Medina v Structure Tone
2025 NY Slip Op 30757(U)
March 6, 2025
Supreme Court, New York County
Docket Number: Index No. 156187/2019
Judge: Sabrina Kraus
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. SABRINA KRAUS** **PART** **57M**

Justice

----------X

JUAN TORRES MEDINA,

Plaintiff,

- v -

STRUCTURE TONE, EGG ELECTRIC INC.,WELLS FARGO BANK N.A.,

Defendants.

----------X

INDEX NO. 156187/2019

MOTION DATE 05/30/2024

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

STRUCTURE TONE, WELLS FARGO BANK N.A.

Plaintiff,

-against-

PENAVA MECHANICAL CORP.

Defendant.

----------X

Third-Party
Index No. 595091/2021

The following e-filed documents, listed by NYSCEF document number (Motion 001) 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 137, 145, 146, 148, 150, 152, 153, 154, 159, 160, 163, 165

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

The following e-filed documents, listed by NYSCEF document number (Motion 002) 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 138, 139, 140, 141, 142, 143, 147, 149, 151, 155, 156, 157, 158, 161, 162, 164, 166, 167, 168

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

BACKGROUND

Plaintiff commenced this action seeking damages for personal injuries allegedly sustained at work on August 28, 2018, as a result of him tripping and falling on an exposed wire at the 11th

floor of 30 Hudson Yards in Manhattan ("building"). Plaintiff asserts causes of action sounding in negligence and for violations of Labor Law §§ 200, 240(1), and 241(6).

Defendant/third-party plaintiff Wells Fargo Bank N.A. ("Wells") is the owner of the building. Wells hired defendant/third-party plaintiff Structure Tone ("Structure") as general contractor for the construction project that Plaintiff was working on (the "project"). Structure hired defendant Egg Electric, Inc. ("Egg") and third-party defendant Penava Mechanical Corp. ("Penava") as subcontractors on the project. Penava employed Plaintiff as a welder/pipefitter.

PENDING MOTIONS

On April 14, 2024, Egg moved for an order pursuant to CPLR § 3212 dismissing plaintiff's complaint and all cross claims, with prejudice, against it. (Mot. Seq. 1).

On May 3, 2024, Structure and Wells moved for an order pursuant to CPLR §3212 dismissing plaintiff's complaint and all cross claims against them and granting them summary judgment on their claims for contractual defense and indemnification, common law negligence, failure to procure insurance, and attorneys' fees from Egg and Penava (Mot. Seq. 2).

The motions are consolidated herein and determined as set forth below.

FACTS

Based on the parties' statements of material fact and counter-statements thereto, the following facts are undisputed.

Plaintiff testified was working on the project performing pipe welding and plumbing as an employee of Penava. While working on the project, he only took orders from his foreman, Sal, and his partner Jake, who were both employees of Penava. On the day of his accident, he was tasked with welding pipes that would be used for a hot and cold water HVAC system, located in an open area on the 11th floor by Sal. Plaintiff's work area was approximately 75-90

feet from Penava's gang box, which he and a co-worker had placed weeks earlier. From the gang box, Plaintiff could see ground cable on the floor between him and the workstation. The only other way to access the workstation was blocked. The cable was in the same position it had been for three days prior, and Plaintiff had complained to the electrician foreman about it three times. Plaintiff had no trouble seeing the cable and was looking at the cable as he walked, however his right foot got caught on a cable causing him to trip. There was a slight protrusion of the portion of the wire that Plaintiff tripped on, that he did not notice until after the accident. Plaintiff did not know how high the cable was protruding.

Structure project manager William Murphy ("Murphy") testified that Structure was the construction manager/general contractor for the project, which involved building offices for Wells. He walked the site every day for multiple purposes, including checking for tripping hazards. He did not recall any complaints about the ground cable before Plaintiff's accident but stated that ground cable is part of the normal course of construction. The ground wire at issue was to remain underneath the raised flooring system once installed and get clamped to the pedestals. After observing a photograph of the ground cable, Murphy stated that it was a condition where he would have expected some kind of warning or barricade or cone to alert employees to its presence. Murphy testified that Egg, as the electrical subcontractor, would be the only ones using the ground wires, and that Egg would have been responsible for installing a warning sign for the ground wire.

