

Vasquez v Kaufman Astoria Studios, Inc.

2025 NY Slip Op 35286(U)

April 16, 2025

Supreme Court, Queens County

Docket Number: Index No. 717457/2019

Judge: Maurice E. Muir

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This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT – QUEENS COUNTY

Present: HONORABLE MAURICE E. MUIR
Justice

JOHNATHAN L. GUEVARA VASQUEZ,

Plaintiff,

-against-

KAUFMAN ASTORIA STUDIOS, INC., ASTORIA
STUDIOS INCORPORATED, ASTORIA STUDIOS
LIMITED PARTNERSHIP, ASTORIA STUDIOS
LIMITED PARTNERSHIP II, ASTORIA ON
STAGE, LLC, URBAN ATELIER GROUP, LLC,
THE J CONSTRUCTION CO LLC and
W.J. CONTRACTING,

Defendants.

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Index No.: 717457/2019

Motion Date: 4/11/24

Motion Cal. No. 26

Motion Seq. No. 2

KAUFMAN ASTORIA STUDIOS, INC., ASTORIA
STUDIOS LIMITED PARTNERSHIP, ASTORIA
STUDIOS LIMITED PARTNERSHIP II, ASTORIA
ON STAGE, LLC, and URBAN ATELIER GROUP,
LLC,

Third-Party Plaintiffs,

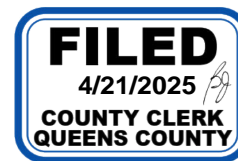
-against-

RSC GROUP L.L.C.,

Third-Party Defendant.

KAUFMAN ASTORIA STUDIOS, INC., ASTORIA
STUDIOS LIMITED PARTNERSHIP, ASTORIA
STUDIOS LIMITED PARTNERSHIP II, ASTORIA
ON STAGE, LLC, and URBAN ATELIER GROUP,
LLC,

Second Third-Party Plaintiffs,



-against-

RIGHT AWAY ELECTIC LLC,

Second Third-Party Defendant.

The following electronically filed (“EF”) documents read on this motion by Johnathan L. Guevara Vasquez (“Mr. Vasquez” or “plaintiff”) for an order granting plaintiff summary judgment against defendants pursuant to Labor Law §§ 240(1) and 241(6) together with such other relief this court deems just and proper.

| | Papers Numbered |
|---|--------------------|
| Notice of Motion-Affirmation in Support-Exhibits..... | EF 122 – 126 |
| Notice of Cross Motion-Affirmation in Support-Exhibits..... | EF 153 – 176 |
| Affirmation in Opposition-Exhibits..... | EF 128 – 152 |
| Reply Affirmation-Exhibits-Memorandum of Law in Reply..... | EF 203 – 206 |

Upon the foregoing papers, it is ordered that the motion and cross-motion are combined herein for disposition, and determined as follows:

Plaintiff was employed by RSC Group, LLC (“RSC”), which had a subcontract with Urban Atelier Group, LLC (“UAG”) to perform masonry work at property located at 34-12 36th Street, Astoria, New York (“construction site”), which was owned by Astoria on Stage. Moreover, the latter a contract with UAG to provide construction management services for the project. On March 19, 2019, plaintiff was allegedly injured when a round metal object fell from above the location where he was working and struck the blade of the electric saw, severing his right thumb. As a result, on October 14, 2019, Plaintiff commenced this action, pursuant to Labor Law §§ 240 (1), 241 (6), and 200 and common-law negligence. On January 22, 2020, Kaufman, Astoria Studios, Astoria Studios II, Astoria on Stage, and UAG commenced a third-party action against RSC alleging claims for contractual indemnification, common-law indemnification, contribution, and breach of contract. Moreover, on November 30, 2020, Kaufman, Astoria Studios, Astoria Studios II, Astoria on Stage, and UAG instituted a second third-party action against Right Away Electric LLC (“Right Away Electric”) alleging claims for contractual indemnification, common-law indemnification, contribution, and breach of contract. Additionally, pursuant to a stipulation executed by the parties dated March 29, 2021, the action

against Kaufman, Astoria Studios, Astoria Studios II, and defendant The J Construction Co LLC (“J Construction”) and all claims, counterclaims, cross-claims, and third-party claims brought by Kaufman, Astoria Studios, Astoria Studios II, and J Construction were voluntarily discontinued. As such, the court will address the issues herein only as to defendants/third-party plaintiffs/second third-party plaintiffs Astoria on Stage and UAG and defendant W.J. Contracting Corp. (W.J. Contracting).

