

Bowden v Summit Glory Prop. LLC

2024 NY Slip Op 32792(U)

August 9, 2024

Supreme Court, New York County

Docket Number: Index No. 159509/2018

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 E. d'Auguste PART 55

Justice

-----X

JOHN BOWDEN, MICHALINA BOWDEN,
Plaintiffs,

- v -

SUMMIT GLORY PROPERTY LLC, HUNTER ROBERTS
CONSTRUCTION GROUP, L.L.C., MARLBORO GROUP
INTERNATIONAL LLC, BOOKING HOLDINGS INC.,

Defendants.

-----X

MARLBORO GROUP INTERNATIONAL LLC,
Plaintiff,

-against-

CORD CONTRACTING CO., INC.,

Defendant.

-----X

INDEX NO. 159509/2018

09/23/2022,
09/26/2022,
12/06/2022,

MOTION DATE 12/06/2022

MOTION SEQ. NO. 004 005 006
006

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595302/2019

The following e-filed documents, listed by NYSCEF document number (Motion 004) 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 183, 184, 191, 193, 194, 197, 199, 200, 201, 208, 209, 210, 211, 223, 224, 227, 228, 229

were read on this motion to/for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 181, 182, 189, 192, 195, 198, 202, 203, 204, 206, 207, 212, 213, 214, 215, 230

were read on this motion to/for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 190, 196, 205, 216, 217, 218, 219, 220, 221, 222, 225, 226, 231, 232, 233, 234

were read on this motion to/for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 190, 196, 205, 216, 217, 218, 219, 220, 221, 222, 225, 226, 231, 232, 233, 234

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

Motion Sequences 004, 005, and 006 are consolidated for disposition.

In Motion Sequence 004, Defendant Summit Glory moves for summary judgment seeking to dismiss plaintiffs' complaint, granting Summit Glory's cross claims for contractual and common law indemnification against Marlboro and Booking Holdings, granting summary judgment for cross claims for contractual and common law indemnity against third-party defendant Cord Contracting (moot due to the decision and order in Motion Sequence 003, NYSCEF Doc. No. 179), and dismissing all cross claims and counterclaims against Summit Glory. Cord, Booking, Marlboro, and plaintiffs oppose the motion. In Motion Sequence 005, Defendant Booking moves for summary judgment, seeking to dismiss plaintiffs' claims as against Booking and seeking contractual and common law indemnification against Cord Contracting (which is moot following the decision and order in Motion Sequence 003, NYSCEF Doc. No. 179). Cord, Marlboro, Summit Glory, and plaintiffs oppose or partially oppose the motion. Plaintiffs move for partial summary judgment on liability against Summit Glory, Marlboro, and Booking. Summit Glory and Booking oppose the motion. Marlboro cross moves for summary judgment, seeking to dismiss the complaint as to Marlboro. Plaintiffs oppose the cross-motion. Motion Sequence 006 is granted in favor of plaintiffs as to liability, and the remaining branches of the motions are denied.

John Bowden, a carpenter working for former third-party defendant Cord Contracting, tripped and fell on a piece of unsecured Masonite on June 12, 2017. Summit Glory Property LLC ("Summit Glory"), the property owner, leased the subject premises to Booking.com ("Booking"). Booking retained Marlboro Group International LLC ("Marlboro"), a general contractor, to build out the leased space. Marlboro hired various subcontractors, including Cord Contracting Co. (plaintiff's employer and former third-party defendant). In Motion Sequence

003, the Court granted summary judgment, dismissing the third-party complaint; the Court found that Marlboro had actual site safety supervision over the subcontractors and were responsible for installing the Masonite that injured Bowden.

The Court grants plaintiffs' motion for partial summary judgment under Labor Law Section 241(6). Plaintiffs allege that defendants violated 12 NYCRR § 23-1.7(e) 1 and 2 – requiring work sites and passageways to be free of debris and tripping hazards. *See Velasquez v 795 Columbus LLC*, 103 AD3d 541, 541 [1st Dept 2013]. The Court agrees. Defendants argue that the Masonite board was integral to the work being completed; however, defendants conducted the final inspection two days prior and planned to remove the Masonite board two days after the accident. Defendants' case law does show that a protective Masonite board can be considered integral to the work, but the case law does not support the broad-sweeping proposition that a Masonite board can never be considered "accumulated debris or scattered materials." *Thomas v Goldman Sachs Headquarters, LLC*, 109 AD3d 421, 422 [1st Dept 2013]. In the *Thomas* case, plaintiff tripped on a Masonite board used to cover a gap in an active workspace. Ernest Thomas and Yasmin Thomas, Plaintiffs-Appellants., v. Goldman Sachs Headquarters, LLC, Tishman Construction Corp. and Structure Tone, Inc., Defendants-Respondents., 2013 WL 12086738, at *4. In the present action, work had been completed in the area in question and defendants were planning to remove the board. *Cf. Krzyzanowski v City of New York*, 179 AD3d 479, 481 [1st Dept 2020] [First Department reversed plaintiff's summary judgment under Labor Law Section 241(6), finding questions of fact regarding whether the Masonite boards were protective coverings *while construction was ongoing*]. Moreover, if the Masonite board had to remain in place, it should have been secured properly so it did not become

a tripping hazard. Therefore, plaintiffs’ motion for partial summary judgment under Labor Law Section 241(6) is granted.


The Court is denying summary judgment for all branches of the motions addressing indemnification. The indemnification contract between Marlboro and Booking.com has a “negligence trigger.” Although the Court has found defendants liable under Labor Law Section 241(6), summary judgment under a statutory provision of the Labor Law is not, without more, a negligence finding that would grant contractual indemnification under the Marlboro – Booking.com contract. Moreover, the Court’s decision in Motion Sequence 003 addressed claims between Marlboro and Cord Contracting; the decision did not address the other defendants’ alleged negligence. Therefore, resolving the contractual and common-law indemnification claims among defendants will have to be addressed at trial.

Accordingly, it is hereby

ORDERED that plaintiffs’ motion for summary judgment is granted as to plaintiffs’ claims pursuant to Labor Law Section 241(6), and it is further,

ORDERED that all remaining branches of the motions are denied.

This constitutes the decision and order of the Court.

<u>8/9/2024</u> DATE					 James d’Auguste, J.S.C.		
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE