

Carbajal v 399 Sunrise Hwy. Corp.
2024 NY Slip Op 35545(U)
March 25, 2024
Supreme Court, Nassau County
Docket Number: Index No. 601176/20
Judge: Erica L. Prager
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

PRESENT: ERICA L. PRAGER, J.S.C.

ALEXANDER CARBAJAL,

Plaintiff,

IAS/TRIAL PART 18

Motion Seq.: 006, 007

Submission Date: 1/30/24

-against-

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**399 SUNRISE HIGHWAY CORP., FADI ALMAHMOUD,
a/k/a FADI MAHMOUD, TILE WORLD IMPORT CORP.,
d/b/a TILE EXPO, TILE EXPO INC. and EXPO KITCHEN
& BATH, INC.,**

Defendants.

DECISION AND ORDER

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Upon the foregoing papers, the following motions are determined herein.

Motion Sequence 6. Plaintiff's motion for an Order granting the plaintiff leave to reargue the Decision and Order dated August 1, 2023, which denied plaintiff's motion for summary judgment as against defendant, 399 SUNRISE HIGHWAY CORP., and upon reargument, granting plaintiff's motion as against defendant, 399 SUNRISE HIGHWAY CORP., along with such other and further relief as to this Court may seem just and proper.

Motion Sequence 7. Cross-motion by defendant 399 SUNRISE HIGHWAY CORP. pursuant to CPLR 2221(d) granting the defendants 399 SUNRISE HIGHWAY CORP., leave to reargue the Decision and Order dated August 1, 2023, and upon reargument dismissing plaintiff's Labor Law §240(1) cause of action, together with such other and further relief as this Court may deem just, proper and equitable.

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This is an action to recover damages for injuries allegedly sustained by plaintiff while he was working on a construction project at commercial real property. The accident occurred when a blade of a forklift being used to transport a steel column broke off (or became dislodged) and fell, and struck him in the face. By Decision and Order dated August 1, 2023 (the "Prior Order"), this Court, among other things: (i) denied plaintiff's motion for summary judgment on his Labor Law §240(1) claim as against all defendants, and (ii) denied the corporate defendants' motions for summary judgment dismissing plaintiff's Labor Law §240(1) claim. The Court refers to the Prior Order for a more complete recitation of the underlying facts and rationale of the Court's decision.

Plaintiff now moves for leave to reargue the motion underlying the Prior Order, and upon reargument, seeks an Order granting summary judgment on his claim for liability pursuant to Labor Law §240(1) as against defendant 399 SUNRISE HIGHWAY CORP. ("399 SUNRISE"). Defendant 399 SUNRISE opposes plaintiff's motion, cross-moves for leave to reargue, and upon reargument, seeks summary judgment dismissing such claim. In the alternative, 399 SUNRISE argues that if plaintiff is granted summary judgment on his Labor Law § 240(1) claim, then same should be entered as against the general contractor, defendants TILE WORLD IMPORT CORP., d/b/a TILE EXPO, TILE EXPO INC. and EXPO KITCHEN & BATH, INC. (the "TILE Defendants").

"[M]otions for reargument are addressed to the sound discretion of the court, and may be granted upon a showing that the court overlooked or misapprehended the facts or law or for some reason mistakenly arrived at its earlier decision." *Coke-Holmes v. Holsey Holding, LLC* 189 A.D.3d 1162, 1164 (2nd Dept. 2020). A motion for leave to reargue "is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided." *Mazinov v. Rella*, 79 A.D.3d 979, 980, 912 N.Y.S.2d 896 (2d Dept. 2010).

Upon the record presented, the Court finds that plaintiff has established a basis for reargument with respect to the Court's denial of his motion for summary judgment on his Labor Law §240(1) claim as against defendant 399 SUNSHINE. Thus, plaintiff is hereby granted leave to reargue. In the view of this Court, however, defendant 399 SUNRISE has not established a basis for reargument with respect to the Court's denial of its motion for summary judgment dismissing plaintiff's Labor Law §240(1) claim. Nonetheless, the Court finds that reconsideration of the issues pertaining to the liability of 399 SUNRISE is necessitated by the granting of plaintiff's motion.

Upon reconsideration, the Court adheres to its determination that Labor Law §240(1) imposed a statutory duty "to provide Plaintiff proper protection not only from the hazard of the steel column falling, but from a defective component of the forklift falling." See Prior Order, citing *Jiron v China Buddhist Assn.*, 266 AD2d 347 (2d Dept 1999). Accordingly, the Court adheres to its finding that plaintiff's accident was the type of accident that may give rise to liability under Labor Law §240(1).

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The question then becomes which of the defendants, if any, may be held liable as a matter of law. Labor Law §240(1) imposes absolute liability against the property owner or an agent of the owner who breaches a duty thereunder. *Sanchez v. Metro Builders Corp.*, 136 A.D.3d 783, 786 (2d Dept. 2016). “A general contractor is not considered a statutory agent of the property owner for Labor Law § 240(1) liability purposes, unless that contractor had the authority to supervise and control significant aspects of the construction project, such as safety, at the time of the accident.” *Id.*

Applying these principles, the Court adheres to its prior determination denying plaintiff’s motion for summary judgment as against the TILE Defendants. Notably, plaintiff does not seek reargument with respect to this portion of the Prior Order. Only 399 SUNRISE does so, as an alternative form of relief.

Upon the record presented, however, the Court does not find that 399 SUNRISE has established a basis for reargument on this issue. As the Court found in the Prior Order, “while the record indicates that Tile Expo was the general contractor of the construction project, the record is unclear as to Tile’s involvement herein.” The evidence cited by SUNRISE – that Tile Expo was the party listed on the Building Permit, and the party that contracted with and paid all of the subcontractors, including plaintiff’s employer – was not overlooked by the Court, but rather, was considered as supportive of the finding that Tile Expo was the general contractor. In this Court’s view, however, the evidence did not establish whether or not Tile Expo, or any of the TILE Defendants, was a general contractor in anything more than name only. Particularly insofar as FADI ALMAHMOUD, a/k/a FADI MAHMOUD was the president of both 399 SUNRISE and Tile Expo, the record is not clear with respect the scope of each entity’s supervisory authority and responsibility for safety at the work site. It cannot be determined on the record presented whether or not the entity Tile Expo, or any of the TILE Defendants, was an agent of the owner, with authority to supervise and control “significant aspects of the construction project, including safety, at the time of the accident.” See *Sanchez, supra*. Accordingly, the Court found, and adheres to the finding, that the issue cannot be decided as a matter of law on the record presented.

Where the Court finds the Prior Order to be erroneous is in its finding that if summary judgment was unavailable as against the TILE Defendants, it must also be unavailable as against 399 SUNRISE. Notwithstanding their relationship, the potential liability of these two entities under Labor Law §240(1) is distinguishable. 399 SUNRISE, as property owner, may be liable as a matter of law, even if there are issues of fact as to the liability of the TILE Defendants, as general contractor. See *Sanchez*, 136 A.D.3d at 786.

The record is clear that 399 SUNRISE was the owner of the subject premises. The law is clear that the property owner and any agent of the owner owes a non-delegable duty to protect workers from the special hazards contemplated by Labor Law §240(1). In view of the Court’s finding that such duty is breached when a worker is injured by an object falling from a hoist, even if that

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object is a defective part of the hoist itself, and insofar as the defendants have raised no issues of fact with respect to how the accident occurred, the Court finds that 399 SUNRISE, as property owner, may be held liable as a matter of law pursuant to Labor Law §240(1).

The Court has considered the remaining contentions of the parties and finds that they do not require discussion or alter the determination herein. Based upon the foregoing, it is

ORDERED, that plaintiff's motion for leave to reargue the Prior Order, and upon reargument, granting plaintiff's motion for summary judgment as against defendant, 399 SUNRISE (*Mot. Seq. 006*) is **granted**; and it is further

ORDERED, that 399 SUNRISE's cross-motion for leave to reargue (*Mot. Seq. 007*) is **denied**.

This constitutes the Decision and Order of the Court.

Dated: March 25, 2024
Mineola, NY, 11501

ENTER:



HON. ERICA L. PRAGER, J.S.C.

ENTERED

Mar 27 2024

NASSAU COUNTY
COUNTY CLERK'S OFFICE

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