
DATE					
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<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"/>
				REFERENCE	