Sumba v Manhattan House Condominium
2025 NY Slip Op 32729(U)
July 25, 2025
Supreme Court, New York County
Docket Number: Index No. 152563/2021
Judge: Mary V. Rosado

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARY V. ROSADO **PART** 33M
Justice

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FREDDY SUMBA,

Plaintiff,

- v -

MANHATTAN HOUSE CONDOMINIUM, BOARD OF MANAGERS OF MANHATTAN HOUSE CONDOMINIUM,

Defendant.

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INDEX NO. 152563/2021

MOTION DATE 09/25/2024

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

MANHATTAN HOUSE CONDOMINIUM, BOARD OF MANAGERS OF MANHATTAN HOUSE CONDOMINIUM

Plaintiff,

-against-

ADRIATIC PLUMBING & HEATING CORP.

Defendant.

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Third-Party
Index No. 596013/2021

The following e-filed documents, listed by NYSCEF document number (Motion 002) 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 103, 109, 110, 111, 112, 113, 114, 119, 121, 124, 126, 127, 133, 134, 135

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

Upon the foregoing documents, and after oral argument, which took place on May 27, 2025, where Jenny Xu, Esq. appeared for Plaintiff Freddy Sumba ("Plaintiff"), Marc Silverstein, Esq. appeared for Defendants/Third-Party Plaintiffs Manhattan House Condominium and the Board of Managers of Manhattan House Condominium (collectively "Manhattan House"), and Dennis S. Heffernan, Esq. appeared for Third-Party Defendant Adriatic Plumbing & Heating Corp. ("Adriatic"), Manhattan House's motion for summary judgment seeking dismissal of Plaintiff's Complaint and Adriatic's counterclaim, and summary judgment against Adriatic on Manhattan House's claim for contractual indemnification is granted in part and denied in part.

I. Background

On July 16, 2020, Adriatic employed Plaintiff as a mechanic's assistant at 200 East 66th Street, New York, New York (the "Premises") (NYSCEF Doc. 55 at 13-16). Manhattan House, which owns the common areas of the Premises, retained Adriatic as a plumber (NYSCEF Doc. 56 at 20; 33; 37-39). Adriatic was to remove and to demolish old iron pipes in a steam room in the basement (NYSCEF Doc. 55 at 25; 128-29; NYSCEF Doc. 56 at 43). Plaintiff used a sledgehammer to break the pipe, bagged the broken pipe pieces, and brought them upstairs (NYSCEF Doc. 55 at 29 and 34). Plaintiff had seen pieces of debris that fell outside of the bags (NYSCEF Doc. 55 at 59) Plaintiff was walking downstairs to the basement when he tripped on a piece of broken pipe on the staircase (NYSCEF Doc. 55 at 13-16, 43, 46, 48). The Adriatic mechanic present on the day of Plaintiff's accident could not remember if he saw debris or garbage on the stairway where Plaintiff fell (NYSCEF Doc. 57 at 33-34).

In motion sequence 001, this Court granted Plaintiff summary judgment against Manhattan House on the issue of liability with respect to his Labor Law § 241(6) claims predicated on violations of Industrial Code §§ 21-1.7(e)(1) and (e)(2). In this motion, Manhattan House seeks dismissal of Plaintiff's Complaint and Adriatic's counterclaim, and summary judgment on its contractual indemnification asserted against Adriatic.

II. Discussion

A. Standard

"Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact." (*Vega v Restani Const. Corp.,* 18 NY3d 499, 503 [2012]). Once this showing is made, the burden shifts to

the party opposing the motion to produce evidentiary proof sufficient to establish the existence of material issues of fact (*See e.g., Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

B. Dismissal of Plaintiff's Complaint & Counterclaims

Manhattan House's motion for summary judgment dismissing Plaintiff's Complaint is granted in part and denied in part. As a preliminary matter, in motion sequence 001, the Court already rejected Manhattan House's argument that Plaintiff was not engaged in work covered by the Labor Law. The Court likewise rejected Manhattan House's argument that the debris which Plaintiff tripped on was integral to the work at hand. Manhattan House's argument that the Board of Managers of the Manhattan House Condominium (the "Board") should be dismissed as an improper Labor Law defendant because the Board had no responsibility for the maintenance of the common areas is directly contradicted by the express language of the bylaws which created the Board (*see also German v 333 Rector Garage, LLC*, 233 AD3d 476 [1st Dept 2024]; *Jerdonek v 41 West 72 LLC*, 143 AD3d 43, 48 [1st Dept 2016]). Section 2.4(A)(i) of the bylaws states that the Board has the "specific powers and duties" to:

> "operate, maintain, repair, restore, add to, improve, alter and replace the Common Elements, including, without limitation, as the Condominium Board shall deem necessary or proper in connection therewith, (a) the purchase and leasing of supplies, equipment and material and (b) the employment, compensation and dismissal of personal" (NYSCEF Doc. 80 at page 107).

Considering this Court granted Plaintiff summary judgment on his Labor Law § 241(6) claim predicated on violations of Industrial Code §§ 21-1.7(e)(1) and (e)(2), Manhattan House's motion for summary judgment dismissing these claims is denied. However, Plaintiff fails to provide any particularized opposition to Manhattan House's motion for summary judgment dismissing Plaintiff's Labor Law Labor Law § 241(6) claim predicated on violations of Industrial Code §§ 23-1.5, 23-1/8. 23-1.30, 23-2.1, and 23-2.7. Therefore, these claims are dismissed as

abandoned. Nor does Plaintiff provide any particularized opposition to his claims alleging violations of Labor Law §§ 240(2) and (3). Therefore, the Labor Law §§ 240(2) and (3) claims are dismissed as abandoned.

Manhattan House's motion for summary judgment dismissing Plaintiff's Labor Law § 240(1) claim is denied. The mere fact that Plaintiff's accident occurred because he tripped and fell down a permanent staircase does not automatically take his accident outside the scope of Labor Law § 240(1)'s protections (*O'Brien v Port Auth. of New York and New Jersey*, 29 NY3d 27, 33 [2017]; *Conlon v Carnegie Hall Society, Inc.*, 159 AD3d 655, 655 [1st Dept 2018]; *Gory v Neighborhood Partnership Housing Dev. Fund Co., Inc.*, 113 AD3d 550, 550-51 [1st Dept 2014]). Manhattan House failed to meet its prima facie burden of showing that the permanent staircase was an adequate safety device to protect Plaintiff from the risks associated with transporting a large, broken boiler pipe between different floors of the Premises. Indeed, there is no dispute the staircase was the sole means of access between the basement and the first floor; that Plaintiff was required to remove the old boiler pipe by using the staircase, and that the staircase had become hazardous due to an accumulation of debris. Therefore, the portion of the motion seeking dismissal of the Labor Law § 240(1) claim is denied.

Issues of fact also preclude dismissing Plaintiff's Labor Law § 200 and common law negligence claims. As this is a "dangerous condition" case arising from the broken pipe pieces on the staircase, Manhattan House must show the absence of actual or constructive notice of the debris on the staircase. However, Manhattan House's own employee, who was assigned to "spot check" Plaintiff's work, raised triable issues of fact as to Manhattan House's actual or constructive notice of the condition which caused Plaintiff to fall. When reviewing video footage produced by Manhattan House, Mr. Biel admitted there appeared to be debris on the third and second step near

Plaintiff's fall (NYSCEF Doc. 60 at 54-57). He also admitted that there were holes in the bags because the pipe pieces were sharp (NYSCEF Doc. 60 at 60). From this testimony, a jury could find that Mr. Biel knew the bags Plaintiff and his coworkers were using to transport the pipe pieces had holes in them through which pipe pieces could fall onto the staircase. Moreover, as Mr. Biel admitted he spot checked Adriatic's work approximately every two hours (NYSCEF Doc. 60 at 49), there is a question of fact as to whether Manhattan House knew or should have known about the presence of debris on the staircase (*Balbuena v 395 Hudson New York, LLC*, 214 AD3d 586, 587-88 [1st Dept 2023]; *Dirschneider v Rolex Realty Co. LLC*, 157 AD3d 538, 539 [1st Dept 2018]).

Manhattan House's motion for summary judgment dismissing the counterclaim asserted by Adriatic is granted. Adriatic has not sought leave to amend even though its counterclaim alleges that Plaintiff's damages "arose in whole or in part from the negligence of Defendant/Third-Party Plaintiff Heatherwood House at Ronkonkoma, LLC" (*see* NYSCEF Doc. 14 at ¶ 50). However, Heatherwood House at Ronkonkoma, LLC is not a party to this action nor are there any allegations or evidence that this entity is tied to Plaintiff's accident. Adriatic's failure to seek leave to amend and failure to allege a counterclaim against the proper party requires dismissing the counterclaim.

C. Contractual Indemnification

Manhattan House's motion for summary judgment on its contractual indemnification claim against Adriatic is granted conditioned on an apportionment of negligence between Manhattan House and Adriatic by the finder of fact at the time of trial. There is no dispute as to the validity or enforceability of the indemnification clause agreed to by Manhattan House and Adriatic (*see* NYSCEF Doc. 77). The indemnification clause in that agreement reads:

> "To the fullest extent permitted by law, [Adriatic] agrees to indemnify, defendant and hold harmless [Manhattan House] from any and all claims, suits, damages,

> liabilities, professional fees, including attorneys' fees, costs, court costs, expenses and disbursements related to death, personal injuries or property damage…arising out of or in connection with the performance of the work of [Adriatic], its agents, servants, subcontractors or employees….This agreement to indemnify specifically contemplates full indemnity in the event of liability imposed against [Manhattan House] without negligence and solely by reason of statute, operation of law or otherwise, and partial indemnity in the event of any actual negligence on the part of [Manhattan House] either causing or contributing to the underlying claim. In that event, indemnification will be limited to any liability imposed over and above that percentage attributable to actual fault, whether by statute, by operation of law or otherwise."

The undisputed facts show the contractual indemnification clause was triggered. Namely, Plaintiff, Adriatic's employee, was injured while working for Adriatic in connection with Adriatic's plumbing work at the Premises. Therefore, Manhattan House is entitled to contractual indemnification – and the only issue that remains to be determined is whether Manhattan House is entitled to complete contractual indemnification by virtue of vicarious liability or is entitled to partial contractual indemnification by virtue of being partially negligent in causing Plaintiff's injuries. Therefore, Manhattan House's motion for summary judgment on its contractual indemnification claim against Adriatic is granted, conditioned on an apportionment of negligence between Adriatic and Manhattan House at the time of trial (*Gervasi v FSP 787 Seventh LLC*, 228 AD3d 459, 461 [1st Dept 2024]).

Accordingly, it is hereby,

ORDERED that Manhattan House's motion for summary judgment seeking dismissal of Plaintiff's Complaint and Adriatic's counterclaim, and summary judgment against Adriatic on its claim for contractual indemnification is granted in part and denied in part; and it is further

ORDERED that Manhattan House's motion for summary judgment seeking dismissal of Plaintiff's Complaint is granted solely to the extent that Plaintiff's Labor Law §§ 240(2), 240(3), and 241(6) claim predicated on violations of Industrial Code §§ 23-1.5, 23-1-8. 23-1.30, 23-2.1,

and 23-2.7 is granted, and Manhattan House's motion for summary judgment seeking dismissal of Plaintiff's Complaint is otherwise denied; and it is further

ORDERED that Manhattan House's motion for summary judgment seeking dismissal of Adriatic's counterclaim is granted; and it is further

ORDERED that Manhattan House's motion for summary judgment on its third-party claim for contractual indemnification against Adriatic is granted, conditioned on an apportionment of negligence at the time of trial; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

7/25/2025
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, 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