Francisco Arriaga, general foreman for Egg, testified that part of Egg's work was to install ground cable. He said the typical procedure was that they would be given an area of about 200 by 200 square feet at a time by Structure, where they would install ground cables and fasten them to the floor and the carpenters would place a pedestal for the raised floor. It was an ongoing

procedure at the time of Plaintiff's accident, and the area was only to be accessed by Egg workers and the carpenters. As part of their work Egg put up safety cones, and safety caution tape to let others know that the ground wiring was being installed. Egg connected the ground wire to the floor with half-inch straps drilled into the floor, and the ground wires had slack between the straps so it could connect to the pedestals.

DISCUSSION

Summary Judgment Standard

Summary judgment is a drastic remedy reserved for those cases where there is no doubt as to the existence of material and triable issues of fact *Sillman v Twentieth Century–Fox Film Corp.*, 3 NY2d 395, 404 (1957).

To prevail on a motion for summary judgment, the movant must establish, *prima facie*, its entitlement to judgment as a matter of law, providing sufficient evidence demonstrating the absence of any triable issues of fact. CPLR 3212(b); *Matter of New York City Asbestos Litig.*, 33 NY3d 20, 25-26 (2019). If this burden is met, the opponent must offer evidence in admissible form demonstrating the existence of factual issues requiring a trial; "conclusions, expressions of hope, or unsubstantiated allegations or assertions are insufficient." *Justinian Capital SPC v WestLB AG*, 28 NY3d 160, 168 (2016), quoting *Gilbert Frank Corp. v Fed. Ins. Co.*, 70 NY2d 966, 967 (1988).

In deciding the motion, the evidence must be viewed in the "light most favorable to the opponent of the motion and [the court] must give that party the benefit of every favorable inference." *O'Brien v Port Auth. of New York and New Jersey*, 29 NY3d 27, 37 (2017).

Plaintiff's Labor Law §§ 240(1) and 241(6) claims

As Plaintiff does not oppose dismissal and states in his opposition papers that he is withdrawing his Labor Law §§ 240(1) and 241(6) claims, those claims are dismissed.

Plaintiff's Labor Law § 200 and Common Law Negligence Claims against Structure and Wells

Wells and Structure seek dismissal of Plaintiff's Labor Law § 200 and common law negligence claims against them, contending that they did not create the condition that caused Plaintiff's accident or have actual or constructive notice of it. They also assert that the cable was integral to the work.

In opposition, Plaintiff argues that there are questions of fact as to whether Structure Tone had notice, as Plaintiff testified that the wires were on the floor for several days prior to his accident and the project manager testified that he checked the jobsite for safety issues at least once per day. Plaintiff argues that even if the wire was visible, the fact that it was protruding from the ground was not open and obvious, and that defendants have failed to establish that the condition was not inherently dangerous. He argues that the "integral to the work" defense is not applicable to Labor Law § 200 and common law negligence claims.

Egg asserts in separate opposition to Wells and Structure's motion that in the event that Plaintiff's complaint is not dismissed in its entirety, there are still issues of fact as to Structure's negligence.

The duty to provide a safe worksite imposed upon owners, general contractor and their agents are based upon supervision and control. "The purpose of the [Labor Law] is to protect workers by placing the 'ultimate responsibility' for worksite safety on the owner and general contractor instead of the workers themselves." *Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d

494, 500 (1993); *Rocovich v Consolidated Edison Co.*, 78 NY2d 509, 513 (1991). Labor Law § 200 is the codification of the common-law duty of owners, general contractors and their agents to protect the health and safety "of all persons employed therein or lawfully frequenting such places." *Allen v Cloutier Constr. Corp.*, 44 NY2d 290, 299 (1978). An implicit precondition of this duty "is that the party charged with that responsibility has the authority to control the activity bringing about the injury." *Russin v Picciano & Son*, 54 NY2d 311, 317 (1981).

Labor Law § 200 applies where workers are injured as a result of dangerous or defective premises conditions at a worksite or where a worker is injured due to the way the work is performed. When a premises condition is at issue, the owner or general contractor may be held liable for a violation of the statute if they created the condition that caused the accident or had actual or constructive notice of the dangerous condition. *See Alonzo v Safe Harbors of the Hudson Housing Dev. Fund Co., Inc.*, 104 AD3d 446 (1st Dept 2013); *Singh v Black Diamonds LLC*, 24 AD3d 138 (1st Dept 2005).

