

Boragi v First Lexington Corp.

2025 NY Slip Op 33890(U)

October 10, 2025

Supreme Court, New York County

Docket Number: Index No. 155552/2020

Judge: Paul A. Goetz

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. PAUL A. GOETZ PART 47

Justice

-----X

PETER N. BORAGI,

Plaintiff,

- v -

FIRST LEXINGTON CORPORATION, CENTRON
ENTERPRISES LIMITED LIABILITY COMPANY,

Defendants.

-----X

FIRST LEXINGTON CORPORATION

Plaintiff,

-against-

ADCO ELECTRICAL CORPORATION

Defendant.

-----X

INDEX NO. 15552/2020

**MOTION DATE 06/24/2025,
06/24/2025**

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595713/2021

The following e-filed documents, listed by NYSCEF document number (Motion 001) 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 160, 163, 170, 172, 177, 183, 184

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

The following e-filed documents, listed by NYSCEF document number (Motion 002) 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 161, 164, 171, 173, 174, 175, 176, 178, 179, 180, 181, 182

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

Upon the foregoing documents, it is

ORDERED that the portion of plaintiff’s motion, (MS #1) pursuant to CPLR § 3212 for summary judgment on his Labor Law § 241(6) cause of action as asserted against defendant First Lexington Corporation (“Lexington”) is granted because while Lexington argues that plaintiff has failed to identify someone in the “chain of responsible employees on the construction project

had actual or constructive notice of the alleged hazardous condition that caused Plaintiffs trip” (NYSCEF Doc No 158 at p 6), “[s]ince an owner's liability under Labor Law § 241 (6) is vicarious, it is irrelevant that defendant, as it contends, had no notice of the hazardous condition” (*Burnett v City of New York*, 104 AD3d 437, 438 [1st Dept 2013]), and furthermore while Lexington argues that liability in this case cannot be predicated upon a violation NYCRR § 23-1.7(e)(1) because, they argue that plaintiff has failed to establish that his accident occurred in a “passageway” within its meaning in that provision, however “courts have interpreted the term to mean a defined walkway or pathway used to traverse between discrete areas as opposed to an open area” (*Prevost v One City Block LLC*, 155 AD3d 531, 535 [1st Dept 2017]), and here plaintiff testified “[w]hen I came out I made a left to exit the elevator down the hallway like to walk towards the work and get my tools” when he tripped over debris (NYSCEF Doc No 119 at 165:2 – 165:7), and while Lexington submits testimony from shop steward Anthony Esposito who testifies that the incident took place in an “elevator bank” rather than in the hallway itself, (NYSCEF Doc No 129 at 59:5 – 59:9) this testimony does not raise a triable issue of fact as an “elevator bank” is not an open area removing the incident from the purview of NYCRR § 23-1.7(e)(1) as it plaintiff is required to travers through it while performing his work (*see McCullough v One Bryant Park*, 132 AD3d 491 [1st Dept 2015] [holding that a doorway constitutes a passageway]; *see also Lois v Flintlock Const. Services, LLC*, 137 AD3d 446 [1st Dept 2016] [holding that a two- or three-foot space between two large piles of debris is a passageway]); and it is further

ORDERED that the portion of plaintiff’s motion, (MS #1) pursuant to CPLR § 3212 for summary judgment on his Labor Law § 241(6), Labor Law § 200, and common law negligence causes of action as asserted against defendant Centron Enterprises Limited Liability Company

(“Centron”) are granted as a subcontractor can be held liable for a Labor Law § 241(6) violation as an “agent” of the owner or general contractor when it has been delegated the authority to supervise and control the area where the violation which caused plaintiff’s injury occurred (*see Russin v Louis N. Picciano & Son*, 54 NY2d 311 [1981]), and further “liability under Labor Law § 200 and common-law negligence may be imposed upon a subcontractor where it had control over the work site and either created the allegedly dangerous condition or had actual or constructive notice of it” (*Vita v New York Law School*, 163 AD3d 605, 607 [2d Dept 2018]) and here plaintiff has submitted evidence that he tripped over material which was generated from Centron’s work of installing “terrazzo tile” (*see* NYSCEF Doc No 128 ¶ 10 – 12; NYSCEF Doc No 126; NYSCEF Doc No 124 at 108:21 – 108:4; NYSCEF Doc No 119 at 198:21 – 199:3), and Centron fails to submit any evidence which rebuts plaintiffs’ *prima facie* showing; and it is further

ORDERED that the portion of plaintiff’s motion (MS #1) seeking to dismiss defendants’ affirmative defenses of comparative fault is granted as defendant has the burden of establishing plaintiff’s comparative fault and “a plaintiff does not bear the ... burden of establishing ... the absence of his or her own comparative fault” (*Whitehead v David Rosen Bakery Supplies, Inc.*, 208 AD3d 533, 534 [2d Dept 2022]), and here neither defendant has submitted evidence establishing that plaintiff was at fault; and it is further

ORDERED that the portion of Lexington’s motion (MS #2) seeking to dismiss the Labor Law § 241(6) cause of action asserted against it is denied for the reasons stated above; and it is further

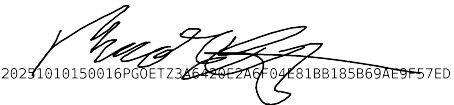
ORDERED that the portion of Lexington's motion (MS #2) seeking to dismiss the Labor Law § 240(1) cause of action asserted against it is granted as plaintiff does not oppose this portion of the motion and it is deemed abandoned; and it is further

ORDERED that the portion of Lexington's motion (MS #2) seeking to dismiss the Labor Law § 200 and common law negligence claims as asserted against it is granted because "[w]here an existing defect or dangerous condition caused the injury, liability attaches if the owner or general contractor created the condition or had actual or constructive notice of it" (*Prevost v One City Block LLC*, 155 AD3d 531, 534 [1st Dept 2017]), and here it is undisputed that owner did not create the condition, and considering that plaintiff testified that the day before his accident the floor was clear, and that his accident occurred the next morning (NYSCEF Doc No 120 at 361:20 – 22; 153:17 – 154:6) Lexington has established "entitlement to judgment as a matter of law with evidence that they had no actual or constructive notice of the allegedly dangerous condition and, in any event, did not have a reasonably sufficient time to remedy the allegedly dangerous condition prior to the plaintiff's accident" (*Brandon v Hallivis*, 67 AD3d 618, 619 [2d Dept 2009]); and it is further

ORDERED that the portion of Lexington's motion (MS #2) seeking summary judgment on its contractual indemnification cross-claim as asserted against Centron, is granted as Lexington has established that plaintiff's accident occurred in connection with Centron's work, and Lexington's liability only stems from statutory liability "and in contractual indemnification, the one seeking indemnity need only establish that it was free from any negligence and was held liable solely by virtue of the statutory liability" (*Uluturk v City of New York*, 298 AD2d 233, 234

[1st Dept 2002]) and pursuant to the contract, Centron “shall indemnify, defend, save and hold harmless” Lexington in this action (NYSCEF Doc No 123 at ¶ 8.1); and it is further¹

ORDERED that the portion of Lexington’s motion seeking to dismiss Centron’s cross-claims for contribution and common law indemnification is granted as Lexington “demonstrated its entitlement to the dismissal of Marshall's cross claims against it for common-law indemnification and contribution by showing that it was free from negligence and only vicariously liable” (*Royland v McGovern & Co., LLC*, 203 AD3d 677 [1st Dept 2022]).


20251010150016PGOETZ326420E2A6F04F81BB185B69AE9F57ED

<u>10/10/2025</u> DATE					<u>PAUL A. GOETZ, J.S.C.</u>
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

¹ While Lexington also moves for an order directing Centron to reimburse it for expenses expended in defense of this action to date, it fails to address the request in their papers.