

Chuez v Royal Charter Props. Inc.

2025 NY Slip Op 30673(U)

February 28, 2025

Supreme Court, New York County

Docket Number: Index No. 157616/2021

Judge: Lyle E. Frank

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

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

-----X

TAMARA CHUEZ,

Plaintiff,

- v -

ROYAL CHARTER PROPERTIES INC.,ARIANA
CONTRACTING INC.,BAY RESTORATION CORP.,

Defendant.

-----X

ROYAL CHARTER PROPERTIES INC.

Plaintiff,

-against-

BAY RESTORATION CORP.

Defendant.

-----X

INDEX NO. 157616/2021

MOTION DATE 08/20/2024,
08/27/2024

MOTION SEQ. NO. 002 003

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595441/2022

The following e-filed documents, listed by NYSCEF document number (Motion 002) 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 80, 81, 90, 91, 92, 93, 94, 95, 96, 99, 100, 102 were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 82, 83, 84, 85, 86, 87, 88, 89, 97, 98, 101, 103, 104 were read on this motion to/for JUDGMENT - SUMMARY.

This action arises out of injuries allegedly sustained by plaintiff when she fell off a ladder at a construction site. Defendants/third-party plaintiff, Royal Charter Properties Inc. (“Royal Charter”), move for summary judgment, motion seq. 002, on its claims for indemnification from defendant/third-party defendant Bay Restoration Corp. (“Bay Restoration”). Plaintiff moves for summary judgment as to her claims pursuant to Labor Law § 240 (1), motion seq. 003. The Court will address each motion in turn.

Background

This action arises from plaintiff's accident that occurred on July 28, 2021. At the time of the accident, defendant, Royal Charter owned the property located at 600 West 165th Street, New York, the location of the subject accident. Royal Charter contracted with Bay Restoration to renovate the subject location. Bay Restoration subcontracted non-party Chris Restoration to perform the respective work. Plaintiff was employed by Chris Restoration.

Plaintiff alleges that on July 28, 2021, at approximately 4:15 p.m., she was caused to fall within Apartment 2L of the subject premises. Specifically, plaintiff alleges while performing demolition, using a crowbar to remove sheetrock off a wall, she was caused to fall from a ladder because one of the ladder's feet bent causing the ladder to collapse.

Standard of Review

It is a well-established principle that the "function of summary judgment is issue finding, not issue determination." *Assaf v Ropog Cab Corp.*, 153 AD2d 520, 544 [1st Dept 1989]. As such, the proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law. *Alvarez v Prospect Hospital*, 68 NY2d 320, 501 [1986]; *Winegrad v New York University Medical Center*, 64 NY 2d 851 [1985]. Courts have also recognized that summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted.

Motion Sequence 002

Defendant/third-party plaintiff seeks summary judgment on its contractual indemnification claims as against Bay Restoration. Bay Restoration opposes the instant motion.

In support of its motion, Royal Charter relies on the portion of the contract between it and Bay Restoration that provides in pertinent part that Royal Charter is entitled to indemnification “to the extent such losses are attributable: (i) to vendor's negligence, willful misconduct, or breach of its obligations hereunder.” *See* NYSCEF Doc. 67.

Based on this language Royal Charter asserts that Bay Restoration’s breach of the contract, by subcontracting the work at the premises without the consent of Royal Charter, entitles it to indemnification in this action.

At this point, the Court finds that Royal Charter has failed to establish a prima facie entitlement to judgment as a matter of law. The plain reading of the contract requires Bay Restoration to indemnify if a loss is attributed to the “breach of its obligations” under the contract. It appears undisputed that the contract was breached, in that Bay Restoration obtained a subcontractor without the approval of Royal Charter. However, Royal Charter fails to establish that this breach was the cause of the loss. Stated differently, Royal Charter has not established that plaintiff having sustained an injury at the worksite and commenced the instant litigation was a result of the breach of contract, or any other negligence or misconduct of Bay Restoration. Accordingly, Royal Charter’s motion seeking indemnification is denied.

Motion Sequence 003

Plaintiff seeks summary judgment on its claims pursuant to Labor Law § 240 (1), as against Royal Charter and Bay Restoration. Both Royal Charter and Bay Restoration oppose the motion.

In support of tis motion, plaintiff contends that the ladder was inadequate. The un rebutted testimony is that the ladder failed and collapsed causing plaintiff’s injuries.

In opposition, defendants contend that there is a question of fact regarding the cause of the accident. Specifically, the defendants rely on the affidavit of Mr. William Flores, owner of Chris Restoration, who testified that the day after the accident he inspected the two ladders on site, that would have been used by plaintiff and her co-worker, and did not observe any defects. Defendants contend that this affidavit creates a question of fact precluding a finding of summary judgment in plaintiff's favor.

Labor Law § 240 (1) provides in pertinent part that

"[a]ll contractors and owners and their agents, [...] who contract for but do not direct or control the work, in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such 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."

It is well established law that an accident alone does not establish a Labor Law § 240 (1) violation or causation. (*Blake v Neighborhood Hous. Servs. of N.Y. City, Inc.*, 1 NY3d 280 [2003]; *Rudnik v Brogor Realty Corp.*, 45 AD3d 828 [2d Dept 2007]; *Forschner v Jucca Co.*, 63 AD3d 996 [2d Dept 2009]). Rather, the protections afforded by this section are invoked only where plaintiff demonstrates that he was engaged in an elevation-related activity and the failure to provide him with a safety device was the proximate cause of his injuries. *See id.*

Plaintiff has established that Labor Law § 240(1) applies in the instant matter. While defendants attempt to rely on an inspection of ladders after the date of the accident, the Court finds that the inspection is insufficient to raise a triable issue of fact. Mr. Flores was not on site on the date of the incident, and it has not sufficiently established that the ladders inspected were the same ladders on site or used by the plaintiff. While defendants contend that the affidavit is

sufficient to establish that there are “conflicting versions of how the accident occurred”, the Court is not persuaded that the affidavit does in fact create a question.

The First Department in *Montalvo* found that plaintiff did not have to show that the ladder was defective, rather the contractor’s failure to secure the ladder established a violation of Labor Law § 240 (1) (*Montalvo v J. Petrocelli Constr., Inc.*, 8 AD3d 173, 175 [1st Dept 2004]). Accordingly, it is hereby

ADJUDGED that motion sequence 002, Royal Charter Properties Inc.’s motion for summary judgment is denied; and it is further

ORDERED that plaintiff’s motion on her claims pursuant to Labor Law § 240 (1), is granted.

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LYLE E. FRANK, J.S.C.

2/28/2025

DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE