Wolosz v Erzuli, LLC
2026 NY Slip Op 30584(U)
February 17, 2026
Supreme Court, New York County
Docket Number: Index No. 155218/2022
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **14**

Justice

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HENRYK WOLOSZ,

Plaintiff,

- v -

ERZULI, LLC,SWEENEY & CONROY INC.,NOVA CONSTRUCTION SERVICES, LLC,

Defendant.

----------X

INDEX NO. 155218/2022

MOTION DATE N/A, N/A

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

SWEENEY & CONROY INC.

Plaintiff,

-against-

NOVA CONSTRUCTION SERVICES LLC

Defendant.

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Third-Party
Index No. 595965/2022

ERZULI, LLC

Plaintiff,

-against-

SWEENEY & CONROY INC.

Defendant.

----------X

Second Third-Party
Index No. 595149/2023

NOVA CONSTRUCTION SERVICES LLC

Plaintiff,

-against-

WRG CONSTRUCTION, INC.

Defendant.

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Third Third-Party
Index No. 595149/2023

The following e-filed documents, listed by NYSCEF document number (Motion 001) 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 118, 122, 126, 127, 128

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 115, 116, 117, 119, 120, 121, 123, 124, 125, 129

were read on this motion to/for JUDGMENT - SUMMARY.

Motion Sequence Numbers 001 and 002 are consolidated for disposition. Defendant Sweeney & Conroy Inc. ("SC")'s motion (MS001) for summary judgment dismissing plaintiff's complaint, all claims against it and on its third party complaint is granted in part and denied in part. Plaintiff's motion (MS002) for partial summary judgment on his Labor Law § 240(1) claim is granted in part and defendants Erzuli, LLC ("Erzuli") and Nova Construction LLC ("Nova")'s motion for summary judgment is granted in part.

Background

Plaintiff brings this Labor Law case to recover damages he claims he suffered while working at a construction site on June 2, 2022. He testified that the accident happened on an "internal staircase. We were carrying heavy machinery, taking it down to the basement" (NYSCEF Doc. No. 86 at 18). Plaintiff was working to build and elevator shaft that day and, as part of that task, he was told to bring down heavy machines to the basement (*id*. at 23). He added that the accident happened "Sometime before eleven. The training ended. We started unloading. And then we were bringing it down. And then the accident took place" (*id*.). Plaintiff insisted that there was no supervisor from his employer that day (*id*. at 24).

The machine plaintiff and his coworker were bringing down "is used for cutting the cinderblocks by using water" and "It is called a table saw because it's for construction. It comes

with the table, it has legs, has a motor and you're using for cutting cinderblocks" (*id*. at 28). "So first we were pulling it because it has two small wheels. So if there's even ground we can pull it. Then we were carrying it down by using stairs. We were supposed to bring it down two flights of stairs. So we were able to do it on one flight of stairs. And then on the second we lost the balance and we fell down" (*id*. at 30-31). When asked how heavy this machine was, plaintiff responded that "It was heavy. 600 pounds. It has [a] heavy motor and all other parts" (*id*. at 33).

Plaintiff moves for summary judgment on his Labor Law § 240(1) claim. He contends that defendant Erzuli was the owner, SC was the general contractor and Nova was another contractor tasked with doing masonry work who then hired plaintiff's employer (an entity called Avalanche). Plaintiff argues that no safety devices were provided for his task and he, along with a coworker, had to lower the machine down the stairs, step by step.

Plaintiff insists that Erzuli, SC and Nova are appropriate defendants under a Labor Law 240(1) claim as they constitute the owner, the general contractor and the contractor responsible for the job at issue. He contends that his accident clearly entitles him to summary judgment on a Labor Law § 240(1) claim.

Erzuli contends that because the project was going to be used a residential property and it did not direct or control the work, it is entitled to rely upon the homeowner's exception from the Labor Law.

Nova contends that it was not the owner or the general contractor's statutory agent and that it did not control or direct plaintiff's work. Both Nova and Erzuli argue that plaintiff's Labor Law § 200 claim is without merit as neither of these parties directed his work.

SC makes its own motion for summary judgment on the ground that the accident does not qualify as a 240(1) claim because plaintiff was descending a permanent staircase. It contends that

a permanent staircase is a not the functional equivalent of a ladder or other device contemplated under the Labor law. SC also moves to dismiss plaintiff's Labor Law § 241(6) and 200 claims.

Homeowner's Exemption

"In 1980, the Legislature amended Labor Law §§ 240 and 241 to exempt owners of one and two-family dwellings who contract for but do not direct or control the work from the absolute liability imposed by these statutory provisions. The homeowners' exemption was enacted to protect those people who, lacking business sophistication, would not know or anticipate the need to obtain insurance to cover them against the absolute liability imposed by Labor Law §§ 240 and 241. The intent of the homeowner's exemption was to make the law fairer and more reflective of the practical realities governing the relationship between homeowners and the individuals they hire to perform construction work on their homes" (*Assevero v Hamilton & Church Properties, LLC*, 131 AD3d 553, 555-56, 15 NYS3d 399 [2d Dept 2015]).

Erzuli claims it is entitled to this exemption because the project in question was on a single-family home. The principal of Erzuli explains that the home was being constructed for his family and the instant construction involved turning two single family townhouses into a single home (NYSCEF Doc. No. 94 at 1). Erzuli also submits the affidavit of Mr. Brian Caffrey, an employee of Grid Group, who represents Erzuli and he insists that his entity was hired by Erzuli to oversee the project although he repeatedly emphasizes that Grid Group was not controlling or supervising the project (NYSCEF Doc. No. 95 at 1). Mr. Caffrey insists that Erzuli was not involved in the day-to-day management of the project.

In opposition to this point, plaintiff contends that the principal for Erzuli was never produced for a deposition and so there is an issue of fact concerning whether it was intended to be used as his primary residence.

The Court dismisses Erzuli under the homeowner exemption as the record shows this construction project was for a residential property; they were combining townhouses to make a Manhattan equivalent of a doublewide. "The fact that title to an otherwise qualifying one- or two-family dwelling is held by a corporation rather than an individual homeowner does not, in and of itself, preclude application of the exemption" (*Assevero*, 131 AD3d at 556). Although plaintiff complains it did not get a chance to question Erzuli's principal, he did not point to, or attach, any evidence that he ever pursued this deposition. Moreover, he did not cite any evidence that could raise an issue of fact regarding whether this project was anything other than a residential project.

Nova's Status

The other preliminary issue is whether Nova, who was not the general contractor, can be held liable under the Labor Law.

"[A]s a subcontractor rather than the general contractor, [the subcontractor] may be held liable for plaintiff's injuries under Labor Law §§ 240(1) and 241(6) only if it had the authority to supervise and control the work giving rise to the obligations imposed by these statutes, which would render it the general contractor's statutory agent. To be treated as a statutory agent, the subcontractor must have been delegated the supervision and control either over the specific work area involved or the work which gave rise to the injury" (*Nascimento v Bridgehampton Const. Corp.*, 86 AD3d 189, 192-93, 924 NYS2d 353 [1st Dept 2011] [internal quotations and citations omitted]).

First, plaintiff testified that he thought Nova was the general contractor (NYSCEF Doc. No. 86 at 21). And he claimed, at one point, that the foreman who was on site that day had a Nova insignia on his helmet (*id*. at 49). To be sure, plaintiff's testimony is not entirely clear on this point—but that compels the Court to deny all requests for relief related to Nova on the ground that it was not a proper Labor Law defendant because it is unclear exactly what role it may have played that day. Plus, SC contends that Nova hired plaintiff's employer and that Nova did pre-shift meetings on safety issues.

At the very least, Nova had people on site that day and it is undisputed that Nova contracted in some way with plaintiff's employer. The extent to which Nova may have controlled the work by plaintiff's employer (Avalanche) is unclear on this record. The Court cannot make any affirmative findings as a matter of law.

Labor Law § 240(1)

"Labor Law § 240(1), often called the 'scaffold law,' provides that all contractors and owners . . . shall furnish or erect, or cause to be furnished or erected . . . scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to construction workers employed on the premises" (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 499-500, 601 NYS2d 49 [1993] [internal citations omitted]). "Labor Law § 240(1) was designed to prevent those types of accidents in which the scaffold, hoist, stay, ladder or other protective device proved inadequate to shield the injured worker from harm directly flowing from the application of the force of gravity to an object or person" (*id.* at 501).

"[L]iability [under Labor Law § 240(1)] is contingent on a statutory violation and proximate cause . . . violation of the statute alone is not enough" (*Blake v Neighborhood Hous. Servs. of NY City*, 1 NY3d 280, 287, 771 NYS2d 484 [2003]).

The Court grants plaintiff's motion for summary judgment on his Labor Law § 240(1) claim as against SC. The fact is that falling while carrying a heavy piece of equipment, even on a permanent staircase, compels summary judgment on liability on this claim (*DaSilva v Toll GC LLC*, 224 AD3d 540, 541, 205 NYS3d 363 [1st Dept 2024] [awarding summary judgment under Labor Law § 240(1) to a plaintiff who fell while carrying a 200-pound item up a permanent staircase]). Plaintiff was not provided with any safety device to help alleviate the gravity-related dangers from attempting to carry a 600-pound machine down two flights of stairs with a single other individual.

Labor Law 241(6)

SC moves to dismiss plaintiff's claims based on Labor Law § 241(6). Plaintiff contends that it does not oppose this branch of SC's motion and so this claim is severed and dismissed.

The Court observes that Erzuli and Nova did not seek to dismiss this claim on substantive grounds in their moving papers—it only claimed that Erzuli was entitled to the homeowner's exemption and that Nova was not a proper Labor Law defendant. Therefore, this claim remains against Nova.

Labor Law § 200

Labor Law § 200 "codifies landowners' and general contractors' common-law duty to maintain a safe workplace" (*Ross v Curtis-Palmer Hydro-Electric Co.*, 81 NY3d 494, 505, 601

NYS2d 49 [1993]). "[R]ecovery against the owner or general contractor cannot be had unless it is shown that the party to be charged exercised some supervisory control over the operation . . . [A]n owner or general contractor should not be held responsible for the negligent acts of others over whom the owner or general contractor had no direction or control" (*id.* [internal quotations and citation omitted]).

"Claims for personal injury under this statute and the common law fall under two broad 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, 143-44, 950 NYS2d 35 [1st Dept 2012]). "Where an existing defect or dangerous condition caused the injury, liability attaches if the owner or general contractor created the condition or had actual or constructive notice of it" (*id.* at 144).

The Court denies all requests to dismiss plaintiff's cause of action under this Labor Law section. With respect to SC, its witness testified that if a contractor wanted to use a hoist to transport a machine like the one plaintiff was tasked with moving, that subcontractor would have had to get permission from SC (NYSCEF Doc. No. 109 at 63). In other words, there is an issue of fact concerning whether SC had control over the various ways in which this equipment might have been moved with the appropriate safety devices.

Of course, Nova is not entitled to summary judgment on this because, as noted above, plaintiff thought that Nova was the general contractor and there are issues of fact with respect to how much control Nova had over plaintiff's work at the site. After all, plaintiff insisted that his boss was not on site and it is unclear who employed the foreman identified by plaintiff during his deposition.

Contractual Indemnity

For the reasons stated above, i.e. the issues of fact concerning which party had control over the work plaintiff was to perform at the job site that day, the Court is unable to grant any claims for relief on the contractual indemnification claim. "In contractual indemnification, the one seeking indemnity need only establish that it was free from any negligence and was held liable solely by virtue of the statutory liability. Whether or not the proposed indemnitor was negligent is a non-issue and irrelevant" (*Correia v Professional Data Mgt., Inc.*, 259 AD2d 60, 65 [1st Dept 1999]). As no remaining party has established that it is free from negligence, summary judgment cannot be awarded.

Accordingly, it is hereby

ORDERED that defendant Sweeney & Conroy Inc.'s motion (MS001) for summary judgment is granted only to the extent that plaintiff's Labor Law § 241(6) claim is severed and dismissed; and it is further

ORDERED that plaintiff's motion (MS002) for partial summary judgment on liability as to his Labor Law § 240(1) claim is granted only as to defendant Sweeney & Conroy, Inc. and denied as to the remaining defendants; and it is further

ORDERED that defendant Erzuli LLC and Nova Construction Services, LLC's cross-motion is granted only to the extent that all claims against Erzuli LLC are severed and dismissed under the homeowner's exemption.

2/17/2026
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	DENIED		GRANTED IN PART	X	OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE