

Pilapanta v Hudson 888 Owner LLC

2024 NY Slip Op 33198(U)

September 12, 2024

Supreme Court, New York County

Docket Number: Index No. 152726/2020

Judge: Paul A. Goetz

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

PRESENT: HON. PAUL A. GOETZ PART 47

Justice

-----X

JOSE PILAPANTA,

Plaintiff,

- v -

HUDSON 888 OWNER LLC, LEEDING BUILDERS GROUP LLC,

Defendants.

-----X

HUDSON 888 OWNER LLC, LEEDING BUILDERS GROUP LLC

Plaintiffs,

-against-

USA INTERIORS LLC, YGJ TAPERS LLC

Defendants.

-----X

INDEX NO. 152726/2020

MOTION DATE 01/19/2024,
01/22/2024

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

Third-Party
Index No. 595476/2020

The following e-filed documents, listed by NYSCEF document number (Motion 001) 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 103, 104, 105, 106, 107, 108

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

The following e-filed documents, listed by NYSCEF document number (Motion 002) 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 100, 101, 102, 109

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

In this Labor Law personal injury action arising from plaintiff's fall from a ladder, plaintiff moves for summary judgment on his Labor Law § 240(1) cause of action (MS #1, NYSCEF Doc No 52), and defendants/third-party plaintiffs move for summary judgment (i) on their cause of action for contractual indemnification as against third-party defendant USA

Interiors LLC (USA Interiors), and (ii) to dismiss plaintiff's common law negligence and Labor Law § 200 causes of action (MS #2, NYSCEF Doc No 65).

BACKGROUND

Defendant Hudson 888 Owner LLC (Hudson 888) owns the property located at 615 10th Avenue, New York, NY 10036 (the premises). Hudson 888 hired defendant Leeding Builders Group LLC (Leeding) as a general contractor for a new apartment building to be constructed on the premises. Leeding hired third-party defendant USA Interiors LLC (USA Interiors) as a subcontractor for drywall and carpentry work. The subcontract entered into by Leeding and USA Interiors provided that "Subcontractor agrees to defend, indemnify and save harmless Contractor and Owner . . . from and against any claim, cost, expense or liability . . . arising out of . . . performance of the Work by Subcontractor, its subcontractors and suppliers, or their agents, servants or employees" (NYSCEF Doc No 69, Subcontract § 12).

Plaintiff, a carpenter for USA Interiors, arrived at the premises at approximately 6:30 a.m. on March 5, 2020 (NYSCEF Doc No 61, 13:18-14:9, 21:18-20). Plaintiff's usual supervisor, Cesar Garcia, was not present that day, but a man nicknamed Gamba was in charge in his place; both Garcia and Gamba were USA Interiors employees (*id.*, 21:25-22:20). Plaintiff picked up where he had left off in framing the ceiling of a bathroom on the seventh floor of the building (*id.*, 22:24-23:14). Plaintiff checked that the floor was clear of debris and that the 6-step A-frame ladder plaintiff had been using for the past few days was locked and secure (*id.*, 26:11-28:22). Plaintiff climbed to the fourth step of the ladder, holding metal framing material in his left hand and a drill in his right (*id.*, 28:23-29:9). While on that step, and with his arms reached overhead to drill the metal piece into the ceiling, plaintiff felt the ladder move and fall to the left, and he fell along with it, landing on his left foot and the left side of his lower back (*id.*, 29:14-30:6).

Plaintiff testified that he does not know what caused the ladder to move (*id.*, 29:18-20). Medical records from Mount Sinai West, where plaintiff was treated later that day, reflect that “Patient states that he was standing on the 5th step when he lost his balance and fell” (NYSCEF Doc No 104).

Plaintiff’s complaint asserts causes of action for common law negligence and violations of Labor Law §§ 200, 240(1), 240(2), 240(3) and 241(6) (NYSCEF Doc No 1). Defendants/ third-party plaintiffs’ third-party complaint against USA Interiors and its subcontractor, YGJ Tapers LLC (YGJ Tapers), asserts causes of action for contractual and common law indemnification, contribution, and breach of contract due for failure to obtain insurance coverage (NYSCEF Doc No 9).

DISCUSSION

“It is well settled that ‘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.’” (*Pullman v Silverman*, 28 NY3d 1060, 1062 [2016], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). “Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers.” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985] [internal citations omitted]). “Once such a prima facie showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to raise material issues of fact which require a trial of the action.” (*Cabrera v Rodriguez*, 72 AD3d 553, 553-554 [1st Dept 2010], citing *Alvarez*, 68 NY2d at 342).

“The court’s function on a motion for summary judgment is merely to determine if any triable issues exist, not to determine the merits of any such issues or to assess credibility.”

(*Meridian Mgmt. Corp. v Cristi Cleaning Serv. Corp.*, 70 AD3d 508, 510-511 [1st Dept 2010] [internal citations omitted]). The evidence presented in a summary judgment motion must be examined “in the light most favorable to the non-moving party” (*Schmidt v One New York Plaza Co.*, 153 AD3d 427, 428 [2017], quoting *Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 339 [2011]) and bare allegations or conclusory assertions are insufficient to create genuine issues of fact (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*id.*).

i. Labor Law § 240(1) (MS #1)

Labor Law § 240 (1), also known as New York’s “Scaffold Law,” provides that all general contractors and owners “shall furnish or erect, or cause to be furnished or erected for the performance of [construction] labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed.” Labor Law § 240 (1) “imposes absolute liability on building owners and contractors whose failure to provide proper protection to workers employed on a construction site proximately causes injury to a worker” (*Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1, 7 [2011] [internal quotation marks and citation omitted]). To prevail on a Labor Law § 240 (1) cause of action, the plaintiff must establish that the statute was violated, and that the violation was a proximate cause of his or her injuries (*Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280, 287-289 [2003]). “[T]he single decisive question is whether plaintiff’s injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential” (*Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 603 [2009]).

The legislative intent behind the statute is to place “ultimate responsibility for safety practices at building construction jobs where such responsibility actually belongs, on the owner and general contractor, instead of on workers, who are scarcely in a position to protect themselves from accident” (*Zimmer v Chemung County Performing Arts*, 65 NY2d 513, 520 [1985], *rearg denied* 65 NY2d 1054 [1985] [internal quotation marks and citations omitted]). Therefore, the statute should be liberally construed to achieve the purpose for which it was framed (*Rocovich v Consolidated Edison Co.*, 78 NY2d 509, 513 [1991]).

Plaintiff argues that he is protected by Labor Law § 240(1) because the facts “result in the presumption that the ladder upon which Plaintiff was standing and performing his work was inadequately secured, and as such, failed to provide the necessary protection to Plaintiff from the elevation-related hazard of his work” (NYSCEF Doc No 54). Hudson 888 and USA Interiors argue that plaintiff failed to meet his initial burden of proof, since plaintiff’s own testimony indicates that the ladder was stable before he stepped onto it, plaintiff was the sole witness of his accident, and plaintiff gave hospital personnel a different account as to the cause of his accident (NYSCEF Doc Nos 103, 106). USA Interiors further asserts that plaintiff’s “testimony that the ladder ‘moved’ is insufficient to establish, as a matter of law, that a purported failure to secure the ladder was a substantial factor in causing his injuries” (*id.*). Hudson 888 also disputes that the ladder was the proximate cause of plaintiff’s accident, although it relies on falling object cases, whereas plaintiff alleges he fell *from* the ladder (NYSCEF Doc No 106).

Much like the plaintiff in *Joseph v 210 W. 18th, LLC*, 189 AD3d 1384 [2nd Dept 2020], plaintiff states that the ladder was stable and locked when he commenced work, the floor was clear of debris, and the ladder somehow became unstable or unsecured, though he cannot say how. “Here, the fact that the plaintiff fell from a ladder, standing alone, is insufficient to

establish, prima facie, that the ladder was an inadequate safety device[, nor] does his claim that the ladder [somehow fell] satisfy that burden” (*id.* at 1385; *De Oliveira v. Little John's Moving, Inc.*, 289 AD2d 108, 108 [1st Dept 2001] [where plaintiff did not know what made the ladder slip, “[w]hether the ladder provided proper protection for purposes of section 240 (1) [was] a question of fact for the jury”). Thus, plaintiff has not met his prima facie burden here.

Moreover, “[s]ince the manner in which plaintiff’s alleged accident occurred is within his exclusive knowledge, and the only evidence submitted in support of defendants’ liability is plaintiff’s account, defendants should have the opportunity to subject plaintiff’s testimony to cross-examination to have his credibility determined by a trier of fact” (*Pabon v 940 S. Blvd., LLC*, 181 AD3d 547, 547 [1st Dept 2020]; *Grant v Steve Mark, Inc.*, 96 AD3d 614 [1st Dept 2012] [same]). Accordingly, plaintiff’s motion for summary judgment on his Labor Law § 240(1) cause of action will be denied.

ii. Labor Law § 200 and Common Law Negligence (MS #2)

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]). It provides that worksites “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” (Labor Law § 200[1]). “In order to prevail on such a claim, a plaintiff must prove that the party so charged had authority or control over the activity causing the injury, thus enabling it to avoid or correct an unsafe condition” (*O’Sullivan v IDI Constr. Co., Inc.*, 28 AD3d 225, 226 [1st Dept 2006]; *Jackson v Hunter Roberts Constr., L.L.C.*, 205 AD3d 542, 543 [1st Dept 2022] [a

contractor will not be held liable unless it had “authority to supervise or control the means and methods of plaintiff’s work”]).

Defendants/third-party plaintiffs move for summary judgment dismissing plaintiff’s negligence and Labor Law § 200 causes of action, arguing that they did not exercise supervision or control over the means and methods of plaintiff’s work, nor did they provide the allegedly defective ladder (NYSCEF Doc No 66). In support, defendants/third-party plaintiffs submit plaintiff’s own testimony, which confirms that his work was directed and supervised only by other USA Interiors employees, and that USA Interiors provided the ladder (NYSCEF Doc No 72). Thus, defendants/third-party plaintiffs have met their prima facie burden and plaintiff failed to oppose the motion. Accordingly, the part of defendants/third-party plaintiffs’ motion for summary judgment seeking to dismiss plaintiff’s negligence and Labor Law § 200 causes of action will be granted.

iii. Contractual Indemnification (MS #2)

“The right to contractual indemnification depends upon the specific language of the contract” (*Alfaro v 65 W. 13th Acquisition, LLC*, 74 AD3d 1255, 1255 [2nd Dept 2010]). “A party is entitled to full contractual indemnification provided that the ‘intention to indemnify can be clearly implied from the language and purposes of the entire agreement and the surrounding facts and circumstances’” (*Drzewinski v Atlantic Scaffold & Ladder Co.*, 70 NY2d 774, 777 [1987], citing *Margolin v New York Life Ins. Co.*, 32 NY2d 149, 153 [1973]). “A contract assuming the duty to indemnify will be strictly construed” (*GFE Jerome Ave. LLC v Steph-Leigh Assoc., LLC*, 193 AD3d 435, 436 [1st Dept 2021]) “in light of the apparent objective of the parties” (*Williams v 100 Church Fee Owner, LLC*, 198 AD3d 590, 591 [1st Dept 2021]).

Defendants/third-party plaintiffs seek summary judgment on their cause of action for contractual indemnification from USA Interiors, arguing that the contract Leeding entered into with USA Interiors is clear and unambiguous in its intent for USA Interiors to indemnify defendants/third-party plaintiffs from all claims and lawsuits arising from performance of the work by its employees (NYSCEF Doc No 66; NYSCEF Doc No 69, Subcontract § 12 [*To the fullest extent permitted by law, Subcontractor agrees to defend, indemnify and save harmless Contractor and Owner . . . from and against any claim, cost, expense or liability . . . arising out of . . . performance of the Work by Subcontractor, its subcontractors and suppliers, or their agents, servants or employees*”] [emphasis added]). USA Interiors argues that in order for defendants/third-party plaintiffs to be entitled to indemnification, they must prove themselves free of negligence, and that the deposition transcripts they rely upon to make this showing are inadmissible (NYSCEF Doc No 100).

The indemnity provision of the contract states that USA Interiors must indemnify defendants/third-party plaintiffs “against any claim, cost, expense or liability . . . *whether or not caused in part by the active or passive negligence or other fault of a party indemnified [t]hereunder*” unless “such claim, cost, expense, or liability is caused by the *sole* negligence of a party indemnified [t]hereunder” (NYSCEF Doc No 69, Subcontract § 12 [emphasis added]). Therefore, to be protected by this provision, defendants/third-party plaintiffs do not need to “establish [their] freedom from negligence” as suggested by USA Interiors; they only need to demonstrate that the liability was not caused solely by their negligence (*Margolin*, 32 NY2d at 153 [a party may indemnify against its own negligence if expressed in unequivocal terms]). Defendants/third-party plaintiffs have done so by demonstrating, as noted *supra*, that plaintiff received his instructions and the allegedly defective ladder from his employer, USA Interiors.

Accordingly, the part of defendants/third-party plaintiffs' motion for summary judgment on its contractual indemnification claim against USA Interiors will be granted.

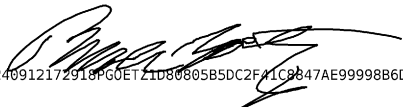
CONCLUSION

Based on the foregoing, it is

ORDERED that plaintiff's motion for summary judgment on his Labor Law § 240(1) cause of action (MS #1) is denied; and it is further

ORDERED that the part of defendants/third-party plaintiffs' motion for summary judgment seeking to dismiss plaintiff's negligence and Labor Law § 200 causes of action (MS #2) is granted; and it is further

ORDERED that the part of defendants/third-party plaintiffs' motion for summary judgment on its contractual indemnification claim as against USA Interiors (MS #2) is granted.


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9/12/2024
DATE

PAUL A. GOETZ, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE