

Rizzieri v New York State Elec. & Gas Corp.

2025 NY Slip Op 34513(U)

July 21, 2025

Supreme Court, Bronx County

Docket Number: Index No. 29331-2019E

Judge: Myrna Socorro

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.

#6

**Supreme Court of the State of New York
County of Bronx Part IA-9**

-----X
Joseph Rizzieri,

Plaintiff

**Index No. 29331-2019E
Motion seq #6**

-against-

**DECISION & ORDER
Hon. Myrna Socorro, J.S.C.**

**New York State Electric & Gas
Corporation, Verizon Communications
Inc., and Avangrid Service Company Inc.,
Defendants**

-----X
The following e-filed documents, listed by NYSCEF Doc. #120-152 were read on defendant’s motion for summary judgment, which was orally argued and marked submitted on May 24, 2024.

According to the plaintiff, at the time of the accident on February 28, 2019: he was employed by non-party Verizon New York, Inc. (“VZNY”), as a linesman; he was instructed by his supervisor, Lester Tarlton, to remove a double wood utility pole approximately 20 feet in height and weighing about 700-800 pounds; he was standing behind his coworker James O’Neill, who was cutting the wooden utility pole manually with a chainsaw; the pole was not secured; the pole suddenly slid off the stump and struck plaintiff’s head and right shoulder. Plaintiff alleges that defendants were the joint owners of the subject pole.

Defendants New York State Electric & Gas Corporation (“NYSEG”), Verizon Communications Inc. (“VCI”), and Avangrid Service Company, Inc. (“Avangrid”), collectively “defendants” previously moved for summary judgment in motion sequence #4. By Decision and Order dated August 9, 2022, (NYSCEF #100) Justice Suarez denied the motion with leave to renew upon completion of discovery with respect to the issue of defendants’ ownership interest in the utility pole at the time of the accident. The Note of Issue was filed on January 11, 2024, after discovery was complete, and defendants now seek to renew its summary judgment motion to dismiss plaintiff’s complaint.

In support of its motion, VCI argues that it is a holding company that did not own, maintain, control or repair the subject pole and therefore plaintiff’s claims must be dismissed. Further, Avangrid and NYSEG (a subsidiary of Avangrid) argue that they are also entitled to summary judgment since they also did not own, operate, manage, maintain, control or repair the subject pole at the time of the accident.

Plaintiff cross-moves for partial summary judgment on his Labor Law §240(1) claim. Plaintiff argues that defendants were the owners of the subject utility pole pursuant to a Joint Ownership

Agreement.

As to the issue of timeliness of plaintiff's cross motion raised in defendant's opposition to the cross-motion, the Court notes that the defendant's motion was to dismiss, one of them to dismiss plaintiff's Labor Law §240 claims. Accordingly, the cross-motion, in this Court's discretion, is not untimely as it cross moves for judgment which defendant seeks to dismiss.

As to defendant VCI

Upon a review of the motion papers, this Court finds that VCI has made a prima facie showing that it did not own, operate, maintain, repair or in any way control the subject pole. In support of its motion, VCI submitted the affidavit and deposition testimony of Veronica Glennon, manager in the Verizon corporate governance group, who states that VCI is a holding company that only holds stock or membership interests in entities and does not own any real estate, poles or equipment of any kind. In opposition, plaintiff refers to VCI's Form 10-K, filed on February 11, 2022, for the period ending December 31, 2021 (NYSCEF Doc. No. 138), arguing that page 18 of this statement shows that VCI owns property, plant and equipment, including poles, which they argue contradicts the testimony and affidavit of Ms. Glennon. However, upon a review of the 10-K statement, this Court disagrees. As highlighted by VCI, the page relied upon by plaintiff does not refer to ownership in properties, but rather lists investment in properties. Thus, this Court finds that plaintiff has failed to raise an issue of fact as to defendant VCI.

Accordingly, defendants' branch of the motion seeking to dismiss plaintiff's complaint as against defendant VCI is **Granted**, and defendant's branch of cross motion for summary judgment against VCI is **Denied**.

As to defendant NYSEG and Avangrid

Pursuant to the affidavit and deposition testimony of Henry Stawicki, employee of NYSEG, neither Avangrid nor NYSEG - a subsidiary of Avangrid - owned, operated, managed, maintained, or performed repairs of the subject pole. Mr. Stawicki testified that the NYSEG attachments located at the subject utility pole were previously removed from the pole following Hurricane Sandy. He further testified that a work order of the removal of the attachment was created on January 15, 2015. Thus, defendants argue that the removal of the NYSEG attachments ended its ownership of the subject pole pursuant to the Joint Ownership Agreement between NYSEG and VZNY (plaintiff's employer), and that VZNY became the sole owner of the pole. Defendants also submit the affidavit of Michael A. Jankowski, an Engineer with VZNY, who states that the subject pole was solely

owned by VZNY.

Section 4 titled Abandonment of Jointly Owned Poles of the Joint Ownership Agreement between NYSEG and VZNY states as follows:

If at any time either party hereto shall desire to abandon its right, title and interest to and in any jointly owned pole or poles, it shall give thirty (30) days' notice in writing to the other party, on a form mutually agreed upon, of its desire and intention so to do, specifying the pole or poles, and shall remove its attachments for the said pole or poles giving notice of such removal to the other party in writing. *Thereupon* (emphasis added), it shall be relieved from and shall be indemnified and held harmless by the other party for and from all expense, obligation and liability incurred or accruing thereafter with respect to the pole or poles from which its attachments have been removed, including the taxes thereon, and its interest in such pole or poles shall thereupon vest in the remaining Owner; provided, however, that if the intention in writing also to abandon its interests in such pole or poles, the party last removing its attachments therefrom shall also remove the pole or poles, and if any such pole or poles shall be removed before the expiration of a period of sixty (60) days after date of initial notice, the net expense of the removal of such pole or poles and the salvage therefrom, if any, shall be equally divided between the parties hereto. If such pole or poles shall not be removed before the expiration of the period of sixty (60) days, then, at the expiration of the sixty (60) days, such party remaining upon the pole or poles, shall be deemed to be the sole Owner thereof, and shall be responsible for all obligation, liability, expense or charges incurred or accruing there after in connection with such pole or poles.

Pursuant to the agreement, in order to give up its ownership in the jointly owned pole, NYSEG was to provide written thirty days' notice of its intention and was to remove the attachments for said poles. Here, NYSEG has provided testimony and a work order indicating that its attachments were removed sometime after Hurricane Sandy and at latest on January 15, 2015. However, there has been no written notice produced as required by the agreement to establish the abandonment of its right, title, and interest. Therefore, as to NYSEG and Avangrid, this Court finds that there is a question of fact as to the ownership of the subject pole, which precludes summary judgment to NYSEG and Avangrid and plaintiff. Accordingly, the motion to dismiss plaintiff's claims as to NYSEG and Avangrid is **DENIED**, and Plaintiff's branch of cross motion for summary judgment as against NYSEG and Avangrid is **Denied**.

Accordingly, it is hereby

ORDERED, that the motion by defendant VCI for summary judgment is **GRANTED**; and it is further

ORDERED, that the motion by defendants NYSEG and Avangrid for summary judgment is **DENIED**; and it is further

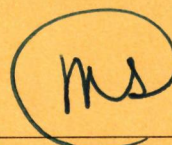
ORDERED, that the motion by plaintiff for summary judgment is **DENIED**; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED that counsel for defendants shall serve a copy of this Order with Notice of Entry upon all parties within thirty (30) days of the date of this Decision and Order

This decision constitutes the Order of the Court.

Dated: July 21, 2025



HON. MYRNA SOCORRO, J.S.C.