

Castillo-Ubiera v BNS I, LLC

2025 NY Slip Op 34835(U)

December 11, 2025

Supreme Court, New York County

Docket Number: Index No. 153937/2020

Judge: Lynn R. Kotler

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYNN R. KOTLER PART 08

Justice

-----X

ELVIS CASTILLO-UBIERA,
Plaintiff,

- v -

BNS I, LLC, ALMA REALTY CORP.,
Defendants.

-----X

BNS I, LLC, ALMA REALTY CORP.,
Third-Party Plaintiffs,

- v -

GREEN WORKS PROJECTS, INC.,
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, 172, 180, 181, 185, 186

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 006) 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 173, 182, 183, 184, 187

were read on this motion to/for DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 007) 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 174, 175, 176, 177, 178, 179, 188

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER)

INTRODUCTION

This labor law action arises from a workplace accident suffered by plaintiff, Elvis Castillo-Ubiera, on December 10, 2019, while working at a construction project located at One Park Place in Peekskill, New York (the "Project"). Defendant BNS I, LLC ("BNS") owns the Project, while defendant Alma Realty Corp. ("Alma") is the managing agent for the Project. Castillo-Ubiera was employed by third-party defendant Green Works Projects, Inc. ("Green

Works”), a contractor hired by BNS to perform construction services at the Project. He was allegedly injured while performing work for Greens Works in the basement of the Project.

Castillo-Ubiera now moves pursuant to CPLR 3212 for partial summary judgment as to liability on his Labor Law §§ 240(1) and 241(6) causes of action (MOT SEQ 005). Green Works also now moves pursuant to CPLR 3212 for summary judgment dismissing the third-party complaint, which asserts claims for contribution, common-law and contractual indemnification, and breach of contract for failure to procure insurance (MOT SEQ 006). BNS and Alma oppose both these motions and separately move pursuant to CPLR 3212 for summary judgment in their favor on their contractual indemnity and breach of contract claims against Green Works, and to dismiss Castillo-Ubiera’s negligence and Labor Law § 200 claims (MOT SEQ 007), which motion is opposed solely by Green Works. For the reasons that follow, Castillo-Ubiera’s motion is denied and the motions by Green Works and BNS/Alma are granted in part.

DISCUSSION

On a motion for summary judgment, the proponent bears the initial burden of making a prima facie showing that it is entitled to summary judgment as a matter of law, providing sufficient evidence that no material issues of triable fact exist (*see Trustees of Columbia Univ. in the City of N.Y. v D’Agostino Supermarkets, Inc.*, 36 NY3d 69, 74 [2020]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Once met, the burden shifts to the opposing party to “produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact” (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *see De Lourdes Torres v Jones*, 26 NY3d 742, 763 [2016]). However, if the proponent fails to make out its prima facie case for summary judgment, its motion must be denied regardless of the sufficiency of the opposing papers (*Alvarez*, 68 NY2d at 324; *Ayotte v Gervasio*, 81 NY2d 1062 [1993]). Summary judgment is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue (*see Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]). The court’s function on these motions is limited to “issue finding,” not “issue determination” (*see id.* at 505).

PLAINTIFF’S MOTION (MOT SEQ 005)

“Whether a plaintiff is entitled to recovery under Labor Law § 240(1) requires a determination of whether the injury sustained is the type of elevation-related hazard to which the

statute applies” (*Rivas v Seward Park Hous. Corp.*, 219 AD3d 59, 63-64 [1st Dept. 2023], quoting *Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1, 7 [2011]). “[T]he single decisive question [in this connection] is whether plaintiff’s injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential” (*id.* at 64, quoting *Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 603 [2009]). “This single decisive question ‘center[s] around a core premise: that a defendant’s failure to provide workers with adequate protection from reasonably preventable, gravity-related accidents will result in liability” (*id.*, quoting *Wilinski*, 18 NY3d at 7).

Labor Law § 241(6) imposes a non-delegable duty on contractors and owners to ensure that “[a]ll areas in which construction, excavation or demolition work is being performed” is “so constructed, shored, equipped, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety to the persons employed therein” The scope of the duty imposed by Labor Law § 241(6) is defined by the safety rules set forth in the Industrial Code (*see Garcia v 225 E. 57th Owners, Inc.*, 96 AD3d 88, 91 [1st Dept. 2012], citing *Ross*, 81 NY2d at 501-02). Thus, to establish liability under this provision, a plaintiff must “specifically plead and prove the violation of an applicable Industrial Code regulation” (*Buckley v Columbia Grammar & Preparatory*, 44 AD3d 263, 271 [1st Dept. 2007]). Here, Castillo-Ubiera seeks summary judgment on his Labor Law § 241(6) claim based solely on defendants’ alleged violation of Industrial Code § 23-2.2(a), which provides that “[f]orms, shores and reshores shall be structurally safe and shall be properly braced or tied together so as to maintain position and shape.”

Castillo-Ubiera principally relies upon his deposition testimony that, while cleaning debris from the ongoing stripping of concrete forms from the basement ceiling at the Project, he was struck by falling formwork that was not braced or otherwise secured in place. This testimony is sufficient to demonstrate, *prima facie*, a violation of Labor Law §§ 240(1) and 241(6) (*see Morris v Pavarini Const.*, 22 NY3d 668, 675 [2014]; *Diaz v Raveh Realty, LLC*, 182 AD3d 515, 515–16 [1st Dept. 2020]; *Zuniga-Rodriguez v Broadway Stockton, LLC*, No. 508343/2019, 2025 WL 1042764, at *6 [N.Y. Sup. Ct. Apr. 08, 2025]). However, in opposition, BNS and Alma raise a triable issue of fact as to the circumstances of the subject accident via the deposition testimony of Brian Mahoney, Green Works’ superintendent for the Project, who testified that, by the time

of the alleged accident in December 2019, concrete work in the Project's basement was complete and all formwork had already been stripped and removed.

Therefore, Castillo-Ubiera's summary judgment motion is denied.

GREEN WORKS' & BNS/ALMA'S MOTIONS (MOT SEQ 006 & 007)

Green Works moves for summary judgment dismissing the third-party claims against it for contribution, common-law and contractual indemnification, and breach of contract for failure to procure insurance. BNS and Alma move for summary judgment on their contractual indemnity and breach of contract claims against Green Works, and to dismiss Castillo-Ubiera's negligence and Labor Law § 200 claims

Green Works' motion is granted to the extent it seeks dismissal of the third-party claims for contribution and common-law indemnification. Green Works submits, as relevant here, Castillo-Ubiera's verified bill of particulars and deposition testimony, which demonstrate, *prima facie*, that Castillo-Ubiera did not sustain a "grave injury" within the meaning of Workers' Compensation Law § 11 (*see Itara v Masaryk Towers Corp.*, 211 AD3d 605, 605 [1st Dept. 2022]; *see also TCS Constr. Corp. v AmTrust N. Am., Inc.*, 235 AD3d 479, 481 [1st Dept. 2025]; *Granite State Ins. Co. v Moklam Enters., Inc.*, 193 AD3d 616, 616 [1st Dept. 2021]; *Hernandez v Seadyck Realty Co., LLC*, 161 AD3d 711, 711–12 [1st Dept. 2018]; *Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. 221-223 W. 82 Owners Corp.*, 120 AD3d 1140, 1140 [1st Dept. 2014]; *Marshall v Arias*, 12 AD3d 423, 423–24 [2nd Dept. 2004]). BNS and Alma submit no evidence in opposition to demonstrate that Castillo-Ubiera sustained a grave injury under the statute and thus fail to raise a triable issue of fact. As such, BNS and Alma may not maintain their claims against Green Works for contribution or common-law indemnity with respect to Castillo-Ubiera's injuries (*see Majewski v Broadalbin-Perth Cent. Sch. Dist.*, 91 NY2d 577, 582 [1998]).

Green Works' motion is likewise granted, and BNS/Alma's motion is denied, to the extent they each seek summary judgment with respect to the breach of contract claim for failure to procure insurance. The evidence before the court includes a tender response letter from Green Works' insurer to Alma demonstrating that Green Works did, in fact, obtain the additional insured coverage required by its contract with BNS, pursuant to which the insurer is providing BNS and Alma a defense in this action.

Green Works' motion is denied, however, to the extent it seeks the dismissal of the third-party claim for contractual indemnification. The relevant contractual provision requires Green Works to indemnify BNS and Alma for all claims, damages, losses, and expenses "arising out of or resulting from the performance of the Project, provided that any such claim, damage, loss, or expense . . . is caused in whole or in part by any negligent act or omission" of Green Works. The contract defines "the Project" to consist of "excavation, trucking and disposal, support of excavation, ground improvements elements and foundation concrete work performed at the Property . . . as specified in the One Park Place Excavation & Foundation Scope of Work[.]" The referenced scope of work, which Exhibit A attached to the contract document, in turn provides that "Foundation work includes all reinforced concrete below the first floor slab required to construct foundation including . . . the first floor slab [i.e., the basement ceiling]."

Green Works contends that the contractual indemnification claim must be dismissed because the work Castillo-Ubiera was performing at the time of his accident was purportedly outside the limited scope of "the Project," as defined in the contract. However, if the accident occurred during the stripping of formwork from the basement's concrete ceiling (i.e., the first floor slab), as described by Castillo-Ubiera in his deposition testimony, then it arose out of or resulted from Green Works' performance of foundation work as specified in the contract's scope of work, and thus falls within the scope of "the Project." As such, Green Works' summary judgment motion is denied to the extent it seeks dismissal of the third-party claim for contractual indemnification.

BNS/Alma's motion is likewise denied to the extent it seeks summary judgment on the contractual indemnity claim. As already discussed, there is a question of fact as to the circumstances of the subject accident. If, as argued by BNS/Alma in opposition to Castillo-Ubiera's motion, the accident did not involve the stripping of formwork from the basement's ceiling, then the work Castillo-Ubiera was performing at the time of the accident may indeed fall outside the limited scope of the "Project" as defined in the contract. Moreover, the contract's indemnity provision includes an express negligence trigger, but BNS/Alma do not address, let alone establish, that the subject accident was caused by Green Works' negligence.

However, BNS/Alma’s motion is granted without opposition to the extent it seeks summary judgment dismissing Castillo-Ubiera’s negligence and Labor Law § 200 claims, as “the evidence fails to show either that [they] had notice of a dangerous or defective condition on the work site or that [they] controlled the means and methods of plaintiff’s work” (*Galvez v Columbus 95th St. LLC*, 161 AD3d 530, 531 [1st Dept. 2018]; see *Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 144 [1st Dept. 2012]).

CONCLUSION

Accordingly, it is

ORDERED that plaintiff Elvis Castillo-Ubiera’s summary judgment motion (MOT SEQ 005) is denied; and it is further

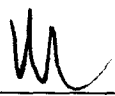
ORDERED that third-party defendant Green Works Projects, Inc.’s motion (MOT SEQ 006) is granted to the extent it seeks summary judgment dismissing the first, second, and fourth causes of action in the third-party complaint, which third-party causes of action are hereby dismissed, and the motion is otherwise denied; and it is further

ORDERED that the motion by defendants/third-party plaintiffs BNS I, LLC and Alma Realty Corp. (MOT SEQ 007) is granted to the extent it seeks summary judgment dismissing the first and second causes of action in plaintiff’s amended complaint for negligence and violation of Labor Law § 200, respectively, which causes of action are hereby dismissed, and the motion is otherwise denied; and it is further

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision and Order of the court.

12/11/2025
DATE


LYNN R. KOTLER, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE