

Rivera v RS JZ Driggs, LLC

2025 NY Slip Op 32528(U)

July 7, 2025

Supreme Court, Kings County

Docket Number: Index No. 526945/2021

Judge: Devin P. Cohen

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**Supreme Court of the State of New York
County of Kings**

Index Number 526945/2021
Seqs. 008, 009

Part LL1M

DECISION/ORDER

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

DOROTEO RIVERA,

Plaintiff,

against

RS JZ DRIGGS, LLC, CLUNE CONSTRUCTION COMPANY,
L.P., ANFIELD INTERIORS, INC., BV NY, INC., BOND VET
HOLDINGS, LLC d/b/a BOND VET, BOND VETERINARY, INC.
d/b/a BOND VET, AND BOND VET,

Defendants.

RS JZ DRIGGS, LLC AND FOREMOST CONTRACTING &
BUILDING, LLC,

Third-Party Plaintiffs,

against

BV NY INC. AND ANFIELD INTERIORS INC.,

Third-Party Defendants.

CLUNE CONSTRUCTION COMPANY, L.P.,

Second Third-Party Plaintiffs,

against

ANFIELD INTERIORS INC.,

Second Third-Party Defendants.

ANFIELD INTERIORS INC.,

Third Third-Party Plaintiffs,

against

Papers Numbered	
Notice of Motion and Affidavits Annexed	<u>1-2</u>
Order to Show Cause and Affidavits Annexed	<u> </u>
Answering Affidavits	<u>3-4</u>
Replying Affidavits	<u>5</u>
Exhibits	<u>Var.</u>
Other	<u> </u>

KILLEAVY BUILDERS CORP.,

Third Third-Party Defendants.

RS JZ DRIGGS, LLC,

Fourth Third-Party Plaintiffs,

against

KILLEAVY BUILDERS CORP.,

Fourth Third-Party Defendants.

Based on the foregoing papers, plaintiff's motion to re-argue (Seq. 008) and defendant Anfield Interiors (Anfield)'s motion to re-argue (Seq. 009) are decided as follows:

Introduction

Plaintiff commenced this action to recover for damages he claims to have sustained on October 11, 2021, when he fell from a Baker scaffold at a construction site. Driggs owned the premises. Bond Vet (Bond) was the commercial tenant. Bond contracted with Clune Construction Company, L.P. (Clune), to serve as the general contractor for renovation work at the premises. Clune sub-contracted Anfield Interiors Inc. (Anfield) to perform carpentry work. Anfield sub-sub-contracted Killeavy Builders Corp. (Killeavy) to perform interior carpentry work. Killeavy sub-sub-contracted Builders HQ, which employed the plaintiff.

On October 25, 2024, this court issued an order, *inter alia*, denying plaintiff's motion for summary judgment and granting RS Driggs motion for summary judgment against Anfield. Plaintiff and Anfield now move to reargue that decision.

Factual Background

The following is undisputed: Plaintiff was working on a Baker scaffold painting and taping the ceiling of the unit under renovation. During the course of his work, the scaffold plaintiff was working on fell over and plaintiff fell to the floor. The scaffold plaintiff was working on had a caster that was mismatched—specifically, the stem of one of the wheels was wrapped in tape and missing a hole for a cotter pin. These facts are supported by photographs contained in the record.

However, the parties dispute what was happening immediately prior to the accident. Plaintiff testified that the wheels were locked and he was working on the ceiling when the scaffold inexplicably fell (Rivera EBT at 62). Defendants offer an incident report, a purported business record of Clune, which contains a statement attributed to plaintiff that he was “surfing” the scaffold prior to his accident. (Defendant contends that surfing is self-propelling a scaffold while the worker is still atop it.) Richard McLaren, Clune’s superintendent, authenticated the report and testified that plaintiff admitted to surfing the scaffold after the incident (McLaren EBT at 46–49, 193–194).

Labor Law § 240 (1) & Labor Law § 241 (6)

Previously, the court held that even though there was a statutory violation (the mismatched scaffold wheel), there was insufficient evidence in the record to show that the wheel was a proximate cause of the accident (*Blake v Neighborhood Hous. Sevs. of N.Y. City*, 1 NY3d 280, 290 [2003] [emphasis added]). Without causation, a statutory violation is insufficient to impose Labor Law § 240 (1) liability.

Plaintiff argues that the court overlooked the admission by Mr. McLaren, the representative of Clune, that the mismatched caster was a cause of plaintiff’s accident (McLaren

EBT at 192–193). Although the original motion papers did not explicitly contend that Mr. McLaren admitted to causation, that is effectively the substance of Mr. McLaren’s testimony. Therefore, plaintiff’s motion for re-argument is granted.

Upon re-argument, plaintiff’s motion for summary judgment on his Labor Law § 240 (1) claim is granted. The plaintiff demonstrated that the scaffold he was working on was defective, that the mismatched caster was a proximate cause of the accident, and therefore that any question of plaintiff’s comparative fault is immaterial to defendants’ liability under Labor Law § 240 (1) (*see Masmalaj v New York City Economic Development Corporation*, 197 AD3d 1292 [2d Dept 2021]).

With respect to plaintiff’s Labor Law § 241 (6) claim, plaintiff’s motion is granted upon re-argument with the question of plaintiff’s comparative fault on this claim only reserved for the time of trial (*Rodriguez v City of New York*, 31 NY3d 312 [2018]). Plaintiff demonstrated that at least Industrial Code 23-5.18 (e), governing adequate casters that are able to lock in position, was violated and that the violation was a proximate cause of his accident.

Contractual Indemnification

Anfield contends that the court misapprehended the contract in which it purportedly owes an indemnification obligation to Driggs. Upon review of the record, Anfield is correct that although Driggs is listed as an additional insured under the contract there is no contractual indemnification language in favor of Driggs. Since an obligation to provide contractual indemnification is distinct from additional insured status, and one obligation cannot be inferred from the presence of the other in a contract, Anfield is correct that Driggs was not entitled to summary judgment against it on the issue of contractual indemnification (*see Meadowbrook*

Pointe Development Corp. v F&G Concrete & Brick Industry, Inc., 214 AD3d 965 [2d Dept 2023]).

Therefore, Anfield's motion for re-argument is granted and, upon re-argument, Driggs' motion for summary judgment on its contractual indemnification claim against Anfield is denied.

Conclusion

Plaintiff's motion to re-argue (Seq. 008) is granted and, upon re-argument, is granted to the extent indicated above.

Anfield's motion to re-argue (Seq. 009) is granted and, upon re-argument, Driggs' motion for summary judgment against Anfield is denied.

This constitutes the decision and order of the court.

July 7, 2025

DATE



DEVIN P. COHEN

Justice of the Supreme Court