

Paguay v 61 N. 11, LLC

2025 NY Slip Op 32081(U)

June 5, 2025

Supreme Court, Kings County

Docket Number: Index No. 521452/2020

Judge: Carolyn E. Wade

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: HON. CAROLYN E. WADE, JSC

-----X
BYRON PAGUAY,

Plaintiff,

Index No. 521452/2020

-against-

DECISION AND ORDER

61 NORTH 11, LLC and CW CONSTRUCTION LLC,

Defendants.

MS* 2,3,4

-----X
61 NORTH 11, LLC and CW CONSTRUCTION LLC,

Third-Party Plaintiffs,

-against-

STEEL BOYZ INC.,

Third-Party Defendant.
-----X

Upon the foregoing papers, and after oral argument, Plaintiff Byron Paguay ("Plaintiff") moves for summary judgment on the issue of liability under Labor Law §§ 240(1) and 200, and common-law negligence against the Defendants/Third-Party Plaintiffs, 61 North 11, LLC, and CW Construction LLC (collectively "Defendants" or "Third-Party Plaintiffs"). (NYSCEF Doc Nos. 89-103).

Defendants, 61 North 11, LLC, and CW Construction LLC, move for summary judgment granting its third-party claim claims against Third-Party Defendant, Steel Boyz, and dismissing Plaintiff's claims under Labor Law §§ 200, 240(1), 246(1), and common law negligence. (NYSCEF Doc Nos. 104-110).

Third-Party Defendant, Steel Boyz, Inc. ("Steel Boyz"), moves for summary judgment and dismissal of Defendants/Third-Party Plaintiffs' Complaint. (NYSCEF Doc Nos. 74-88).

Plaintiff commenced this action against Defendants 61 North 11, LLC and CW Construction LLC for personal injuries allegedly sustained on October 5, 2018, at the premises located at 61 North 11th Street, Brooklyn, NY. Plaintiff alleges that, while at the premises, he was removing tools from the freight elevator when the elevator door fell six inches and hit Plaintiff on his left side, causing serious injuries. At the time of the alleged accident, Plaintiff was employed as a welder by Steel Boyz, a subcontractor for Defendant/Third Party Plaintiff CW Construction LLC.

In support of his summary judgment motion, Plaintiff contends that the freight elevator he used to transport himself and his tools was the functional equivalent of a hoist. Furthermore, Plaintiff contends that the elevator's failure was a proximate cause of his injuries and prima facie proof that Defendants violated Labor Law §240(1). Lastly, Plaintiff contends that the elevator constituted a defective premises condition and a violation of Labor Law §200.

In opposition to Plaintiff's motion, and in support of their own summary judgment motion, Defendants/Third-Party Plaintiffs 61 North 11, LLC and CW Construction LLC argue that there is no legal precedent for Plaintiff's argument that the elevator was a functional equivalent of a hoist. Defendants 61 North 11, LLC and CW Construction LLC further argue that the elevators are not designed as a safety device within the meaning of Labor Law §240(1). Additionally, Defendants argue that they did not cause, create, or have notice of any allegedly defective condition involving the elevator to trigger Labor Law §200. Lastly, Defendants/Third-Party Plaintiffs 61 North 11, LLC and CW Construction LLC argue that they did not supervise or direct the work of the subcontractor's, Steel Boyz, employees. If this Court finds that Defendants 61 North 11, LLC and CW Construction LLC are liable to any of Plaintiff's causes of action, Defendants/Third-Party Plaintiffs 61 North 11, LLC and CW Construction LLC should be entitled

to contribution from Third-Party Defendant Steel Boyz.

In support of their summary judgment motion and in opposition to Defendants 61 North 11, LLC and CW Construction LLC's motion, Third-Party Defendant Steel Boyz contends that they did not have any actual or constructive notice of the elevator's alleged condition, nor were they responsible for the maintenance and repair of the elevator. Furthermore, Plaintiff's injuries did not arise from the manner in which the work was performed, but rather as a result of an alleged dangerous condition. As such, the contractual indemnification provision of the agreement between Defendants 61 North 11, LLC and CW Construction LLC and Third-Party Defendant Steel Boyz was not triggered and there is no legal duty for Third-Party Defendant Steel Boyz to provide indemnification.

Plaintiff did not oppose the portion of the Defendants 61 North 11, LLC and CW Construction LLC's motion for summary judgment dismissing Plaintiff's Labor Law §241(6) claim. As such, the portion of the Defendants 61 North 11, LLC and CW Construction LLC's motion seeking to dismiss Labor Law §241(6) is GRANTED.

Plaintiff's Labor Law §240(1) Claim

"The extraordinary protections of Labor Law §240(1) extend only to a narrow class of special hazards and do 'not encompass any and all perils that may be connected in some tangential way with the effects of gravity.'" (*Simmons v. City of N.Y.*, 165 AD3d 725, 726 [2d Dept 2018]). "In determining whether a plaintiff is entitled to the extraordinary protections of Labor Law §240(1), the '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.'" (*Id.*). "Without a significant elevation differential, Labor Law §240(1) does not apply, even if the injury is caused by the application of gravity on an object." (*Id.*

at 726-27). “A plaintiff must also show that ‘the object fell . . . because of the absence or inadequacy of a safety device of the kind enumerated in the statute.’” (*Id.* at 727, quoting *Narducci v. Manhasset Bay Assoc.*, 96 NY2d 259, 268 [2001]).

In the instant action, Plaintiff testified that after opening the door to the elevator and removing his tools, the elevator door fell six inches and hit him on his left side. As such, the subject accident did not involve an elevation related risk as required by Labor Law §240(1). The Plaintiff’s injuries were not the direct consequence of Defendants/Third-Party Plaintiffs 61 North 11, LLC and CW Construction LLC’s failure to provide adequate protection against a risk arising from a physically significant elevation differential. Furthermore, the Plaintiff’s argument that the elevator can be considered a functional equivalent of a hoist fails since “[t]he elevator was not designed as a safety device within the meaning of [Labor Law § 240(1)].” (*Kleinberg v. City of New York*, 61 AD3d 436, 437 [1st Dept 2009], citing *DiPilato v. H. Park Cent. Hotel, LLC.*, 17 AD3d 191, 192 [1st Dept 2005]). As such, Defendants/Third-Party Plaintiffs 61 North 11, LLC and CW Construction LLC did not violate Labor Law §240(1).

Plaintiff’s Labor Law §200 and Common Law Negligence Claims

Labor Law §200 codifies the common-law duty to provide employees with a safe place to work (*Bradley v. Morgan Stanley & Co.*, 21 AD3d 866, 868 [2d Dept 2005]). Cases fall into two broad categories; namely, those where workers are injured because of a dangerous or defective condition at a work site, and those involving the manner in which the work is performed (*Ortega v. Puccia*, 57 AD3d 54 [2d Dept 2008]). When a claim arises out of an alleged dangerous condition, a property owner or general contractor may be held liable in common-law negligence and under Labor Law §200 when the owner or general contractor failed to remedy the dangerous or defective condition while having actual or constructive notice of it. (*Abelleira v. City of New York*, 120

AD3d 1163 (2d Dept 2014); *Shaughnessy v. Huntington Hospital Association*, 147 AD3d 994, 997 [2d Dept 2017]; *Eversfield v. Brush Hollow Realty LLC*, 91 AD3d 814 [2d Dept 2012]). Pursuant to *Ahmed v. Macy's Inc.*, 161 AD3d 446 [1st Dept 2018], maintenance of the freight elevator every month for five months prior to the accident is sufficient to establish regularity of maintenance.

In the instant action, Plaintiff has not satisfied the burden of establishing that a dangerous or defective condition caused his injuries. There was no sufficient evidence that the freight elevator had a defect. Plaintiff testified that he had used the elevator on numerous occasions prior to the accident. Furthermore, there were no prior reports of any incidents involving the freight elevator or its door by Plaintiff, nor Defendant CW Construction LLC's witness Adam Glickman. Additionally, Defendants/Third-Party Plaintiff's elevator maintenance company, Warren Elevator Service Co., Inc., conducted maintenance to the freight elevator in June 2018, July 2018, August 2018, September 2018 and October 2018. None of the maintenance logs leading up to the accident demonstrate that the elevator door was defective. Thus, Plaintiff failed to show that the Defendants/Third-Party Plaintiffs 61 North 11 LLC and CW Construction LLC had any actual or constructive notice that the elevator presented a dangerous or defective condition.

Common Law Indemnity, Contribution, and Contractual Indemnity

A defendant that did not create or have actual or constructive notice of a problem is entitled to summary judgment. (*Isaac v. 1515 Macombs, LLC*, 84 AD3d 457 [1st Dept 2011]; *Bortugino v. New York State Urban Development Corporation*, 191 AD3d 422 [1st Dept. 2011]). “[A] party cannot obtain common-law indemnification unless it has been held to be vicariously liable without proof of any negligence or actual supervision on its own [part]” (*McCarthy v. Turner Const., Inc.*, 17 NY3d 369 [2011]; *Naughton v. City of New York*, 94 AD3d 1 [1st Dept 2012]).

“The right to contractual indemnification depends upon the specific language of the

contract. In the absence of a legal duty to indemnify, a contractual indemnification provision must be strictly construed to avoid reading into it a duty which the parties did not intend to be assumed. The promise [to indemnify] should not be found unless it can be clearly implied from the language and purpose of the entire agreement and the surrounding facts and circumstances.” (*Alfaro v. 65 W.13th Acquisition, LLC*, 75 AD3d 1255 [2d Dept. 2010]; *Tolpa v. Square One Astoria Square LLC*, 125 AD3d 755 [2d Dept 2015]).

Here, Defendants 61 North 11, LLC and CW Construction LLC, not Third-Party Defendant Steel Boyz, actively repaired and maintained the elevator before the alleged accident. As such, Defendants 61 North 11, LLC and CW Construction LLC cannot obtain common law indemnification since they would have had actual notice of any issues of the elevator prior to the alleged accident. Furthermore, the specific language of the indemnity provision in the agreement between Defendants 61 North 11, LLC and CW Construction LLC and Third-Party Defendant Steel Boyz excludes liability created by the negligence of Defendants 61 North 11, LLC and CW Construction LLC. As such, Third-Party Defendant Steel Boyz’s contractual obligation to indemnify Defendants 61 North 11, LLC and CW Construction LLC has not been triggered.

Lastly, the portion of Third-Party Defendant Steel Boyz’s motion to dismiss Defendants 61 North 11, LLC and CW Construction LLC’s third-party cause of action for failure to procure insurance is **GRANTED** since Third-Party Defendant Steel Boyz provided a copy of a Travelers insurance policy with an effective date of July 1, 2018.

Accordingly, based on the above, it is

ORDERED that Plaintiff’s motion for Summary Judgment on the issue of liability (Mot. Seq. 3) is **DENIED**; and it is further

ORDERED that Defendants’ Motion for Summary Judgment (Mot. Seq. 4) is **GRANTED**

TO THE EXTENT of dismissing Plaintiff's claims under Labor Law §§ 200, 240(1), and 246(1);

and it is further

ORDERED that Third-Party Defendant Steel Boyz's Motion for Summary Judgment and dismissal of the Third-Party Complaint (Mot. Seq. 2) is **GRANTED IN ITS ENTIRETY**.

This constitutes the Decision and Order of the Court

Dated: June 5th, 2025

ENTER:



Hon. Carolyn E. Wade, J.S.C.
Hon. Carolyn E. Wade
Supreme Court Justice

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KINGS COUNTY CLERK
FILED