

Suazo v 511 W. 25th St., LLC
2024 NY Slip Op 35192(U)
February 7, 2024
Supreme Court, Queens County
Docket Number: Index No. 701702/2020
Judge: Joseph J. Esposito
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SHORT FORM ORDER

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable Joseph J. Esposito PART 17
Justice



-----X
ABAD SUAZO

Plaintiff,

- against -

511 WEST 25th STREET, LLC,

Defendant.

-----X
511 WEST 25th STREET, LLC,

Third-Party Plaintiff,

- against -

COOL BREEZE AIR CONDITIONING, INC.,

Third-Party Defendant.

-----X

Index No.: 701702/2020

Motion Date: 11/15/2023

Mot. Seq. No. 1 AND 2

The following numbered papers read on a motion by third-party defendant, Cool Breeze Air Conditioning Inc., for an Order pursuant to CPLR 3212, granting the third-party defendant, Cool Breeze Air Conditioning, Inc., a summary judgment dismissing the plaintiff's Complaint and for such other and further relief as this Court deems just and proper.

Papers Numbered

Notice of Motion - Affidavits – Exhibit	EF 40-53
Affirmations in Opposition – Exhibits	EF 80-83
Reply Affirmation	EF 84-85

The following numbered papers read on a motion by defendant/third-party plaintiff, 511 West, for an Order granting summary judgment dismissing plaintiff’s complaint in its entirety as against defendant including plaintiff’s Labor Law Claims and common-law negligence claim and granting defendant/third-party plaintiff’s claims for indemnification as against third-party defendant including awarding moving defendant complete reimbursement of all attorneys’ fees and costs associated with defendant against plaintiff’s claim and for such other and further relief as this Court deems just and proper. The following numbered papers read on this cross-motion by third-party defendant, for an Order granting the third-party defendant a summary judgment dismissing the defendant/third-party plaintiff’s claims for indemnification and for such other and further relief that this Court may deem just and proper. The following numbered papers read on this cross-motion by plaintiff for an Order granting summary judgment on liability under Labor Law 240 and for such other and further relief as the Court deems proper and just.

Papers Numbered

Notice of Motion - Affidavits – Exhibit	EF 54-57
Notice of Cross-Motion Affirmations in Opposition	EF 58-72
Notice of Cross-Motion Affirmations in Opposition	EF 75-79
Affirmations in Opposition – Exhibits	EF 86
Affirmations in Opposition – Exhibits	EF 80-83
Reply Affirmation	EF 87-88
Reply Affirmation	EF 89

At the outset, the Court notes that the attorneys in the instant matter are directed to ensure proper filing of their papers under the correct sequence numbers moving forward.

The gravamen of this lawsuit arises from personal injuries allegedly sustained by plaintiff on January 9, 2019, while working at the premises owned by defendant/third-party plaintiff, 511 West, located at 511 West 25th Street. Plaintiff’s left hand was allegedly caught beneath an air conditioning unit while he was installing the subject unit during the course of his employment with third-party defendant, Cool Breeze Air Conditioning Inc. (“Cool Breeze”).

Whether or not the third-party defendant is to have any liability at all depends upon whether the plaintiff recovers anything from the defendant, the third-party

plaintiff. As such, the Court will first consider defendant 511 West and plaintiff's motion for summary judgment.

At the outset, the Court notes that plaintiff does not oppose the 511 West's motion for summary judgment as to Labor Law 241(6) and common law negligence claims. Accordingly, the Court will proceed with considering only the arguments made in support of Labor Law 240.

Labor Law 240 is a codification of the common-law duty of landowners and general contractors to provide workers with a reasonably safe place to work (*Seem v Premier Cmap Co., LLC*, 200 AD3d 921 [2d Dept 2021]). It "was designed 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" (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494 [1993]). To establish liability under Labor Law 240(1), there must be a violation of the statute, and the violation must be a proximate cause of the plaintiff's injury (*Cioffi v Target Corp.*, 188 AD3d 788 [2d Dept 2020]). "Whether a plaintiff is entitled to recovery under Labor Law 240(1) requires a determination of whether the injury sustained is the type of elevation-related hazard to which the statute applies" (*Wilinski v 334 E 92nd Hous Dev Fund Corp.*, 18 NY3d 1 [2011]). "A defendant's failure to provide workers with adequate protection from reasonably preventable, gravity-related accidents will result in liability under Labor Law 240(1)" (*Id.*). "Labor Law 240(1)'s contemplated hazards are those related to the effects of gravity where protective devices are called for either because of a difference between the elevation level of the required work and a lower level or a difference between the elevation level where the worker is positioned, and the higher level of the materials or load being hoisted or secured" (*Id.*).

The Court finds that the plaintiff is not precluded from recovery under Labor Law 240(1). The elevation differential could not be viewed as de minimis, particularly given the weight of the object and the amount of force it was capable of generating, even over the course of a relatively short descent. Thus, the plaintiff suffered harm that flowed directly from the application of the force of gravity to the air conditioning unit. However, though the risk here arose from a physically significant elevation differential, it remains to be seen whether plaintiff's injury was the direct consequence of defendants' failure to provide adequate protection against that risk. Plaintiff asserts, but does not demonstrate, that protective devices such as a hoist or ropes could have been used to secure the air conditioning unit and prevent

the accident. Defendant asserts, but fail to demonstrate, that no protective devices were called for aside from the car jack.

The Court concludes, therefore, that while there is a potential “causal connection between the objects inadequately regulated descent and plaintiff’s injury, neither party, including third-party defendant, Cool Breeze, is entitled to summary judgment on plaintiff’s Labor Law claim. Whether plaintiff’s injuries were proximately caused by the lack of safety device of the kind required by the statute is an issue for a trial of fact to determine.

With respect to the branch of motion seeking indemnification, “it is well settled that, where an owner or contractor is held liable to a plaintiff pursuant to Labor Law 240, the owner or contractor may recover, under familiar common-law principles, full indemnification from the actor who caused the action and where the cause is shared contribution (*Kelly v Diesel Constr Div of Carl A Morse, Inc.*, 35 NY2D 1 [1974]). As such, the matter of indemnification is determined pursuant to the final determination of the entire action.

Accordingly, it is

ORDERED that third-party defendant, Cool Breeze’s motion for summary judgment and dismissing the plaintiff’s Complaint is denied; and it is further

ORDERED that defendant, 511 West’s motion for summary judgment is similarly denied in its entirety; and it is further

ORDERED that plaintiff’s motion for summary judgment is denied; and it is further

ORDERED that third-party defendant’s motion for summary judgment and dismissing third-party plaintiff’s claim for indemnification is denied.

The foregoing constitutes the decision and order of this court.

Dated: FEB 07 2024




JOSEPH J. ESPOSITO, J.S.C