The court will first address plaintiff’s motion for partial summary judgment on the Labor Law §§ 240 (1) and 241 (6) causes of action against Astoria on Stage and UAG and the cross-motion by Astoria on Stage and UAG for summary judgment dismissing the Labor Law §§ 240 (1), 241 (6), and 200 and common-law negligence causes of action against them. In support of Astoria on Stage and UAG’s cross-motion, they initially contend that UAG is not liable to plaintiff under Labor Law §§ 240 (1), 241 (6), and 200 because it served as a construction manager on the construction project. It is well settled law that although a construction manager is generally not considered a contractor responsible for the safety of the workers at a construction site pursuant to Labor Law §§ 200, 240(1), and 241(6), “it may nonetheless become responsible if it has been delegated the authority and duties of a general contractor, or if it functions as an agent of the owner of the premises” (*Rodriguez v. JMB Architecture, LLC*, 82 AD3d 949, 950 [2d Dept 2011]; *see Walls v. Turner Constr. Co.*, 4 NY3d 861, 863-864 [2005]). “A party is deemed to be an agent of an owner or general contractor under the Labor Law when it has supervisory control and authority over the work being done where a plaintiff is injured” (*Lamar v. Hill Intl., Inc.*, 153 AD3d 685, 686 [2d Dept 2017]). A party’s status as a contractor is dependent upon whether it had the right to exercise control over the work, not whether it actually exercised that right (*see Williams v. Dover Home Improvement, Inc.*, 276 AD2d 626 [2d Dept 2000]). Here, the evidence in the record demonstrates that UAG’s role was only one of general supervision, which is insufficient to impose liability under the Labor Law (*see Lamar*, 153 AD3d at 686; *Armentano v. Broadway Mall Props., Inc.*, 30 AD3d 450 [2d Dept 2006]). Specifically, the construction management services contract between Astoria on Stage and UAG does not confer upon UAG supervisory control over the injury-producing work and demonstrates that UAG was not responsible for the means and methods of construction at the subject construction site. Instead, the contract provides that UAG was responsible for coordinating the work of the various subcontractors, create work schedules, prepare progress reports, and ensure that the construction project was completed in accordance with the relevant subcontract documents and

cost, time, safety, and quality control requirements. Moreover, plaintiff testified at his deposition that he received daily instructions at the construction site from his supervisor, Gino, who is also an employee of RSC. In addition, Joseph Carzzarella (“Mr. Carzzarella”), UAG’s senior superintendent working on the subject construction project at the time of plaintiff’s accident, stated in his affidavit that his “duties included administrative oversight of the progress of the work, coordination of the work being performed by UAG’s subcontractors and ensuring compliance with the architectural drawings, plans, and specifications.” Mr. Carzzarella further averred that his duties “did not include the supervision or control of the means and methods used by the subcontractors to perform their work, nor did [his] duties include training the workers on site relative to set up and use of the tools typical of their trade.” Under these circumstances, plaintiff’s Labor Law §§ 240 (1), 241 (6), and 200 claims against UAG are dismissed.

Next, the court will turn to the branch of plaintiff’s motion for partial summary judgment on the Labor Law § 240(1) claim asserted against Astoria on Stage and W.J. Contracting and the branch of the cross-motion by Astoria on Stage and UAG for summary judgment dismissing said cause of action against Astoria on Stage. To prevail on a Labor Law § 240(1) cause of action, a plaintiff must demonstrate that there was a violation of the statute and that the violation was a proximate cause of the accident (*see Blake v. Neighborhood Hous. Servs. of New York City, Inc.*, 1 NY3d 280 [2003]). Labor Law § 240(1) requires owners, contractors, and their agents to provide workers with appropriate safety devices to protect against “such specific gravity-related accidents as falling from a height or being struck by a falling object that was improperly hoisted or inadequately secured” (*see Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 [1993]). In cases involving falling objects, as alleged here, to establish liability under Labor Law § 240 (1), a plaintiff must show more than simply that an object fell, thereby causing injury to a worker (*see Narducci v. Manhasset Bay Assocs.*, 96 NY2d 259 [2001]). Rather, a plaintiff must demonstrate that the object fell, while being hoisted or secured, because of the absence or inadequacy of a safety device of the kind enumerated in the statute (*see Narducci*, 96 NY2d at 268; *Novak v. Del Savio*, 64 AD3d 636 [2d Dept 2009]). While not all injuries caused by falling objects come within the ambit of Labor Law § 240 (1), the statute affords protection where the falling of an object is related to “a significant risk inherent in . . . the relative elevation . . . at which materials or loads must be positioned or secured” (*see Narducci*, 96 NY2d at 268; *Rocovich v. Consolidated Edison Co.*, 78 NY2d 509, 513 [1991]), that is, the statute applies to objects that require securing for the purposes of the undertaking (*see Outar v. City of New York*,

5 NY3d 731, 732 [2005]). Here, based on a careful review of the evidence submitted to the court, there are triable issues of fact, at least, as to how plaintiff's accident happened, thereby precluding an award of summary judgment. At his deposition, plaintiff testified that, at the time of the accident, he was cutting cement blocks using a table saw when a round metal object fell from above the area where he was working and struck the saw blade, thereby severing his thumb as it hit the blade. According to the affidavit of Mr. Carzzarella, however, there was no work being performed on the floor above the location where plaintiff was using the saw; and there were no materials being hoisted above him at the time of the accident. The saw was also located underneath an enclosed steel decking. Additionally, Mr. Carzzarella stated in his affidavit that following the subject accident, he went to the accident location but he did not observe any round metal object in the vicinity of the saw; and no one advised him that a round metal object hit the saw. Given the conflicting evidence, the branches of plaintiff's motion for partial summary judgment on the Labor Law § 240(1) claim asserted against Astoria on Stage and W.J. Contracting and the cross-motion by Astoria on Stage and UAG for summary judgment dismissing said cause of action are denied.

For similar reasons, those branches of plaintiff's motion for partial summary judgment on the Labor Law § 241(6) claim asserted against Astoria on Stage and W.J. Contracting and the cross-motion by Astoria on Stage and UAG for summary judgment dismissing said cause of action against Astoria on Stage are denied. To recover under Labor Law § 241(6), a plaintiff must demonstrate the violation of an Industrial Code provision, which sets forth specific, applicable safety standards, in connection with construction, demolition, or excavation work (*see Ross*, 81 NY2d at 502-505). Here, as previously discussed, there are material issues of fact as to how plaintiff's accident occurred, namely whether a metal object fell from above and struck the subject saw, causing his alleged injuries. As such, it cannot be determined at this juncture whether the aforementioned Industrial Code regulations were violated.

Notwithstanding these findings, dismissal of the Labor Law § 200 and common-law negligence claims against Astoria on Stage and UAG is warranted. Labor Law § 200 codifies the common-law duty of an owner or contractor to provide employees with a safe place to work (*see Rodriguez v. Metropolitan Transportation Authority*, 191 AD3d 1026 [2d Dept 2021]; *Lane v. Fratello Constr. Co.*, 52 AD3d 857 [2d Dept 2008]). Where, as here, a claim arises out of alleged defects or dangers in the methods or materials of the work rather than the condition of the premises, recovery against the owner or general contractor cannot be had under either the

