

Reyes v Yorke Constr. Corp.

2025 NY Slip Op 35133(U)

October 10, 2025

Supreme Court, Bronx County

Docket Number: Index No. 21775-2020E

Judge: Myrna Socorro

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#105 & #106

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

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Carlos Mauricio Herrera Reyes
Plaintiff

Index No. 21775-2020E
Motion seq #5 and #6

-against-

Yorke Construction Corporation,
Sound Dog Ventures LLC, Berklee
College of Music, Inc., Power Station
Studios International Inc., Alpha Dog
LLC and Cove Dog LLC

Defendants

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

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Yorke Construction Corporation,
Sound Dog Ventures LLC, Berklee
College of Music Inc.,
Third Party Plaintiffs

-against-

Celtic Services NYC, Inc., and White
Star NYC Inc.,
Third Party Defendants

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The following e-filed documents, as to motion seq #5 listed by NYSCEF Doc. #153-184; 192-204; and as to motion seq #6 listed by NYSCEF Doc. #208-235; 240-241, which were read on these motions for **SUMMARY JUDGMENT**, which motions were orally argued and marked submitted on October 21, 2024.

According to Plaintiff, on the day of the accident on October 10, 2019, at the premises of 441 West 53rd Street, New York, New York, Plaintiff Carlos Mauricio Herrera Reyes (“Reyes”), an employee of Third-Party Defendant White Star NYC Inc. (White Star”), was transporting a 90–100-pound steel beam. As he was walking, Plaintiff tripped over loose concrete debris.

Defendant Sound Dog Ventures LLC (“Sound Dog”) was the owner of the subject premises and Yorke Construction Corporation (“Yorke”) served as the general contractor. Defendant Berklee College of Music Inc. (“Berklee”) was the lessee. Third-Party Defendant Celtic Services NYC, Inc. was subcontracted to conduct demolition work at the premises which in turn subcontracted White Star to perform said work.

Plaintiff now moves under Motion Sequence #5 pursuant to CPLR §3212 for summary judgment against Sound Dog, Berklee and Yorke. (collectively, the “Sound Dog Defendants”) on the issue of liability pursuant to Labor Law §241(6) and §200. Separately, Sound Dog Defendants move under Motion Sequence #6 pursuant to CPLR §3212 for summary judgment on their contractual indemnification claims against Celtic.

Summary Judgment

The court’s function on a motion for summary judgment is issue finding rather than issue determination or assessing credibility. *Genesis Merchant Partners LP v Gilbride, Tusa, Last & Spellane LLC*, 157 AD 3d 479; 699 NYS 3d 30 [1st Dept. 2018]; *Meredian Mgt. Corp. v Cristi Cleaning Serv. Corp.*, 70 AD 3d 508; 894 NYS 2d 422 [1st Dept. 2010].

Summary judgment is a drastic remedy and is to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact. *See CPLR § 3212[b]*; *Friends of Thayer Lake LLC v. Brown*, 27 NY3d 1039; 33 NYS 3d 853 [2016]; *Vega v Restani Constr. Corp.*, 18 NY3d 499 [2012]. The moving party’s “burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party.” *Jacobsen v New York City Health & Hosps. Corp.*, 22 NY3d 824, 833 [2014]. If the movant fails to make such prima face showing then the motion must be denied regardless of the sufficiency of the opposing papers *Winegrad v N.Y. Univ. Med. Ctr.*, 64 NY 2d 851; 487 NYS 2d 316 [1985].

Once the movant has made a prima facie showing, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial. *See Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Alvarez v Prospect Hosp.*, 68 NY 2d 320; 508 NYS 2d 923 [1986]; and *Pemberton v New York City Tr. Auth.*, 304 AD2d 340 [1st Dept 2003]).

Mere conclusions of law or fact are insufficient to defeat a motion for summary judgment. *See Banco Popular N. Am. v Victory Taxi Mgmt.*, 1 NY3d 381 [2004].

Plaintiff’s Motion for Summary Judgment

Labor Law §241(6)

Labor Law §241(6) imposes a nondelegable duty of reasonable care upon owners and contractors "to provide reasonable and adequate protection and safety" to persons employed in, or lawfully frequenting, all areas in which construction, excavation or demolition work is being performed. *See Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343 [1998]. The standard of liability under Labor Law §241(6), requires that a plaintiff allege that an owner or general contractor breached a specific rule

or regulation containing a positive command. *See Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494 [1993]. In addition, Labor Law §241(6) requires that a plaintiff establish that a violation of a safety regulation was the proximate cause of the accident. *See Gonzalez v Stern's Dep't Stores*, 211 AD2d 414 [1st Dept 1995].

Plaintiff moves for summary judgment on his §241(6) claims as predicated on Industrial Code provisions §23-1.7(e)(1) and §23-1.7(e)(2).

Industrial Code §23-1.7(e)(1)

Industrial Code §23-1.7(e)(1) relates to tripping hazards and provides “(1) Passageways. All passageways shall be kept free from accumulations of dirt and debris and from any other obstructions or conditions which could cause tripping. Sharp projections which could cut or puncture any person shall be removed or covered.”

Plaintiff asserts that it is undisputed that Plaintiff tripped and fell on loose concrete in a walkway or passageway, Sound Dog Defendants argue that §23-1.7(e)(1) is inapplicable because Plaintiff has failed to show that accident occurred in passageway and not an open area. Here however, David Boodhram, construction superintendent for Yorke, testified that at the accident location there was a plywood walkway that would allow people to walk across the area as a means of egress. Defendants also argue that the single piece of concrete does not implicate §23-1.7(e)(1) because it alone is not “an accumulation of dirt and debris.” Plaintiff asserts however that the presence of concrete debris was a common reoccurrence at the site known to Sound Dog Defendants as evidenced by the frequent appearance of concrete debris in daily photos of the jobsite from Yorke’s daily logs. In addition to the photographs, Plaintiff testified that concrete and concrete slabs were present in the area as he was moving the metal beams. Mr. Boodhram also testified that areas being used as paths should be clear of debris and that the concrete debris in the photographs were from Celtic’s demolition work in the area. Thus, §23-1.7(e)(1) applies because Plaintiff tripped and fell on uncleared concrete debris on a walkway. Accordingly, that portion of Plaintiff’s motion seeking summary judgment on §241(6) predicated on Industrial Code §23-1.7(e)(1) is **granted**.

§23-1.7(e)(2)

§23-1.7(e)(2) relates to tripping hazards in working areas, and provides “The parts of floors, platforms and similar areas where persons work, or pass shall be kept free from accumulations of dirt and debris and from scattered tools and materials and from sharp projections insofar as may be consistent with the work being performed.”

As to §23-1.7(e)(2), it is undisputed that the area which Plaintiff fell was a working area. Defendant

asserts however, that the concrete over which Plaintiff tripped was integral to the work and an inherent result of the work Plaintiff was performing and not something left by Celtic or White Star. Here, Plaintiff testified the work he was performing at the time was moving the metal beam. That there was concrete debris that had yet to be removed is not an inherent part of the task of transporting a metal beam and as such Sound Dog Defendants assertion is inapplicable. See e.g. *Bazdaric v Almah Partners, LLC*, 41 NY3d 310 [2024]; *Lourenco v City of New York*, 228 AD3d 577 [1st Dept 2024]; *Rossi v 140 West JV Manager LLC*, 171 AD3d 668 [1st Dept 2019]; Accordingly, That portion of Plaintiff's motion seeking the summary judgment on §241(6) predicated on Industrial Code §23-1.17(e)(2) is **granted**.

Labor Law §200 and Common Law Negligence

Labor Law §200 codifies landowners' and general contractors' common-law duty to maintain a safe workplace. Claims under Labor Law §200 fall under two categories: those arising from an alleged defect or dangerous condition existing on the premises, and those arising from the manner in which the work was performed (*Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 143-144 [1st Dept 2012]). Where an existing defect or dangerous condition caused the injury, liability attaches if the owner or general contractor either created the condition or had actual or constructive notice of the condition (*Mendoza v Highpoint Assocs., IX, LLC*, 83 AD3d 1, 9 [1st Dept 2011]). On the other hand, where the injury was caused by the manner of the work, liability attaches where the owner or general contractor had "authority to control the activity bringing about the injury to enable [a defendant] to avoid or correct an unsafe condition" (*Cappabianca*, 99 AD3d at 145; *Foley v Consol. Edison Co. of New York, Inc.*, 84 AD3 476, 477-478 [1st Dept 2011]).

Plaintiff moves for summary judgment on his §200 claim arguing Yorke had actual and constructive notice of the recurring issue of concrete debris at the site. In opposition, Sound Dog Defendants contend that they did not have actual or constructive notice. As noted above the daily photos of the job site in the daily log prepared by Yorke shows that concrete debris alongside other dirt and debris was a daily occurrence at the site which, according to Mr. Boodhram, was the result of the demolition work being conducted by Celtic. Kieran Selvin, owner of Celtic also testified that disposal of the debris created as part of its demolition work was part of the work that Yorke had hired Celtic to perform. Furthermore, that demolition work was being conducted on site indicates that it should have been self-evident that frequent dirt and debris such as concrete debris was present.

Defendants also contend that there is an issue of act as to the cause of the accident because the statements in the medical records contradict Plaintiffs' deposition testimony. Contrary to Sound Dog Defendants' assertions, that the medical records say Plaintiff was injured as a result of carrying the metal beam is not inconsistent with Plaintiff's testimony that he was injured when he tripped on

concrete which caused the metal beam he was carrying to hit him. Accordingly, Plaintiff's motion for summary judgment on his Labor Law §200 claim is **granted**.

Sound Dog Defendant's Motion for Summary Judgment

Contractual Indemnification

A party is entitled to full contractual indemnification provided that the "intention to indemnify can be clearly implied from the language and purposes of the entire agreement and the surrounding facts and circumstances" (*Drzewinski v Atlantic Scaffold & Ladder Co., Inc.*, 70 NY2d 774, 777 [1987] [internal quotations and citations omitted]). To obtain conditional relief on a claim for contractual indemnification, the one seeking indemnity must establish that it was free from any negligence and may be held liable solely by virtue of statutory or vicarious liability (*Spielmann v 170 Broadway NYC LP*, 187 AD3d 492, 494 [1st Dept 2020]). Conversely, "where a triable issue of fact exists regarding the indemnitee's negligence, a conditional order of summary judgment for contractual indemnification must be denied as premature" (*id.* [internal quotations and citation omitted]).

Sound Dog Defendants seek contractual indemnification from Celtic. The agreement between Yorke and Celtic provides:

§ 4.7 Indemnification

§ 4.7.1 "To the fullest extent permitted by law, Subcontractor [Sub-subcontractor, as applicable] shall defend, indemnify and hold harmless Berklee College of Music, Inc. (including its current and former members, officers, directors, employees, agents, and assigns), Yorke Construction Corporation, David Scott Parker Architects, LLC ("Architect"), Architect's consultants, and agents and employees of any of them (collectively, the "Indemnitees") against any claims, damages, losses, and expenses, including legal fees, arising out of or resulting from performance of work on the Project, to the extent caused in whole or in part by the subcontractor or anyone directly or indirectly employed by the Subcontractor."

Rider B to the agreement between Yorke and Celtic also provides:

6 INDEMNIFICATION

6A. "To the fullest extent permitted by law, the Subcontractor agrees to indemnify, defend and hold harmless Yorke Construction Corp. the Owner, Architect, Consultants, their officers, directors, agents, employees and partners (hereafter collectively "indemnities") from any and all claims, suits, damages, liabilities, professional fees, including attorney's fees, costs, court costs, expenses and

disbursements related to death, personal injuries or property damage (including loss of use thereof) brought or assumed against any of the indemnities by any person or firm, arising out of or in connection with or as a consequence of the performance of the Work of the Subcontractor under this agreement (contract), as well as any additional work, extra work, or add-on work, whether caused in whole or part by the Subcontractor including any subcontractors therefore and their employees.”

Thus, based upon the foregoing contractual provision and pending the determination of negligence, if any, Sound Dog Defendants are entitled to a conditional grant of judgment on its claim for contractual indemnification against Celtic. *See Devlin v AECOM*, 224 AD3d 437 [1st Dept 2024]; *see also Quichimbo v Vornado 640 Fifth Ave., L.L.C.*, 30 AD3d 194 [1st Dept 2006].

Accordingly, it is hereby

ORDERED, that motion for summary judgment by Plaintiff on his Labor Law §241(6) and §200 claims against Sound Dog Ventures LLC, Berklee College of Music, Inc., and Yorke Construction Corporation, is **GRANTED**, and it is further,

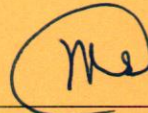
ORDERED, that the motion for summary judgment by Sound Dog Ventures LLC, Berklee College of Music, Inc., and Yorke Construction Corporation, for contractual indemnification of Celtic Services NYC Inc. is **GRANTED TO AN EXTENT** in that Sound Dog Ventures LLC, Berklee College of Music, Inc., and Yorke Construction Corporation is awarded conditional judgment against Celtic Services NYC Inc.,; and it is further

ORDERED, that the Clerk of the Court is directed to enter judgment accordingly; and it is further

ORDERED, the counsel for Plaintiff 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 constitutes the decision and order of this court.

Dated: October 10, 2025



HON. MYRNA SOCORRO, J.S.C.