When the means and manner of the work are at issue, "a plaintiff must show that the owner or agent have the authority to control the activity bringing about the injury to enable it to avoid or correct any unsafe condition." *Lemanche v MIP One Wall St. Acquisition, LLC*, 190 AD3d 422 (1st Dept 2021); *see Rizzuto v L.A. Wegner Contr. Co.*, 91 NY2d 343 (1998).

> Where… the plaintiff's accident arose from an allegedly dangerous premises condition, a property owner may be held liable in common-law negligence and under Labor Law § 200 when the owner has control over the work site and either created the dangerous condition causing an injury, or failed to remedy the dangerous or defective condition while having actual or constructive notice of it (internal citations omitted). Thus, where a plaintiff's injury arose from a dangerous condition at a work site, a property owner moving for summary judgment dismissing a cause of action alleging common-law negligence has "the initial burden of making a prima facie showing that it neither created the dangerous condition nor had actual or constructive notice of its existence" (*Ventimiglia v Thatch, Ripley & Co.*, LLC, 96 AD3d 1043, 1046 [2012]; *see Nicoletti v Iracane*, 122 AD3d 811, 812 [2014]).

Korostynskyy v 416 Kings Hwy., LLC, 136 AD3d 758 (2d Dept 2016).

Both Structure and Wells's motion papers and Plaintiff's opposition papers are silent as to whether Plaintiff's injury arose out of the means and methods of his work, as opposed to a premises condition. However, as both only present arguments based on it being a result of a premises condition, the Court will only consider the latter. *See e.g. Prevost v One City Block LLC*, 155 AD3d 531 (1st Dept 2017 (*finding plaintiff slipping on loose pipe was a premises condition and not due to manner of work*).

Here, it is uncontroverted that the ground cable was open and readily observable, and that Structure regularly inspected the jobsite for safety issues. Thus, there are at minimum issues of fact as to whether Structure had actual or constructive notice of it.

As to the integral to the work defense, while it is applicable generally to Labor Law 200 claims, it is not applicable to the case at bar. No duty is imposed pursuant to Labor Law § 200 as to hazards which are "'part of or inherent in' the very work being performed," and which are readily observable. *Cruz v Metropolitan Transit Auth.*, (1st Dept 2021); quoting *Bombero v NAB Constr. Corp.*, 10 AD3d 170 (1st Dept 2004); *see Gasper v Ford Motor co.*, 13 NY2d 104 (1964).

Here, while Plaintiff testified that the cable was open and observable for several days prior to his accident, he claims that he did not see the section of cable protruding from the ground until after the accident. Additionally, while it is not disputed that the ground cable was an integral part of the overall work being performed, it was not an integral part of the work Plaintiff himself was hired to perform as a pipe welder and plumber. *Cf. Bombero*, 10 AD3d at 171-72 (*finding defendants owed no duty to construction engineer injured while traversing steel rebar*

where his job required him to inspect steel rebar); *Anderson v Bush Industries, Inc.*, 280 AD2d 949 (4th Dept 2001) (*UPS worker injured lifting boxes found to be an inherent part of his job*).

Thus, there remain issues of fact as to Structure and Wells's negligence, and their motion to dismiss the Labor Law § 200 and common law negligence claims is denied.

Plaintiff's Labor Law § 200 and Common Law Negligence Claims against Egg

Egg seeks dismissal of the Labor Law § 200 and common law negligence claims against it, contending that the cable was readily observable, and was an integral part of the installation work being performed.

In opposition, Plaintiff argues that Egg's motion should be denied as its own witness testified that Egg created the condition that caused plaintiff's accident, and thus clearly it had notice of it.

> Where… the plaintiff contends that his or her injuries arose not from the manner in which the work was performed, but rather from an allegedly dangerous condition at the work site, liability under common-law negligence may be imposed upon a subcontractor where it had control over the work site and either created the allegedly dangerous condition or had actual or constructive notice of it (*see Vita v. New York Law Sch.*, 163 A.D.3d 605, 607, 80 N.Y.S.3d 387; *Payne v. 100 Motor Parkway Assoc., LLC*, 45 A.D.3d 550, 553, 846 N.Y.S.2d 211; see also *Bruno v. Board of Educ. of Cent. School Dist. #5*, 74 A.D.3d 1114, 1115, 907 N.Y.S.2d 23; *Morgan v. Neighborhood Partnership Hous. Dev. Fund Co., Inc.*, 50 A.D.3d 866, 867, 855 N.Y.S.2d 671). An award of summary judgment in favor of a subcontractor on a negligence cause of action is improper where the "evidence raise[s] a triable issue of fact as to whether [the subcontractor's] employee created an unreasonable risk of harm that was the proximate cause of the injured plaintiff's injuries" (*Erickson v. Cross Ready Mix, Inc.*, 75 A.D.3d 519, 523, 906 N.Y.S.2d 284 [internal quotation marks omitted]).

