

<b>Galvis v 301 First Owner, LLC</b>
2025 NY Slip Op 35285(U)
December 1, 2025
Supreme Court, Queens County
Docket Number: Index No. 711920/2020
Judge: Peter J. Kelly
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NEW YORK SUPREME COURT: QUEENS COUNTY

Present: HON. PETER J. KELLY

IAS Part 2

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RAUL GALVIS,

Plaintiff,

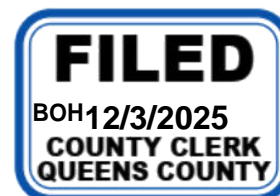
Index No.: 711920/2020

-against-

Motion Seq. 3 & 4

301 FIRST OWNER, LLC, et al,

Defendants.



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301 FIRST OWNER, LLC, et al.,

Plaintiffs,

-against-

GOTHAM DRYWALL, INC., et ano.,

Defendants.

-----X

The following numbered papers read on the motion, (Seq 3), by the defendant/third party plaintiffs, 301 First Owner LLC, (301 First Owner), and general contractor, Leeding Builders Group LLC, (LBG), seeking summary judgment pursuant to CPLR 3212 for liability under Labor Law §§ 200 and common law negligence, and on the separate motion (Seq 4), by third party defendant Gotham Framing, Inc., (Framing), seeking summary judgment dismissing plaintiff's complaint, and all cross claims and counterclaims against it, and on the cross-motion by third party defendant Gotham Drywall, Inc., seeking summary judgment against Framing on its contractual indemnification claim.

Papers  
Numbered

Notices of Motion - Affs - Exhibits.....	92-110; 111-118
Notice of Cross-Motion- Affs- Exhibits.....	120-124
Answering Affs - Exhibits.....	126-130;132, 133-134, 137-138
Reply Affs-Exhibits.....	140-141; 144, 145

Upon the foregoing papers it is ordered that the motions and cross-motion are determined as follows:

This action arises from the personal injuries sustained by the plaintiff, an employee of third party defendant Framing, hired by co-third party defendant Drywall, which in turn was hired by co-defendant LBG, the general contractor of co-defendant 301 First Owner.

Labor Law §§ 240 (1) and 241 (6), impose absolute and liability on owners, contractors and their agents for any breach of their nondelegable statutory duty, to provide appropriate safety devices for the protection of workers against risks inherent in elevated work sites. (*See McCarthy v Turner Constr., Inc.*, 17 NY3d 369 [2011]; *Caiazzo v Mark Joseph Contr., Inc.*, 119 AD3d 718 [2d Dept 2014].) If a failure to abide by their statutory duty, which proximately causes injury, liability is imposed regardless of whether or not the owner, general contractor, or agent exercised supervision or control. (*See Rocovich v Consolidated Edison Co.*, 78 NY2d 509 [1991].)

However, liability pursuant to Labor Law § 200, and common law negligence, may not be imposed upon an owner, or general contractor who had no control over the conditions of the premises or the manner in which the work was performed by the plaintiff. (*See Russin v Louis N. Picciano & Son*, 54 NY2d 311 [1981]; *Giovanniello v E.W. Howell, Co., LLC*, 104 AD3d 812 [2d Dept 2013].) The determinative factor is whether the owner or general contractor had the right to exercise such authority or control to correct a defect on the premises or the manner in which the work was performed. Additionally, it is well settled that where it is shown that there was an absence of any appropriate safety device, and such absence was a proximate cause of plaintiff's injuries, the plaintiff can not be considered to be the sole proximate cause. (*See Id.*; *Gallagher v New York Post*, 14 NY3d 83 [2010].)

On a motion for summary judgment, the court must view the evidence in the light most favorable to the non moving party. (*See Vega v Restani Const. Corp.*, 18 NY3d 499 [2012].) In doing so, the evidence submitted by the movants must eliminate all material issues of fact. (*Id.*)

In support of its motion for summary judgment on plaintiff's claims of violation of Labor Law § 200 and common law negligence, defendants/third party plaintiffs First Owner, submitted, among other things, a copy of the pleadings, their attorney's affirmation, a copy of plaintiff's deposition, a copy of the deposition of Stephen Scott Gaffney, superintendent for co-plaintiff Leedings Builders Group, (Leedings), a copy of the deposition of Jhonathan Cardova, second foreman for Drywall, a copy of the agreement between Leedings and Drywall, and a copy of the agreement between Drywall and Framing. In opposition, and in support of its own motion for summary judgment, Framing submitted, among other things, a copy of its attorney's affirmation, a copy of plaintiff's deposition, and a copy of Cardova's deposition on behalf of Drywall. In support of its cross-motion, Drywall submitted, among other things, a copy of its attorney's

affirmation, and a copy of the time sheets for the plaintiff on the project, from 9-30-2019 through 10-27-2019, sent from Framing to Drywall.

According to the plaintiff's testimony, the accident occurred when he was ordered to "do the best he can", and work alone framing the doorways of the units being constructed. He brought his own tools, but alleged that Drywall supplied a two foot ladder platform, that he claimed was defective, in that, the platform was unsteady, and it "moved" as he was standing up on it, doing his work, holding a heavy 10-15lb grinder. While doing this work, the plaintiff stated that he felt the ladder move, he lost control of the grinder, lost his footing and balance on the ladder and fell, thus causing his injuries. The plaintiff claimed that his co-worker had complained about the defective ladder but was ignored. He said he did not complain because he only spoke Spanish, and would not be understood.


In its cross-motion, the defendant Drywall has taken the position that, they apparently do not believe a ladder was involved, and if so, it was not defective, although Drywall provided no evidence one way, or the other. If it is determined that a ladder was necessary for the plaintiff to conduct his work, the failure to supply a properly functioning ladder would itself constitute a violation of the statutory duty of Labor Law § 240. (See *Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280 [2003].) However, the issue of the ladder is a triable issue of fact, and therefore summary judgment can not be provided to Drywall regarding liability to the plaintiff. As to contractual indemnification claims, since the issue of whether a properly functioning ladder remains a triable issue of fact, it can not be determined the extent to which Drywall might obtain contractual indemnification since it can not be indemnified for its own negligence. (See *Brooks v Judlau Contracting, Inc.*, 11 NY3d 204 [2008].) The arguments made regarding the effect of plaintiff's own negligence, is faulty, at best. Although it may be argued that the manner in which plaintiff used the ladder may be a proximate cause of his injuries, in the absence of an appropriate safety device, he can not be considered to be the sole proximate cause of the accident. (See *Gallagher*, 14 NY3d 83.) The only argument that would be satisfactory to exculpate the defendants from liability, is if the plaintiff was the sole proximate cause of his injuries. There has been no evidence submitted that would suggest that is the case, at this time.

As to Framing's motion for summary judgment, sufficient evidence has been submitted to show that Framing was accounting for the plaintiff's time to Drywall, and therefore that an oral agreement may have been in place between them, within the parameters of the master agreement. Furthermore, the plaintiff attests that he was an employee of Framing, on the job with Drywall, and had done so for a considerable period of time, and a course of conduct between the parties established that the need for a formal purchase order was unnecessary. How the plaintiff was working at this project for Drywall, under the employment of Framing is a material issue of fact to be determined by the jury. Consequently, Framing's motion for summary judgment is denied.

With regard to the motion for summary judgment by the owner/contractor, it has been demonstrated that the owner/contractor did not have actual supervision or control over the workplace, (*See Ortega v Puccia*, 57 AD3d 54 [2d Dept 2008].) The motion by First Owner as to Labor Law § 200 and common law negligence is granted. A contractual indemnification provision is adequately provided in Article 12 of the Agreement between Leedings and Drywall, “arising out of, resulting from, or occurring in connection with ...the performance of the Work by Subcontractor, its subcontractors..or their agents, servants or employees.” (*See Brown v Two Exchange Plaza Partners*, 76 NY2d 172 [1990].) The indemnification also covers holding harmless in Subcontractor’s obligation to defend Contractor. “Contractor shall have the right to approve any counsel Subcontractor intends, such approval not to be unreasonably withheld.” If Contractor chooses to defend itself, then Subcontractor shall pay Contractor’s costs of defense, including but not limited to attorney’s fees and paralegals’ fees. The motion is granted as to the indemnification provision against Drywall. However, its motion with respect to Framing is denied, in that its third party complaint did not allege contractual indemnification against Framing.

Accordingly, the motion for summary judgment by First Owner is granted, in that the claims of violations of Labor Law § 200 and common law negligence are dismissed, as to it, and its claims for contractual indemnification are granted, as against Drywall, but denied as to Framing. The motion for summary judgment by Framing is denied in its entirety. The cross-motion by Drywall is denied in its entirety.

Dated: December 1, 2025

  
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 Hon. Peter J. Kelly, J.S.C.