common law or Labor Law § 200 unless it is shown that the party to be charged had the authority to supervise or control the performance of the work (*see Cambizaca v. New York City Tr. Auth.*, 57 AD3d 701 [2d Dept 2008]; *Ferrero v Best Modular Homes, Inc.*, 33 AD3d 847 [2d Dept 2006]). In the case at bar, the evidence in the record reveals that Astoria on Stage and UAG did not supervise, direct, or control the method or manner in which plaintiff performed his masonry work. According to the deposition testimony of plaintiff, only his supervisor, Gino, gave him daily instructions concerning how to perform his work at the subject construction site, including instructions on how to use the electric saw. Similarly, Mr. Carzzarella stated in his affidavit that, as Senior Superintendent for UAG, he did not give instructions or directions to any of the subcontractors regarding how to perform their work. Moreover, as discussed above, UAG's authority to generally supervise the work on the construction project, to stop a subcontractor's work if a safety violation is noted, and to ensure compliance with safety regulations does not rise to the level of supervision and control necessary to trigger liability under either Labor Law § 200 or common-law negligence (*see Kajo v E.W. Howell Co., Inc.*, 52 AD3d 659 [2008]; *Cambizaca*, 57 AD3d at 702; *Dennis v City of New York*, 304 AD2d 611 [2003]). As such, that branch of Astoria on Stage and UAG's cross-motion for summary judgment dismissing the Labor Law § 200 and common-law negligence claims against them is granted.

Finally, Astoria on Stage and UAG seek summary judgment for dismissal of the separate cross-claims by J Construction and Astoria Studios and third-party cross-claim by RSC for common-law indemnification and contribution against them and the counterclaim asserted in the second third-party action by Right Away Electric for common-law indemnification and contribution against them. To establish a claim for common-law indemnification and contribution, the party seeking indemnity must prove that it was not negligent and that the proposed indemnitor was guilty of some negligence that contributed to the accident or, in the absence of any negligence, had the authority to direct, supervise, and control the work giving rise to the injury (*see Benedetto v Carrera Realty Corp.*, 32 AD3d 874 [2d Dept 2006]). In light of the dismissal of the main action against UAG, the cross-claims, third-party cross-claim, and counterclaim for common-law indemnification and contribution against it are dismissed as academic (*see Payne v. 100 Motor Parkway Assoc., LLC*, 45 AD3d 550 [2d Dept 2007]; *Hoover v. IBM Corp.*, 35 AD3d 371 [2d Dept 2006]; *Cardozo v. Mayflower Ctr., Inc.*, 16 AD3d 536 [2d Dept 2005]). Furthermore, as discussed above, there is no evidence in the record demonstrating that Astoria on Stage was negligent in the happening of plaintiff's accident or that it directed,

controlled, or supervised the method or manner of the work performed by plaintiff. Therefore, those branches of the cross-motion by Astoria on Stage and UAG for summary judgment dismissing all cross-claims and the second third-party counterclaim against them is granted.

Accordingly, it is hereby

ORDERED, that RSC's motion for a protective order striking the notice to admit dated December 7, 2022 is granted; and it is further,

ORDERED, that Plaintiff's motion for summary judgment on the Labor Law §§ 240 (1) and 241(6) causes of action against defendants is denied; and it is further,

ORDERED, that those branches of Astoria on Stage's and UAG's cross-motion for summary judgment dismissing the Labor Law §§ 240(1), 241(6), are denied; and it is further,

ORDERED, that those branches of Astoria on Stage's and UAG's cross-motion for 200 and common-law negligence causes of action against UAG and the Labor Law § 200 and common-law negligence causes of action against Astoria on Stage are granted; and it is further,

ORDERED, that those branches of the cross-motion by Astoria on Stage and UAG for summary judgment dismissing the cross-claims, third-party cross-claim, and the second third-party counterclaim for common-law indemnification and contribution against them are also granted; and it is further,

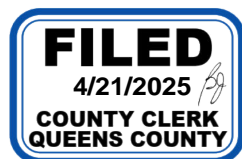
ORDERED, that those branches of the cross-motion by Astoria on Stage and UAG for order compelling RSC to respond to outstanding discovery demands is granted only to the extent that RSC must appear for a deposition, within 45 days of the date of entry this order or its answer shall be stricken; and it is further,

ORDERED, that all other respects, the cross-motion by Astoria on Stage and UAG is denied; and it is further,

ORDERED that defendants shall serve a copy of this decision and order with notice of entry upon the plaintiff and the clerk of this court, via email and NYSCEF, on or before April 30, 2025.

The foregoing constitutes the Decision and Order of the court.

Dated: April 16, 2025
Long Island City, New York




MAURICE E. MUIR, J.S.C.