

Ansbro v Dever Props. LLC

2025 NY Slip Op 33461(U)

September 15, 2025

Supreme Court, New York County

Docket Number: Index No. 153625/2022

Judge: Mary V. Rosado

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. MARY V. ROSADO PART 33M

Justice

-----X

INDEX NO. 153625/2022

BRIAN ANSBRO,

MOTION DATE 09/24/2024

Plaintiff,

MOTION SEQ. NO. 005

- v -

DEVER PROPERTIES LLC,STRUCTURE TONE,

DECISION + ORDER ON MOTION

Defendant.

-----X

STRUCTURE TONE, LLC i/s/h/a STRUCTURE TONE,

Index No. 595960/2022

Third-Party Plaintiff,

-against-

PENGUIN AIR CONDITIONING CORP.

Third-Party Defendant.

-----X

STRUCTURE TONE, LLC i/s/h/a STRUCTURE TONE,

Index No. 596136/ 2023

Second Third-Party Plaintiff,

-against-

CONTRACTORS SHEET METAL LLC,

Second Third-Party Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 005) 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 158, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175

were read on this motion to/for JUDGMENT - SUMMARY

Appearances:**Plaintiff:** Zaremba Brown PLLC (Lisa Pigeon, Esq.)**Defendants/Third-Party Plaintiff:** London Fischer LLP (Sarah R. Cohen, Esq.)**Second Third-Party Defendant:** Fabiani Cohen & Hall, LLP (Kirl C. Francis, Esq.)

Upon the foregoing documents, and after oral argument, which took place on June 17, 2025, Plaintiff Brian Ansbro's ("Plaintiff") motion for summary judgment on the issue of liability with respect to his Labor Law § 240(1) claim against Defendants Dever Properties LLC ("Dever") and Structure Tone, LLC ("Structure Tone") (collectively "Defendants") and dismissing Defendants' affirmative defense of comparative fault is granted. Defendants' cross motion for summary judgment dismissing Plaintiff's Labor Law § 200 and common law negligence claims against them and seeking summary judgment on their contractual indemnification claim against Second Third-Party Defendant Contractors Sheet Metal LLC ("Contractors Sheet Metal") is granted in part and denied in part.

I. Background

On August 24, 2021, Contractors Sheet Metal employed Plaintiff at 215 Park Avenue South, New York, New York (the "Premises") as a sheet metal foreman installing ducts (NYSCEF Docs. 129 and 133 at 17; 19). After working on a duct, Plaintiff began descending the platform ladder he was using when the ladder moved, and Plaintiff fell (NYSCEF Doc. 129 at 26-30). Dever owned the Premises and Structure Tone was the general contractor (NYSCEF Doc. 133 at 22). Structure Tone contracted Third-Party Defendant Penguin Air Conditioning Corp. ("Penguin"), and Penguin subcontracted Contractors Sheet Metal to complete sheet metal and ductwork at the Premises (NYSCEF Doc. 133 at 21).

Structure Tone's witness, Jim McMullin, admitted if the ladder used by Plaintiff was constructed properly, it should not have shifted (NYSCEF Doc. 134 at 42). Contractors Sheet Metal's witness testified he did not know how Plaintiff fell as he was not at the Premises on the

date of Plaintiff's accident. Now, Plaintiff moves for summary judgment on the issue of liability with respect to his Labor Law § 240(1) claim against Defendants, while Defendants' cross move for summary judgment dismissing Plaintiff's Labor Law § 200 and common law negligence claims asserted against them and for contractual indemnification from Contractors Sheet Metal.

II. Discussion

Plaintiff's motion for summary judgment is granted. There is no dispute that Plaintiff was engaged in work within the meaning of Labor Law § 240(1), nor is there any dispute Defendants are proper Labor Law defendants. Plaintiff met his *prima facie* burden of establishing a Labor Law § 240(1) violation through his unrefuted testimony that as he was descending from an unsecured six-foot-tall ladder, the ladder shifted causing him to slip and fall from the ladder (*see, e.g. Sanchez v MC 19 East Houston LLC*, 216 AD3d 443, 443 [1st Dept 2023]; *see also Castillo v TRM Contracting 626, LLC*, 211 AD3d 430, 430 [1st Dept 2022] citing *Panek v County of Albany*, 99 NY2d 452, 458 [2003]). The burden now shifts to Defendants to raise a triable issue of fact.

In opposition, Defendants fail to raise an issue of fact. Contrary to Defendants' contentions, Plaintiff is not required to identify a defect in the ladder to obtain summary judgment on his Labor Law § 240(1) claim (*Cafisi v L&L Holding Company, LLC*, 219 AD3d 1215, 1216 [1st Dept 2023]; *see also Soriano v St. Mary's Indian Orthodox Church of Rockland, Inc.*, 118 AD3d 524, 526 [1st Dept 2014]). Nor are there any credibility issues which raise a triable issue of fact. Plaintiff's deposition testimony was clear that the ladder shifted, and then he slipped. The accident reports' silence as to whether the ladder shifted does not contradict this testimony, and no other witness has contradicted Plaintiff's version of events or impugned his credibility. Moreover, while Defendants argue Plaintiff did not report his accident in a timely manner, this is belied by Structure Tone's own witness providing testimony that Plaintiff reported his accident the day after he fell

(see NYSCEF Doc. 156 at 48; see also NYSCEF Doc. 162). Thus, given the lack of any evidence raising an issue as to Plaintiff's credibility, the mere fact that Plaintiff's accident was unwitnessed is no bar to summary judgment (see *Gutierrez v Turner Towers Tenants Corp.*, 202 aD3d 437, 438 [1st Dept 2022]). Therefore, Plaintiff is granted summary judgment as to his Labor Law § 240(1) claim against Defendants. Because comparative negligence is not a defense to Labor Law § 240(1), Defendants' affirmative defense alleging Plaintiff was comparatively negligent is dismissed.

Defendants' cross motion for summary judgment dismissing Plaintiff's common law negligence and Labor Law § 200 claims asserted against them is granted. "Where a defective condition is not inherent but is created by the manner in which the work is performed, the claim under Labor Law § 200 is one for means and methods and not one for a dangerous condition existing on the premises" (see *Villanueva v 114 Fifth Avenue Associates LLC*, 162 AD3d 404, 406 [1st Dept 2018]). Here, the mechanism which caused Plaintiff's injury was a ladder – i.e., faulty equipment. Plaintiff was not injured due to an inherently dangerous condition existing on the Premises (see, e.g. *Estrella v GIT Industries, Inc.*, 105 AD3d 555, 556 [1st Dept 2013] citing *Castellon v Reinsberg*, 82 AD3d 635, 636 [1st Dept 2011]). Therefore, Plaintiff's Labor Law § 200 and common law negligence claims fall into the "means and methods" bucket. Defendants may only be held liable if they exercised supervisory control over the injury-producing work (*Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 143 [1st Dept 2012]).

However, there is no evidence that Defendants exercised the requisite supervisory control over Plaintiff's work (*Hughes v Tishman Const. Corp.*, 40 AD3d 305, 306 [1st Dept 2007]). Plaintiff received equipment and instruction from his employer, Contractors Sheet Metal. The general supervision over the worksite exercised by Structure Tone is insufficient to impose liability

pursuant to Labor Law § 200 and common law negligence. Thus, these claims asserted against Defendants are dismissed.

Dever's motion for summary judgment seeking indemnification from Contractors Sheet Metal is denied. There is no pleading where Dever ever asserted this claim against Contractors Sheet Metal. The Second Third-Party Complaint only names Structure Tone as a Second Third-Party Plaintiff. To the extent Structure Tone argues in its motion papers that it is entitled to summary judgment on its common law indemnification claims against Contractors Sheet Metal, its notice of motion only seeks summary judgment on its claim for contractual indemnification (*see* NYSCEF Doc. 150). Therefore, the Court need not entertain Structure Tone's request for summary judgment on its common law indemnification claim (*see Fifth Partners LLC v Foley*, 227 AD3d 543 [1st Dept 2024]; *Onofre v 243 Riverside Drive Corp.*, 232 AD3d 443, 443-444 [1st Dept 2024]).

Structure Tone's motion for summary judgment on its claim for contractual indemnification against Contractors Sheet Metal is denied. Contractors Sheet Metal is not a signatory to any contract with Structure Tone wherein it agreed to indemnify Structure Tone. Instead, Structure Tone relies on an incorporation clause in the contract between Penguin and Contractors Sheet Metal which incorporated by reference Penguin's indemnification agreement with Structure Tone (*see* NYSCEF Doc. 174 at §1.2).¹ But "[u]nder New York law, incorporation clauses in a construction subcontract, incorporating prime contract clauses by reference into a subcontract, bind a subcontractor only as to prime contract provisions relating to scope, quality, character and manner of the work to be performed by the subcontract" (*see Waitkus v Metropolitan*

¹ Structure Tone voluntarily discontinued its third-party claims against Penguin on June 15, 2023 (NYSCEF Doc. 39).

Housing Partners, 50 AD3d 260, 261 [1st Dept 2008] quoting *Bussanich v 310 E. 55th St. Tenants*, 282 aD2d 243, 244 [2001]).

While the indemnification agreement between Penguin and Contractors Sheet Metal does contemplate Contractors Sheet Metal indemnifying an “Owner,” that term is never defined anywhere in the contract. Nor does the indemnification clause state that Contractors Sheet Metal agrees to indemnify Structure Tone. Instead, the contract between Penguin and Contractors Sheet Metal defines “customer” ambiguously as “the GC/CM” (NYSCEF Doc. 174 at p. 2). It is well established that indemnification provisions shall be strictly construed and should not be interpreted to create obligations that are not expressly and unambiguously stated (*Weidman v Tremont Renaissance Hous. Dev. Fund. Co., Ind.*, 224 AD3d 488, 491 [1st Dept 2024]; *Maggio v 24 West 57 APF, LLC*, 134 AD3d 621, 627-28 [1st Dept 2015]). Here, there is no express and unambiguous agreement by Contractors Sheet Metal to indemnify Structure Tone. Therefore, the branch of the motion seeking summary judgment on the contractual indemnification claim asserted against Contractor Sheet Metal is denied.²

Accordingly, it is hereby,

ORDERED that Plaintiff’s motion for summary judgment on the issue of liability with respect to his Labor Law § 240(1) claim against Defendants and dismissing Defendants’ affirmative defense alleging comparative negligence is granted in its entirety; and it is further

ORDERED that Defendants’ cross motion for summary judgment is granted solely to the extent that Plaintiff’s common law negligence and Labor Law § 200 claims asserted against Defendants is dismissed, and the remainder of Defendants’ cross motion is denied; and it is further

² Although Contract Sheet Metal argues for dismissal of the contractual indemnification claim asserted against it in its motion papers, it never expressly moved for this relief.

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.

<u>9/15/2025</u> DATE		<u>Mary V Rosado JSC</u> HON. MARY V. ROSADO, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE