

Singh v 280 Richards St., LLC

2025 NY Slip Op 35026(U)

December 18, 2025

Supreme Court, Kings County

Docket Number: Index No. 535292-2022

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73

Index No.: 535292-2022

Motion Date: 11-3-25

Mot. Seq. No.: 4

-----X
SURESH SINGH,

Plaintiff,

-against-

DECISION/ORDER

280 RICHARDS STREET, LLC and MARCH
ASSOCIATES CONSTRUCTION INC.,

Defendants

-----X
280 RICHARDS STREET, LLC, and MARCH
ASSOCIATES CONSTRUCTION, INC. ,

Third-Party Plaintiffs,

-against-

PHILLIPS CONSTRUCTION, INC.,

Third-Party Defendant.

-----X
PHILLIPS CONSTRUCTION, INC.,

Second Third-Party Plaintiff,

-against-

NILE CONSTRUCTION SERVICES LLC,

Second Third-Party Defendant,

-----X

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-----X
280 RICHARDS STREET, LLC, and MARCH
ASSOCIATES CONSTRUCTION, INC.

Third Third-Party Plaintiff,

-against-

NILES CONSTRUCTION SERVICES LLC,

Third Third-Party Defendant.
-----X

The following papers, which are e-filed with NYCEF as items 86-96, 101-105 , were read on this motion:

Upon the foregoing papers, defendants 280 RICHARDS STREET, LLC and MARCH ASSOCIATES CONSTRUCTION, INC. (collectively, "Defendants") move pursuant to CPLR 3212 for an Order (a) dismissing the plaintiff's Labor Law 240(1) and 241(6) causes of action; and (b) dismissing all common law and Labor Law 200 claims asserted against them; and (c) granting judgment to the Defendants over and against Third-Party Defendant PHILLIPS CONSTRUCTION INC. ("Phillips") on their claim for contractual indemnity.

BACKGROUND

The Plaintiff, SURESH SINGH, commenced this action to recover damages for personal injuries he allegedly sustained on June 17, 2022, while performing carpentry and drywall work at a construction site located at 270 Richards Street, Brooklyn, New York (the "Subject Premises"). Defendant 280 RICHARDS STREET, LLC was the owner of the premises, and Defendant MARCH ASSOCIATES CONSTRUCTION, INC. ("March") served as the general contractor. March hired Phillips, Plaintiff's employer, as a subcontractor for carpentry/drywall work.

On the date of the incident, Plaintiff and a coworker, Ness, were instructed by Phillips' assistant supervisor, Phil Tracy, to close-up a hole in a wall near the warehouse roof, which was

approximately 45-48 feet above the ground. To gain access to where he was required to work, Plaintiff utilized a scissor lift. That day, in the area where the scissor lift was located, there were four threaded metal rods attached to the ceiling and hung straight down to a height of approximately 13-15 feet above the ground. The rods were going to be used to hold up HVAC ducts.

Plaintiff testified that when he and Ness first ascended the lift, they each had to manually maneuver two of the rods out of the way to allow the lift to pass without being impeded. After reaching the working height of 45-48 feet, Phil Tracy decided to assign Ness to another task. Thus, they lowered the lift to the ground to allow him to perform the other assignment. Plaintiff had to complete the repair alone.

Plaintiff raised the lift alone, successfully pushing all four rods out of the way without difficulty. After completing the sheetrock repair, which took approximately 15 minutes, Plaintiff began to lower the lift to ground level. As he descended, he was only able to hold two of the four rods out of the way as he. When the lift reached a height of approximately 13-15 feet above the ground, the lift came into contact with one of the threaded rods, causing it to "spring back" and hit his temple and hard hat. The rod was approximately a half-inch thick and made of steel. Plaintiff claims that the pressure of the descending lift on the rod caused it to spring back and impact his head. Plaintiff acknowledged that he was supervised solely by Phillips' personnel and did not see any personnel other than Phillips employees in the vicinity of his work.

The contract between March (General Contractor) and Phillips (Subcontractor) expressly provided at Article 6.3 that Phillips was "solely responsible for (a) construction means, methods and techniques; (b) establishment of a site safety program..." and at Article 12.2, Phillips agreed to indemnify and hold harmless the General Contractor and the Owner (the Defendants) for all claims arising out of the performance of the Work. March's representative testified that March had a site safety manager on site and the authority to stop work if deemed unsafe, but March's daily log contained no mention of the accident.

DISCUSSION

Plaintiff's Labor Law 240(1)

“Liability may ... be imposed under [Labor Law § 240(1)] only where the ‘plaintiff’s injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential’ ” (*Nicomedia v. Vineyards of Fredonia, LLC*, 25 N.Y.3d 90, 97, 7 N.Y.S.3d 263, 30 N.E.3d 154, *rearg. denied* 25 N.Y.3d 1195, 16 N.Y.S.3d 54, 37 N.E.3d 113, quoting *Runner v. New York Stock Exch., Inc.*, 13 N.Y.3d 599, 603, 895 N.Y.S.2d 279, 922 N.E.2d 865). It is undisputed that the portion of the rod that struck the Plaintiff was at the same level Plaintiff’s head and within his reach. The Court thus concludes that plaintiff’s injury did not fall within the scope of section 240(1) since any height differential between plaintiff and the portion of the rod that struck him was at best, *de minimis* (*Joseph v. Lakeside Bldrs. & Devs.*, 292 A.D.2d 840, 841, 738 N.Y.S.2d 471; see *Kuhn v. Giovanniello*, 145 A.D.3d 1457, 1458, 43 N.Y.S.3d 628, 629; *Capparelli v. Zausmer Frisch Assoc.*, 96 N.Y.2d 259, 269–270, 727 N.Y.S.2d 37, 750 N.E.2d 1085; *Christiansen v. Bonacio Constr., Inc.*, 129 A.D.3d 1156, 1158–1159, 10 N.Y.S.3d 683).

While there is no question that the effects of gravity played a role in Plaintiff’s accident, “not all gravity-related risks fall within the parameters of the statute” (*Sereno v. Hong Kong Chinese Rest.*, 79 A.D.3d at 1414, 912 N.Y.S.2d 811; see Labor Law § 240[1]; *Ross v. Curtis–Palmer Hydro–Elec. Co.*, 81 N.Y.2d 494, 499–501, 601 N.Y.S.2d 49, 618 N.E.2d 82 [1993]) and “not every object that falls on a worker [] gives rise to the extraordinary protections of Labor Law § 240(1)” (*Narducci v. Manhasset Bay Assoc.*, 96 N.Y.2d 259, 267, 727 N.Y.S.2d 37, 750 N.E.2d 1085 [2001]). “[T]he single decisive question is whether [a] plaintiff’s injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential” (*Runner v. New York Stock Exch., Inc.*, 13 N.Y.3d 599, 603, 895 N.Y.S.2d 279, 922 N.E.2d 865). Since plaintiff’s injuries were not the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential, the Labor Law 240(1) claim is dismissed.

Plaintiff's Labor Law 241(6) claim

To sustain a § 241(6) claim, a plaintiff must allege a violation of a concrete provision of the Industrial Code (*Misicki v. Caradonna*, 12 N.Y.3d 511; *Ross v. Curtis–Palmer Hydro–Elec. Co.*, 81 N.Y.2d 494). Plaintiff contends that Section 23-1.7(a) of the Industrial Code, which mandates overhead protection only in areas "normally exposed to falling material or objects" applies to this case and was violated. The Court this argument unpersuasive. The Plaintiff was neither struck by a falling object or falling material nor was he working in an area normally exposed these hazards. Significantly, the rod never fell. The Second Department has repeatedly held that the mere occurrence of an object falling is insufficient to trigger this regulation (*Marin v. AP-Amsterdam 1661 Park LLC*, 60 A.D.3d 824). Specifically, courts have held that even a ceiling collapse during demolition does not constitute an area "normally exposed to falling objects" (*Mercado v. TPT Brooklyn Assoc., LLC*, 38 A.D.3d 732). If a ceiling collapse fails to meet this standard, a static hanging rod certainly does not. Because Plaintiff failed to produce evidence that the area was routinely exposed to falling debris, the 241(6) claim must be dismissed (*Alvarado v. Bermuda Realty, No. 2 LLC*, 77 Misc. 3d 1207(A)). The other Industrial Code provisions cited by the plaintiff are either inapplicable or too general to support a claim. Accordingly, plaintiff's claim pursuant to 241(6) is dismissed.

Labor Law § 200 and Common-Law Negligence

“Labor Law § 200 is a codification of the common-law duty imposed on owners, contractors, and their agents to provide workers with a safe place to work” (*Serpas v. Port Auth. of N.Y. & N.J.*, 218 A.D.3d 620, 621, 192 N.Y.S.3d 617 [internal quotation marks omitted]; see *Samperi v. City Safety Compliance Corp.*, 225 A.D.3d 723, 724, 207 N.Y.S.3d 142). Cases involving Labor Law § 200 fall into two broad categories: the first is those where workers are injured as a result of dangerous or defective premises conditions at a work site. The second is those involving the manner in which the work is performed (see *Walsh v. Kenny*, 219 A.D.3d 1555, 1557, 198 N.Y.S.3d 90, *Ortega v. Puccia*, 57 A.D.3d 54, 61, 866 N.Y.S.2d 323; see *Argueta v. City of New York*, 223 A.D.3d 862, 864, 204 N.Y.S.3d 547).

“Where a premises condition is at issue, [f]or liability to be imposed on the [defendant], there must be evidence showing that the [defendant] either created a dangerous or defective

condition, or had actual or constructive notice of it without remedying it within a reasonable time” (*Walsh v. Kenny*, 219 A.D.3d at 1557, 198 N.Y.S.3d 90 [internal quotation marks omitted]; see *Serpas v. Port Auth. of N.Y. & N.J.*, 218 A.D.3d at 622, 192 N.Y.S.3d 617). “By contrast, where a claim arises out of alleged dangers or defects in the means and methods of the work, a [] [defendant] may be held liable for common-law negligence or a violation of Labor Law § 200 only if he or she had the authority to supervise or control the performance of the work” (*Walsh v. Kenny*, 219 A.D.3d at 1557, 198 N.Y.S.3d 90 [internal quotation marks omitted]; see *Argueta v. City of New York*, 223 A.D.3d at 865, 204 N.Y.S.3d 547).

Since the evidence shows that Plaintiff took all his instructions from Phillips' personnel, and that neither defendant had the authority to supervise the means and methods of this work, the Defendant cannot be held liable under the first category. Further, March's the authority to review safety at the site is insufficient if there is no evidence that the defendant actually had authority to control the manner in which the work was performed. “General supervisory authority at a work site for the purpose of overseeing the progress of the work and inspecting the work product is insufficient to impose liability for common-law negligence and under Labor Law § 200” (*Dos Santos v. STV Engrs., Inc.*, 8 A.D.3d 223, 224, 778 N.Y.S.2d 48, *lv. denied*, 4 N.Y.3d 702, 790 N.Y.S.2d 648, 824 N.E.2d 49 [Dec. 21, 2004]). (see *Loiacono v. Lehrer McGovern Bovis*, 270 A.D.2d 464, 465, 704 N.Y.S.2d 658).

Notwithstanding the above, there are triable issue of fact as to whether Plaintiff's accident arose from a dangerous condition on the premises, i.e.- the hanging rods obstructing safe use of the lift. Thus, liability would attach to the moving defendants if they created the condition or had actual or constructive notice of it. Since the moving defendants did not in the first instance demonstrate as a matter of law that they lacked actual or constructive notice of this condition, the branch of the motion seeking dismissal of the Labor Law 200 and common-law negligence claims against both Defendants is denied.

Contractual Indemnification

General Obligations Law 5-322.1 prohibits a party from enforcing an indemnification agreement that seeks to indemnify that party for its own negligence. Since there are tribal issues

of fact as to whether defendants' negligence contributed to the accident, defendants claim for summary judgment on the issue of contractual indemnity must be denied.

Based on the foregoing, it is hereby

ORDERED that those branches of the motion in which Defendants seek summary judgment dismissing Plaintiff's Labor Law 240(1) and 241(6) causes of action is GRANTED; it is further

ORDERED that those branches of the motion in which Defendants seek summary judgment dismissing Plaintiff's common law negligence claims and claims pursuant to Labor Law 200(1) and summary judgment against Phillips on their claim for contractual indemnity are DENIED.

This constitutes the decision and order of the Court.

Dated: December 18, 2025

PPS

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020

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