Beltran v 319 Lenox USA LLC
2025 NY Slip Op 32524(U)
July 3, 2025
Supreme Court, Kings County
Docket Number: Index No. 522980/2021
Judge: Devin P. Cohen
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Supreme Court of the State of New York
County of Kings

Part LL1M

Index Number 522980/2021
Seq. 005–008

DECISION/ORDER

SEBASTIAN DUQUE BELTRAN,

Plaintiff,

against

319 LENOX USA LLC, SUNSHINE CONSTRUCTION USA INC, ALL STAR 1 LLC, AGR CONSTRUCTION NY CORP., ARTE PURO INC., AND OXFORD FARMERS CORP.,

Defendants.

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

	Papers Numbered
Notice of Motion and Affidavits Annexed	1–4
Order to Show Cause and Affidavits Annexed	
Answering Affidavits	5–14
Replying Affidavits	15–18
Exhibits	Var.
Other	

Upon the foregoing papers, Oxford Farmers Corp. (Oxford)'s motion for summary judgment (Seq. 005), 319 Lenox USA LLC (Lenox)'s motion for summary judgment (Seq. 006), AGR Construction NY Corp. (AGR)'s motion for summary judgment (Seq. 007), and All-Star 1 LLC (All-Star)'s motion for summary judgment (Seq. 008) are decided as follows:

Introduction and Factual Background

Plaintiff commenced this action to recover for damages he claims to have sustained when he fell from a ladder while performing construction work on August 19, 2021. Plaintiff testified that while he was performing the work, the ladder shifted and he fell to the right (Beltran EBT at 40, 42, 54–55). At the time, plaintiff was carrying sheetrock down the ladder (*id.* at 80). AGR's foreman, Roberto Saldivar, testified that he witnessed plaintiff slip on his own feet because he was climbing down the ladder too fast (Saldivar EBT at 35, 37).

Analysis

On a motion for summary judgment, the moving party bears the initial burden of making a prima facie showing that there are no triable issues of material fact (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003]). Once a prima facie showing has been established, the burden shifts to the non-moving party to rebut the movant's showing such that a trial of the action is required (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).

As an initial matter, motion sequence 008 was withdrawn as all claims against defendant All-Star were discontinued by stipulation on April 21, 2025. Additionally, the plaintiff waived his Labor Law §§ 241 (6) and 200 claims by not addressing defendants' arguments in his opposition (*see Medina v 1277 Holdings, LLC*, 234 AD3d 839 [2d Dept 2025]). Therefore, defendants' motions are granted with respect to those claims.

Labor Law § 240 (1)

Liability under Labor Law § 240 (1) is "absolute" where the failure of a safety device enumerated by the statute (*e.g.* a ladder) is a proximate cause of the plaintiff's accident (*Blake v Neighborhood Hous. Services of New York City, Inc.*, 1 N.Y.3d 280, 287 [2003] [citing *Haimes v. New York Tel. Co.*, 46 N.Y.2d 132, 136 (1978) and *Ross v Curtis–Palmer Hydro–Elec. Co.*, 81 N.Y.2d 494, 500 (1993)]). Only the defendants moved for summary judgment in this action.

Where a plaintiff falls from a ladder "because he lost his balance," and the ladder is not otherwise defective or unsecured, he is not entitled to the protections of Labor Law § 240 (1) (*Pacheo v Recio*, 168 AD3d 867 [2d Dept 2019]). Here, there is conflicting testimony concerning whether the plaintiff fell because the ladder moved, which would constitute a statutory violation, or because he tripped over his own feet, which would not. Therefore,

defendants' motions are denied with respect to summary judgment on plaintiff's Labor Law § 240 (1) claim.

Indemnification and Breach of Contract

The right to contractual indemnification is established by the "specific language of the contract" (*Dos Santos v Power Auth. of State of New York*, 85 AD3d 718, 722 [2d Dept 2011]; quoting *George v Marshalls of MA, Inc.*, 61 AD3d 925, 930 [2d Dept 2009]). "In addition, a party seeking contractual indemnification must prove itself free from negligence, because to the extent its negligence contributed to the accident, it cannot be indemnified therefor" (*Anderson v United Parcel Serv., Inc.*, 194 AD3d 675, 678 [2d Dept 2021]). A party also cannot obtain summary judgment on its common-law indemnification and contribution claims if it has not shown itself free of negligence, as those claims are not yet ripe for summary judgment (*McCarthy v Turner Const., Inc.*, 17 NY3d 369 [2011]).

In the instant action, Oxford's sub-contract with Sunshine contained an indemnification obligation to Sunshine and "the owner" for damages "arising out of the work" (Oxford/Sunshine contract at § 4.6). AGR had a sub-sub-contract with Oxford containing an "arising out of the work" indemnification obligation in favor of "all entities [to which] Oxford" owed an indemnification obligation (Oxford/AGR contract at 5 ¶ 2). AGR incorrectly argues in its papers that its indemnification obligation is only triggered by negligence. In light of plaintiff's waiver of his Labor Law § 200 claims against 319 Lenox and Sunshine, and in the absence of evidence of their affirmative negligence, there is no bar to their recovery under the contractual indemnification provisions. Therefore, 319 Lenox and Sunshine are entitled to summary judgment on their contractual indemnification claims against Oxford and AGR. Oxford is entitled to summary judgment on its claim for contractual indemnification against AGR.

Breach of Contract

Although AGR provided a certificate of insurance identifying Oxford as an additional insured in the amount specified by the body of its sub-contract (Oxford/AGR contract at 6 ¶ 2.4), the "Preferred Insurance Procurement Language for use by GC/CM in Subcontractor [sic] Agreements" rider, signed by AGR, requires AGR to procure a "following form" umbrella liability policy with limits of $4,000,000 per occurrence. AGR provided an affidavit of no-excess. Therefore, Oxford's motion for summary judgment on its breach of contract claim is granted (*see Uddin v A.T.A. Construction Corp.*, 164 AD3d 1402 [2d Dept 2018]).

Conclusion

Oxford's motion for summary judgment (Seq. 005) is granted with respect to its contractual indemnification claims against AGR; the motion is otherwise denied.

Lenox's motion for summary judgment (Seq. 006) is granted with respect to its contractual indemnification claim against Oxford and AGR, and with respect to plaintiff's Labor Law § 241 (6) and § 200 claims only; the motion is otherwise denied.

AGR's motion for summary judgment (Seq. 007) is denied.

All-Star's motion for summary judgment (Seq. 008) is withdrawn.

This constitutes the decision and order of the court.

July 3, 2025
DATE

DEVIN P. COHEN
Justice of the Supreme Court