Martinez v 281 Broadway Holdings, LLC, 183 AD3d 712, 715 (2d Dept 2020).

Here, it is uncontroverted that Egg laid the cable that Plaintiff tripped on, and therefore is potentially liable for causing the injury. As the Court has ruled *supra* that the integral to the

work defense is not applicable here, the portion of Egg's motion seeking dismissal of Plaintiff's Labor Law § 200 and common law negligence claims is denied.

Additionally, as the sole basis cited by Egg for the dismissal of all cross claims against it was that it was not negligent, that portion of its motion is denied.

Structure and Wells's Claims for Contractual Defense and Indemnification, Attorney Fees and Failure to Procure Insurance against Egg and Penava

Structure and Wells argues that they are entitled to a conditional order of defense and indemnification, including attorney fees, against Egg and Penava, as Plaintiff's injuries arose out of their work, and any finding liability against it would be purely vicarious, and it was not negligent.

In opposition, Egg argues that Structure cannot be indemnified by its own negligence.

In separate opposition, Penava argues that Plaintiff's accident arose out of Egg's conduct, not its own.

Structure's respective subcontracts with Egg and Penava contain identical indemnification provisions, which read:

> 11.2 To the fullest extent by Law, Subcontractor will indemnify and hold harmless Structure Tone, LLC., the owner of the project, the owner of the property where the job/project is located, and all parties required to be indemnified by the prime contract entered into by Structure Tone, LLC. in connection with the job/project work, and any of their trustees, officers, members, directors, agents, affiliates, parents, subsidiaries, and servants and employees from and against any and all claims, suits, liens, judgments, damages, losses and expenses including reasonable legal fees and costs arising in whole or in part and in any manner from the acts, omissions, breach or default of Subcontractor, sub-subcontractors, its officers, directors, agents, employees and Subcontractors in connection with the performance of any work by subcontractor, its employees and sub-subcontractors pursuant to this Subcontract/Purchase Order or a related Proceed Order. Subcontractor will defend and bear all costs of defending any action or proceedings brought against Structure Tone, LLC. and or Owner, their officers, directors, agents and employees, arising in whole or in part out of any such acts, omission, breach or defaults.

Here, as Structure and Wells assert no arguments in support of their contention that they are entitled to summary judgment on its failure to procure insurance claim, that portion of the motion is denied.

Additionally, as Structure and Wells concede that they must prove that they lacked negligence to be entitled to a conditional order of defense and indemnification, and as there remain issues of fact as to their negligence, that portion of their motion is also denied.

CONCLUSION

Accordingly, it is hereby:

ORDERED that defendant Egg Electric Inc.'s motion for summary judgment (mot. seq. 1) is granted, to the extent that plaintiff's Labor Law §§ 240(1) and 241(6) claims are dismissed against it, and is otherwise denied; and it is further

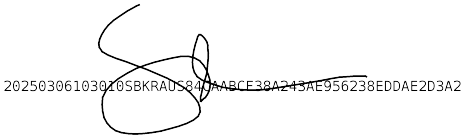
ORDERED that Defendants/third-party plaintiffs Wells Fargo Bank N.A and Structure Tone's motion for summary judgment (mot. seq. 2) is granted, to the extent that plaintiff's Labor Law §§ 240(1) and 241(6) claims are dismissed against them, and is otherwise denied; and it is further

ORDERED that, within 20 days from entry of this order, defendants shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website)].

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh);]; and it is further

ORDERED that this constitutes the decision and order of this court.



3/6/2025
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:		**CASE DISPOSED**			X	**NON-FINAL DISPOSITION**	
		GRANTED		**DENIED**	X	**GRANTED IN PART**	**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**	**REFERENCE**